
(2014) 04 P&H CK 0147

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 7005 of 2001 (O&M)

Joga Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : (2014) 176 PLR 799 : (2014) 3 SCT 825

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : I.D. Singla and Rakesh Kumar, Advocate for the Appellant; Pankaj Mulwani and Monica Chhibber Sharma, Deputy Advocates General, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Rajesh Bindal, J.—This order will dispose of CWP Nos. 7005 and 14270 of 2001, 16571, 18156 and 20142 of 2003 and 9837 of 2004, as common questions of law and facts are involved the issue raised in the present bunch of petitions is regarding entitlement of the petitioners to ACP scale.

2. However, the facts and pleadings have been noticed from

CWP No. 7005 of 2001.

3. Learned counsel for the petitioners submitted that pay scales of all the employees in the State of Punjab were revised w.e.f. 1.1.1996. Vide notification dated 4.9.2000, Punjab Civil Services (Revised Pay) (Second Amendment) Rules, 2000 were notified, vide which Constables were given pay scale of Rs. 3120-5160 as against Rs. 950-1800 w.e.f. 1.1.1996. After the recommendations of the 4th Punjab Pay Commission, when the pay scales had already been revised, while notifying Punjab Civil Services (Revised Pay) Rules, 1998 (for short, "the 1998 Rules"), the State issued a circular dated 25.9.1998 regarding implementation of the recommendations of 4th Punjab Pay Commission under Assured Career Progression Scheme. In terms thereof, after 8 years of service in

the same cadre, an employee who is not promoted to the next higher level either on account of non-availability of a vacancy at such higher level or non-existence of a promotional avenue, he is to be granted pay scale which is next higher in the hierarchy of pay scales, as provided in column No. 3 of the First Schedule annexed with the 1998 Rules. Vide memo dated 24.8.2000, issued by the department of Home and Administration of Justice, it was clarified that in terms of para. 3(1) of the policy dated 25.9.1998, the Constables shall be entitled to pay scale of Rs. 3120-6200 under ACP Scheme. The same was the clarification issued vide memo dated 12.12.2000. As a consequence thereof, pay of the petitioners was fixed w.e.f. 1.1.1996 in the pay scale of Rs. 3120-6200 under ACP Scheme considering the fact that the petitioners had not got any promotion in last 8 years of service. However, the aforesaid benefit granted to the petitioners was withdrawn and their pay was re-fixed in the scale of Rs. 3120-5160 w.e.f. 1.1.1996.

4. The grievance of the petitioners is that withdrawal of ACP Scheme, as was granted to them in terms of the policy and the clarification issued by the Government, was illegal, hence, re-fixation order deserves to be quashed.

5. On the other hand, the plea raised by learned counsel for the State in one of the petitions is that placement of an employee in the higher scale is subject to the condition that his over-all record is adjudged as good. In case any departmental test is prescribed or acquisition of higher qualification is pre-requisite for promotion to the higher level, then only those employees who clear such test or acquire such higher qualification, would be entitled to the benefit under this scheme.

6. In one of the petitions, the stand of the State is that as fixation of pay of the petitioners in the scale of Rs. 3120-5160 was lower than the pay already being drawn by them in un-revised pay scales, the difference was treated as personal pay and only after the same was adjusted in next increments, thereafter they were entitled to ACP scale.

Heard learned counsel for the parties and perused the paper book.

7. The fact that after recommendations of 4th Punjab Pay Commission were accepted by the Government, the pay scale admissible to the Constables was Rs. 3120-5160. In terms of the recommendations of the 4th Punjab Pay Commission on 25.9.1998, ACP Scheme was also circulated. Clause 3(i) thereof, which is extracted below, provided that after service of 8 years on a post in the same cadre, if an employee is not promoted to the next higher level either on account of non-availability of a vacancy or nonexistence of promotional avenue, he would be entitled to pay scale which is next higher in the hierarchy of pay scales provided in column No. 3 of the First Schedule, annexed with the 1998 Rules:

"3(i). After a service of 8 years in a post or posts in the same "cadre" (hereinafter referred as the same post) an employee who is not promoted to the next higher level on account of non availability of a vacancy at

such higher level or non existence of a promotional level in the "cadre" shall be granted the pay scale which is next higher in the hierarchy of pay scales given in column No. 3 of the "First Schedule" annexed to Rules, 1998. If on 1.1.1996 or the date opted under Rule 6 of Rules, 1998 an employee becomes entitled to a higher pay scale on account of protection under the said rules he shall be granted such higher pay scale."

8. The fact that the petitioners had completed 8 years of service as Constable as on 1.1.1996 and had not been promoted to the next higher post on account of non-availability of vacancies is not in dispute. Vide memo dated 24.8.2000, it was clarified by the department of Home and Administration of Justice that in terms of para. 3(i) of the policy dated 25.9.1998, the Constables shall be entitled to pay scale of Rs. 3120-6200 under ACP Scheme. The same view was reiterated vide memo dated 12.12.2000. It was clarified in the aforesaid memo that Constables will not be entitled to higher pay scale of Rs. 4020-6200 admissible to Head Constables, rather, they would be entitled to pay scale of Rs. 3120-6200 instead of Rs. 3120-5160 after completion of 8 years of service, the same being the next higher scale. The pay of the petitioners was initially fixed in terms thereof by granting them ACP scale as on 1.1.1996. However, the same was subsequently reduced while fixing their pay in the scale of Rs. 3120-5160 w.e.f. 1.1.1996.

9. The plea raised by learned counsel for the State that for being entitled to the next higher scale, the petitioners were required to clear the test or acquire qualification, which may be pre-requisite for promotional post, is to be noticed and rejected for the reason that in the present case, it has not been specified as to whether for the purpose of ACP scale any specific qualification or test was required or not. Not only this, as is evident from the clarification dated 12.12.2000, the petitioners have not been granted the scale of next higher post, which was Rs. 4020-6200 admissible to Head Constables, rather, the petitioners were only granted next scale in the hierarchy of pay scales, as provided for in the 1998 Rules.

10. The plea that on fixation of pay and finding that there was some additional amount being drawn by the petitioners in re-revised pay scales and the difference was to be treated as personal pay and anything admissible to the petitioners was to be paid after adjusting the same is also totally misconceived. The condition in ACP Scheme is merely that an employee should have completed 8 years of service on a post, from which he could not be promoted to the next higher post either on account of non-availability of a vacancy or non-existence of promotional avenue. In those circumstances, he was entitled to the next higher scale. There is no such plea raised in the written statement filed that the petitioners could not be promoted to the next higher post on account of their ineligibility on account of non-passing of any examination or for not having requisite qualification, even though promotional avenues were available.

11. Once the undisputed fact on record is that the petitioners had completed 8

years service on the post of Constable as on 1.1.1996 and they were not promoted to the next higher post, they were certainly entitled to ACP scale of Rs. 3120-6200 as clarified in the memo dated 24.8.2000, followed by memo dated 12.12.2000. For the reasons mentioned above, the impugned order re-fixing the pay of the petitioners is quashed. The amount due to the petitioners be paid.

The writ petitions stand disposed of.