

(2014) 03 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6069 of 2013 (O&M)

Vajinder Pal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 175 PLR 175 : (2014) 3 SCT 351

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : R.K. Gautam, Advocate for the Appellant; Manoj Bajaj, Addl. Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The petitioner, who retired from service as Senior Assistant on 28.02.2009, has filed the present petition impugning the order dated 12.11.2012 (Annexure P-8) whereby his claim for grant of ACP scale on the completion of four years of service was rejected. Learned counsel for the petitioner submitted that the petitioner joined service with the Department as Clerk on regular basis on 14.11.1972. He was promoted as Junior Assistant and thereafter further promoted as Senior Assistant on 19.12.1996. On account of some family problem as he could not continue on the promoted post, he sought reversion and his request was accepted. He was reverted to the post of Junior Assistant on October 30, 2003. However, on his turn, he was again promoted as Senior Assistant on 20.7.2006 and after attaining the age of superannuation, retired on 28.02.2009. The submission is that the policy issued by the Government on 3.11.2006 termed as Assured Career Progression Scheme grants benefit of next higher scale to a government employee who does not get any promotion after 4, 9 or 14 years of service in a cadre. While relying on a clarification issued by the Government as is reproduced in grounds in para. 16-B of the petition, it is submitted that even if during the interregnum an employee has been promoted to the higher post, the period prior thereto and subsequent thereto is to be counted for grant of ACP

scale. In the present case, the petitioner remained on the post of Senior Assistant from 19.12.1996 till 29.10.2003 and from 20.7.2006 to 28.2.2009. The total period is more than 4 years. As per the scheme, the petitioner is entitled to the next higher scale. It is submitted that neither the petitioner could get the next higher scale in terms of the earlier policy awarding the benefit on completion of 8, 16, 24 and 32 years of service, nor in the present policy which provided this benefit on completion of 4, 9 and 14 years of service.

2. On the other hand, learned counsel for the State submitted that the petitioner who was working as Junior Assistant, was promoted to the post of Senior Assistant on 19.12.1996. He was reverted on his request on 29.10.2003 and had been working on the post of Junior Assistant from October 30, 2003 onwards. Considering the policy applicable, at that time, the petitioner had not completed eight years of service as Senior Assistant to avail the benefit of ACP Scheme. Thereafter, the petitioner was again promoted on the post of Senior Assistant on July 20, 2006 and retired as such on 28.02.2009. During this interregnum, again on the promoted post, the petitioner did not complete 4 years of service as Senior Assistant. In terms of the policy, the petitioner is entitled to the next higher scale only in case he does not get any promotion while working on the post for a period of more than four years. As the petitioner retired before completion of 4 years of service as Senior Assistant, he was not entitled to the benefit sought. It was further submitted that the clarification which has been referred to by the learned counsel for the petitioner is not applicable in the case in hand as the same was only in cases where an employee could not get regular promotion on account of any reason which is attributable to the employer. Further the aforesaid clarification was pertaining to the ACP Scheme which was applicable prior to the present Scheme where this benefit was available on completion of 8, 16, 24 and 32 years of service.

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

4. The facts which are not in dispute are that the petitioner on his turn was promoted as Senior Assistant on 19.12.1996. He was reverted on 29.10.2003 at his own request as Junior Assistant. He was again promoted on his turn as Senior Assistant on 20.7.2006. He retired on 28.2.2009 after attaining the age of superannuation. The claim of the petitioner in the present petition is that he deserves to be granted ACP scale in terms of the policy issued by the Government on 3.11.2006. A perusal of the aforesaid policy shows that in case an employee after completion of 4, 9 and 14 years of service on a post in the same cadre is not promoted to a higher post on account of non-availability of a vacancy or non-existence of a promotional avenue in a cadre, he shall be granted the pay scale which is next higher in the hierarchy of pay scales. In the present case, the petitioner was promoted as Senior Assistant on July 20, 2006 and retired from service as such on 28.2.2009. Hence, he had not completed 4 years of service without any promotion to be entitled to next higher scale in terms of the ACP Scheme.

5. The contention raised by the learned counsel for the petitioner that his service rendered from 19.12.1996 till 29.10.2003 as Senior Assistant be counted with the service rendered by him from July 20, 2006 till 28.2.2009 for the purpose of grant of benefit of higher scale under ACP scheme is merely to be noticed and rejected being misconceived. ACP Scheme is meant for giving benefit to the employees who stagnate while working on a post there being no vacancy for promotion or promotional avenue. In the case in hand, the petitioner on his turn was promoted as Senior Assistant on 19.12.1996. He was reverted on 29.10.2003 at his own request as Junior Assistant. He was again promoted on his turn as Senior Assistant on 20.7.2006. Prior to the coming into force of ACP Scheme vide communication dated 3.11.2006 w.e.f. 1.11.2006, earlier scheme was in force which provided benefit on completion of 8, 16, 24 and 32 years of services. As the petitioner had not completed 8 years of service on the post of Senior Assistant from 19.12.1996 till 29.10.2003, he was not entitled to that benefit at this stage. If the plea raised by learned counsel for the petitioner is accepted at this stage and his case is considered in terms of the policy issued on 3.11.2006, the same would mean grant of benefit of ACP scale after completion of 4 years of service of the petitioner to which he may not be entitled to in the year 2000. Even the clarification which is sought to be relied upon by the learned counsel for the petitioner for counting two broken periods of service in a cadre even if during the interregnum, an employee may have worked on a higher post is to be noticed and rejected for the reason that clarification sought to be referred was issued when the policy provided this benefit after 8, 16, 24 and 32 years of service was in force which is not the case in hand. No such clarification issued after the enforcement of the present policy granting any benefit to the petitioner in the facts and circumstances of the case has been referred to.

6. Granting the benefit of ACP scale to the petitioner in the circumstances, where he had already got promotion earlier and thereafter sought his reversion and was again promoted but did not complete minimum required 4 years of service as per the policy notified on 3.11.2006, would be totally contrary to the spirit of the policy as it is meant for the employees who neither get promotion nor have promotional avenues during this period. In view of my aforesaid discussion, I do not find any merit in the present petition, the same is dismissed.