
(2024) 02 UK CK 0048

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 904 Of 2021

Suman Kumar Negi

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 20-02-2024

Acts Referred:

Citation : (2024) 02 UK CK 0048

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Piyush Tiwari, B.S. Koranga, N.S. Pundir

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. By means of this petition, the petitioner has sought an indulgence of this Court in the nature of the mandamus commanding the respondents, in particular respondent no.2, to grant benefit of the 2nd ACP and 3rd ACP to the petitioner, from the date of his entitlement i.e. with effect from 08.10.2009, and arrears to be paid within a reasonable period, decided by this Court.

2. The facts of the case shorn off unnecessary details are that the petitioner is working with the respondent no.2, as Senior Computer Operator. It is the contention of the learned counsel for the petitioner that the respondent no.2, has adopted the Government Order dated 08.03.2011, Annexure No.4, to the writ petition, whereby the State Government has made arrangements for payment of the Assured Career Progression to the employees of the State Government. It is provided in the said Government Order that the ACP would be admissible to the employees of the State Government, after completion of the regular, continuous and satisfactory services of 10, 18 and 26 years accordingly.

3. The arrangement for payment of the ACP was also made applicable to the employees of the Public Corporations and Undertakings by issuance of the further

Government Order dated 30.11.2011, Annexure No.7, to the writ petition, whereby the said benefits were made admissible, and available to the employees of the Corporation like the Corporation/respondent no.2, in which the petitioner is also working.

4. It is the case of the petitioner that the petitioner was promoted from the post of Data Punch Operator to the post of Computer Operator on 08.10.2003. Since the petitioner has been promoted on the post of Computer Operator on 08.10.2003, he is entitled to get the 2nd ACP after six years (ten years from the date of his initial appointment), and he is entitled to get the same on 08.10.2009.

5. It is the case of the petitioner that after the grant of the 2nd ACP, the petitioner is entitled to get the 3rd ACP, after completion of the eight years service from the date of grant of 2nd ACP or 26 years of service, whichever is earlier as per proviso second to clause 2 (i) of Government Order 08.03.2011 (Annexure No.4 to the writ petition).

6. It is further submitted by the learned counsel for the petitioner that the aforesaid Government Orders by which the ACP(s) were granted to the State Government employees was adopted by the respondent no.2, vide order dated 15.12.2012, and accordingly the petitioner is also entitled for 1st, 2nd and 3rd ACP, as per the Government Orders dated 30.11.2011, 08.03.2011, and which have been adopted by the respondent no.2. The petitioner is aggrieved by the non payment of the 2nd and 3rd ACP.

7. Respondent no.2, has filed its counter affidavit, and in the counter affidavit, the liability to pay the 2nd and 3rd ACP to the petitioner is admitted by the respondents with the caveat that the ACP would be admissible and payable to the petitioner only with effect from 30.11.2011. It is further submitted by the respondent no.2, in its counter affidavit that due to the financial constraints of the respondent/Corporation the payment of arrears shall be made on the priority basis, as has been decided by the respondent No.2 in its Board Meeting held on 24.12.2020, whereby priority is given first to the deceased employees, then retired and thereafter to employees in service.

8. The rejoinder affidavit to the counter affidavit is filed by the petitioner in which he has reiterated the contention as made in the writ petition, and this much has been clarified that the cut-off date fixed for the petitioner by the respondent no.2 for entitlement i.e. 30.11.2011, is incorrect and unreasonable simply for the reason that the Government Order itself speaks about the entitlement of the employees to receive the ACP with effect from 01.09.2008, or from the date of their entitlement.

9. Heard learned counsels for the parties.

10. I have perused pleadings of the parties in the writ petition, and have gone through the Government Orders relied upon by the respective parties. From the bare perusal of the Government Order, it is clear that there is no dispute with

regards to the payment of the ACP to the employees of the Corporation as the Government Order issued by the State Government has already been adopted by the Corporation.

11. The stand of the respondent/Corporation, with regards to the fact that payment, shall be made from the cut-off date i.e. 30.11.2011, appears to be unreasonable for the reason that the Government Order itself speaks about the entitlement of the petitioner or the employees of the Corporation from the date, which has been given in the said Government Order itself i.e. 01.09.2008. For ready reference clause 3 of the Government Order dated 30.11.2011, is quoted hereunder:-

12. A reliance has been made by the learned counsel for the respondent no.2, on clause 6 of the aforesaid Government Order, wherein, it has been stated that the Corporation may take its own decision keeping in view the financial constraints on the payment of the arrears separately. It appears that the respondent no.2, has confused with the date of the entitlement by misreading of clause 6. Clause 6 of the Government Order dated 30.11.2011 is quoted hereunder:-

13. Clause 6 of the said Government Order, only speaks about the payment of the arrear and for payment of the arrear the respondent Corporation is given free hand to decide as to how the arrears will be disbursed among those employees, who are entitled to get ACP and its arrears accordingly. Further there is no doubt that the petitioner was initially appointed on the post which carried Grade – pay below Rs.5400/-

14. At last, it is argued by the learned counsel for the respondent No.2 that the claim of the petitioner has been denied by the respondent No.2 vide order dated 24.07.2021 (Annexure-11A to the writ petition) which is also challenged by the petitioner. I have seen the order dated 24.07.2021. By that order, claim of the petitioner for ACP vide G.O. dated 01.07.2012 and 17.02.2017 was denied as those G.O.'s had not been adopted by the respondent No.2.

15. I do not find any relevance of the Order dated 24.07.2021, Annexure No.11A, to the writ petition, challenged by the petitioner, for the reason that the liability has already been accepted by the respondent/Department to pay the ACP to the petitioner and accordingly there is no reason to interfere in the order dated 24.07.2021, it would not come in way of the respondent no.2, to make the payment of the ACP (s) to the petitioner, which are claimed on the basis of Government Orders dated 08.03.2011 and 30.11.2011. When the Government Orders dated 08.03.2011 and 30.11.2011 have been adopted by the respondent No.2, the same are adopted as a whole and it cannot be truncated. However even there is nothing in adoption letter dated 15.12.2012 regarding the cut off date.

16. I found force in the writ petition filed by the petitioner. The writ petition is hereby allowed. A mandamus is issued to the respondent no.2, to grant ACP (s) to the petitioner from the date of his entitlement with effect from 08.10.2009 i.e.

2 nd ACP and 3rd ACP with effect from 08.10.2017, 8 years after grant of 2nd ACP. The respondent no.2, shall pay the arrears of the 2nd and 3rd ACP to the petitioner within a period of one year in three instalments.

17. The writ petition is accordingly allowed.