
(2010) 11 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9755 of 2009 (O and M)

Vijay Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Haryana Civil Services (Assured Career Progression) Rules, 1998 — Rule 11

Citation : (2010) 11 P&H CK 0067

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—The petitioner is praying for restoring his second ACP, which has been withdrawn through order dated 13.08.2008 (Annexure P-6) and for quashing the order dated 17.11.2008 (Annexure P-7) re-fixing his pay.

2. The Petitioner was appointed as Assistant Draftsman in the office of Executive Engineer, Fatehabad on 10.11.1981. He is having the qualification of I.T.I. The Petitioner was allowed second ACP on completion of 20 years of service as per ACP Rules. The ACP has now been withdrawn on the ground that the Petitioner has foregone a promotion.

3. Government has issued instructions on 08.02.1994 regulating the grant of higher standard pay scale on completion of 10/20 years regular service. The Petitioner had rendered more than 10 years service when these instructions were issued and he accordingly was granted 1st higher standard pay scale in the scale of `1600-2660 w.e.f. 01.01.1994 and his pay was fixed at `1640-2900 w.e.f. 01.04.1995.

4. The instructions regulating the grant of standard pay scale were replaced by another scheme known as "ACP Pay Scale Rules 1998" w.e.f. 01.01.1996 by the Government. Since, the Petitioner was appointed in the year 1981, he had completed 20 years of service in November, 2001. The Petitioner accordingly was

granted 2nd ACP Scale in the pay scale of `5500-9000 w.e.f. 09.11.2001. Copy of this is annexed with the petition as Annexure P-2. On the basis of good record of the Petitioner, the benefit of 2nd ACP scale was allowed.

5. The Petitioner became due for promotion to the post of Head Draftsman w.e.f. 25.09.2007. On account of some family circumstances, the Petitioner was not keen to join on the promoted post as it would have led to his transfer to another place. The Petitioner filed a representation to forego the promotion for one year through his representation dated 25.09.2007. This prayer of the Petitioner was allowed on 14.12.2007. Soon thereafter the Petitioner was served a show cause notice asking him to explain as to why the 2nd ACP granted to him be not withdrawn as he had foregone his promotion. The Petitioner submitted his reply but impugned order withdrawing the ACP was passed on 13.08.2008 and his pay has been re-fixed through order dated 17.11.2008. Being aggrieved against the same, the Petitioner has filed this writ petition. The pay of the Petitioner has also been re-fixed in the pay scale of `5000-7850.

6. The Petitioner has prayed for quashing of this order primarily on the ground that the issue has been fully settled by order passed by this Court in CWP No. 15839 of 2007, titled as Nirmal Kanta and Anr. v. State of Haryana and others, which was allowed on 11.08.2008. The SLP filed against the same, being Civil Appeal No. 1536 of 2009 has also been dismissed on 16.02.2009. The Petitioner accordingly has prayed that the impugned orders be set-aside.

7. Written statement is filed on behalf of the Respondent-State. It is not disputed that Division Bench of this Court has already taken a view, reference to which is made by the Petitioner, and also the fact that the SLP filed against the said judgment has been dismissed on 16.02.2009. The State counsel, however, would justify the decision of the Government to withdraw the ACP, as the Petitioner had foregone promotion. The counsel contends that the ratio of law as is laid down in Nirmal Kanta's case (supra), is not applicable to this case as while deciding the said case Division Bench was considering the rules regarding proficiency step up, which were different than the rules contained in Assured Career Progression Rules. Reference in this regard is made to Rule 11 of Haryana Civil Services (Assured Career Progression) Rules, 1998, which reads as under:

"Ceasing of entitlement of ACP Scales".-In case the Govt. servant chooses to forego any functional promotion on any ground whatsoever, while drawing his pay in any ACP Scale with reference to him, he shall cease to be entitled to draw his pay in the ACP Scale and shall draw his pay in the functional pay scales prescribed for the post on which he is substantially working from the date of such forego of promotion.

8. It is also stated in the reply that the Petitioner is seeking relief on the basis of a judgment, which was regarding grant of proficiency step up and there was no provision made in the said scheme that a person, who had foregone the promotional would not be entitled to benefit of proficiency step up. Contrary to

this, ACP rules have made a positive provision in this regard and hence the counsel submits that the ratio of law laid down in Nirmal Kanta's case (supra), which was upheld by the Hon'ble Supreme Court, would not apply to the facts of the present case.

9. Copy of the order passed in Nirmal Kanta's case (supra) is annexed with the petition as Annexure P-8. A perusal thereof would clearly reveal that reference is made to the instructions issued by the Government for grant of higher standard pay scale on completion of 10/20 years of regular service. The fact that 2nd ACP Scale was granted in the case of Nirmal Kanta's (supra) w.e.f. 01.01.1996 is also noticed and the pay therein was revised in the scale of `5000-7850 w.e.f. 01.01.1996. In the case of Nirmal Kanta (supra), show cause notice dated 14.08.2001 was issued to the effect that the Petitioners therein were not entitled to 2nd ACP Scale w.e.f. 01.01.1996. The reason for which the show cause notice was issued for withdrawing the ACP was also the same and that is that the Petitioners therein had made a request to forego their promotion as Sub Divisional Clerks. When the matter came up for hearing, counsel appearing for the Petitioners in the said case had placed reliance on another Division Bench judgment passed by this Court in Shashi Kiran and Ors. v. State of Punjab and Ors., CWP No. 7642 of 2001, decided on 28.11.2002. In CWP No. 7642 of 2001, this Court had held as under:

The basic contention raised before us is that the Respondents had undergone their promotions as lecturers w.e.f. 01.01.1996 and consequently they would be debarred from claiming the proficiency step up. The Respondents claim to have taken this action in furtherance to paragraph No. 9 of the Punjab Government instructions dated 01.09.1989. It is difficult for this Court to hold that the Petitioners would be debarred from claiming the proficiency step up in the circumstances of the case. The Petitioners were offered the promotion in September, 1998 and thereafter, by that time the Petitioners had completed more than eight years of service as they were appointed on Adhoc basis in the year 1975 and regularly appointed to the same posts in the year 1977 onwards. Thus, in any circumstances and whatever be the interpretation given to the instructions of the Government, the Petitioners cannot be denied the eight years proficiency step up increment.

10. From the above, it can be noticed that the contention raised on behalf of the State was the same as is being urged now in the present case. The plea in the above-noted case was also that the Petitioners therein had foregone promotion as Lecturers w.e.f. 01.01.1996 and consequently they were debarred from claiming proficiency step up. The court accordingly viewed that it is difficult to uphold the contention that the Petitioners therein could be debarred from claiming proficiency step up in the circumstances of the case. The Petitioners therein were offered promotion in September, 1998 and had completed more than eight years service from the date of their appointment and it was accordingly viewed that the Government instructions could not be read in a

manner to deny the eight years proficiency step up. The court, thus, has held in Nirmal Kant's case (supra) that the refusal to avail promotion would not entail the consequences of forfeiture of proficiency step up as an Assured Career Progression. The court, thus, viewed that Nirmal Kant's case (supra) was covered by the decision in the case of Shashi Kiran (supra). The State had filed a SLP in the case of Nirmal Kant (supra), which was dismissed on merits, though by a short order. Thus, this decision has acquired finality. The State had thereafter filed a review petition against the same, which has been dismissed on 23.02.2010.

11. Reference is made to a decision in another case titled Anita Sharma v. State of Haryana and others, Civil Writ Petition No. 5786 of 2007, which was allowed by Division Bench of this Court on 11.08.2008. Against this judgment, the State again filed SLP and the plea on the basis of Rule 11 of the ACP Rules was made to challenge the order passed by this Court as is now raised by the State counsel. This can be so noticed from order issuing notice in the SLP, which is annexed as Annexure P-14 and is as under:

Learned Counsel for the Petitioner contends that the Division Bench of the High Court has not appreciated the import of the cited judgment which relates to the State of Punjab which has different instructions, whereas the Haryana instructions specify in Clause 11 that if the Government servant chooses to forego any functional promotion on any ground whatsoever, while drawing pay in any ACP scale, he shall cease to be entitled to draw his pay in the ACP pay scale.

12. This SLP was also dismissed by the Hon'ble Supreme Court on 12.07.2010 despite the plea as noted above. Copy of this order is on record as Annexure P-16.

13. In this background, the submission made by the State counsel that provisions of Rule 11 of ACP Rules were not considered by this Court would be of not much consequences as Respondents raised this plea, which was noticed and ultimately did not find favour with the Hon'ble Supreme Court.

14. Even otherwise, the justification to withdraw the ACP, once granted, on the ground that subsequently someone has foregone the promotion may not apparently be justified. No doubt, ACP Rules talk of grant of scale when one is not able to earn promotion but withdraw the scale once granted validly on the ground of some subsequent action may not be sound fair. The impugned order passed by the Respondents is, therefore, not justified. The issue also was considered by Hon'ble Supreme Court and so would not call for any fresh consideration.

15. The writ petition is accordingly allowed. The impugned orders dated 13.08.2008 (Annexure P-6) and 17.11.2008 (Annexure P-7) are, therefore, quashed. There shall, however, be no order as to costs.