



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

214

LPA-118-2022(O&M)

Date of decision:10.04.2026

STATE OF HARYANA AND ANOTHER

...APPELLANTS

VERSUS

Dr. SHIV CHARAN RAWAL

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Saurabh Mohunta, D.A.G., Haryana
for appellants.

Mr. Suryakant Gautam, Advocate
for respondent.

ASHWANI KUMAR MISHRA, J. (ORAL)

The present letters patent appeal has been filed under Clause X of the Letter Patent Act by the appellants for setting aside judgment dated 28.02.2020 and 24.03.2021 passed by Hon'ble Single Bench of this Court in CWP No.15700 of 2016 and RA-CW No.241 of 2020, respectively, whereby a direction has been issued to the appellants to recalculate the 2nd ACP after taking into account the past service of the respondent rendered in Haryana Dairy Development Cooperative Federation prior to his absorption and payment be made with 6% interest from the date of filing the said writ petition.

2. Facts of the case are that the respondent was appointed as Veterinary Officer on 05.03.1985 on ad hoc basis. Respondent was regularized on 23.08.1985. The services of respondent were absorbed as District Dairy Development Officer in the Dairy Development Department Haryana vide order dated 30.04.1996. Vide order dated 14.05.2003

(Annexure P-4), Haryana Dairy Development Department was merged with Animal Husbandry Department. As per condition (ii) of the order dated 14.05.2003, those District Dairy Development Officers, who fulfil the qualification of Veterinary Surgeon may be given an option to join as Veterinary Surgeon in the Department and their *inter se* seniority was to be fixed from the date of joining in the erstwhile Department. The respondent was accordingly placed at serial No.4 of seniority list dated 06.01.1998. The grievance before the learned Single Judge was that on completion of nearly 11 years of service, the respondent was entitled to payment of 2nd ACP, whereas such benefit has been extended to him only on 22.08.2012.

3. Before the learned Single Judge, much of the contest was with regard to counting of the period of service rendered as Veterinary Officer in the Haryana Dairy Development Cooperative Federation, Haryana from 23.08.1985 till 30.04.1996. So far as counting of such services for the purposes of grant of ACP is concerned, learned counsel for the appellants submits that there is no issue and that such period has actually been counted for the purpose of extending the benefit of 2nd ACP.

4. The issue that in fact arose, was with regard to the provisions contained in Rule 5 of the Haryana Civil Services (Assured Career Progression) Rules, 1988 (hereinafter referred to as '**1988 Rules**'). Rule 5 of 1988 Rules specifies the eligibility for grant of ACP. Sub-Rule 4 of Rule 5 of 1988 Rules is relevant for the present consideration and is reproduced as under:-

(4) The eligibility for grant of the ACP scales shall further be subject to any other restriction as may be prescribed by the

Government from time to time including the restriction of the number of Government servant to be granted the respective ACP scales in terms of percentage of posts in the cadre to which such ACP placements shall be limited;

Provided that till the time such restrictions are not imposed by the Government.--

(a) there shall be no restriction on the number of Government servants to be granted the first or second ACP scales with reference to the Government servants covered in sub-rule (2) of rule 4.

(b) for the Government servants covered in sub-rule (1) of rule 4, there shall be no restriction on the number of Government servants for grant of first ACP scale. However, the grant of the second ACP scale for such Government servants as covered in sub-rule (1) of rule 4 shall be limited to 20% of the total posts in the cadre.?

5. As per the respondent, there were only 12 posts in the cadre and 20% of such posts alone were available for extending the benefit of ACP. Consequently, as per the respondent, only two posts were available while the respondent was placed at serial No.4 in seniority list, therefore, he was not entitled to 2nd ACP. It is undisputed that 2nd ACP under 1988 Rules was admissible on working for the prescribed period of regular satisfactory service. This is apparent from Schedule I of 1988 Rules.

6. Learned counsel for respondent, however, has placed reliance upon the orders passed by the State Government itself, whereby certain additional posts were created for District Dairy Development Officer. This fact is not disputed by the State. Consequently, cadre strength undisputedly

is 19. The question before us is as to whether, the respondent would be covered within the ambit of 20% posts of the cadre when he is placed at serial No.4 in the seniority list?

7. Learned counsel for appellants has placed reliance upon an Office Memorandum dated 08.08.2002, wherein clause 9 reads as under:-

“Keeping in view the above detailed discussions, the government have now decided to withdraw the instructions bearing No.2/1/95-4PR(FD), dated 20.08.1996 and reiterate the FD’s instructions dated 24.08.1981 whereby it was stipulated that for the purpose of calculating the selection grade posts, the permanent posts and such of the temporary posts in a cadre which have remained in existence for more than three years should be taken into account. Accordingly, the Government has decided that for the purpose of calculating selection grade posts, the permanent posts as well as temporary posts in a cadre which have remained in existence for more than three years should be taken into account. However, while making calculations, the fraction of three and above may be considered as whole number. It has also been decided that for the computation of Selection Grade post in a cadre, the minimum number of posts in that cadre must be three if the selection grade stands sanctioned at 20% of the cadre and for a cadre strength of 3 to 7 posts, the Selection Grade at 20% should be admissible to one post only.”

8. Learned counsel for respondent, on the other hand also placed reliance upon judgment of the Hon’ble Supreme Court in ***State of Uttar Pradesh and Anr. Vs. Pawan Kumar Tiwari and Ors.***, 2005 SCC (L&S)

193, wherein the Hon'ble Supreme Court has observed as under:-

“7. The High Court has found mainly two faults with the process adopted by the State Government. First, the figure of 46.50 should have been rounded off to 47 and not to 46; and secondly, in the category of freedom fighters and ex-servicemen, total 3 posts have been earmarked as horizontally reserved by inserting such reservation into general quota of 46 posts which had the effect of pushing out of selection zone three candidates from merit list of general category.

7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.”

9. So far as instructions in Office Memorandum dated 08.08.2002 are concerned, it clearly provides that while making calculations, fraction of 3 and above may be considered as whole number.

10. In the present case, if we calculate 20% from the cadre strength of 19, the available posts would work out to 3.8. When we apply Office Memorandum dated 08.08.2002, 3.8 has to be counted as '4'. In view of Office Memorandum and the respondent being placed at serial No.4 in the seniority list, the respondent would then be covered within the 20% umbrella

for which the ACP grade would be available for grant.

11. Learned counsel for appellants has, however, has made many endeavours to emphasize that if the calculation in the above manner is resorted to, it would breach the 20% quota fixed for the grant of ACP and it would actually become 21.05. Unfortunately, we do not find any pleading, either in the reply filed by the appellants before the learned Single Judge or before this Court in the present appeal to demonstrate that the 20% quota would be breached if the rounding off principle in terms of Office Memorandum dated 08.08.2002 is relied upon.

12. In such view of the matter though for different reason, we are inclined to endorse the view of the learned Single Judge that the respondent would be entitled to benefit of 2nd ACP on completion of 11 years services after inclusion of his working from 1985 to 1996 with Haryana Dairy Cooperative Federation.

13. In view of above, present appeal lacks merit and accordingly dismissed.

14. Pending application(s), if any, stand disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(PARMOD GOYAL)
JUDGE

10.04.2026
Sunil Chander

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>