



2026:CGHC:25556-DB

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 6287 of 2025**

Samarpita Paul W/o Ashok Kumar Aged About 58 Years R/o C/o A.K. Paul,  
Near Tipu Dhaba, Temri, Mana Camp, District- Raipur (C.G.)

Presently Working As Post Graduate Teacher (PGT) At Jawahar Navodaya  
Vidyalaya, Kurud, District- Dhamtari (C.G.)

**... Petitioner(s)**

**versus**

**1** - Union Of India Ministry Of HRD, Department Of School Education And  
Literacy, Government Of India, A-28, Kailash Colony, New Delhi 110048.

**2** - The Assistant Commissioner Navodaya Vidyalaya Samiti (An  
Automomous Organization Under Ministry Of Hrd), Government Of India, B-  
15, Institutional Area, Sector- 62, Goutam Budh Nagar, Noida (U.P.) Pin -  
201307.

**3** - The Deputy Commissioner Navodaya Vidyalaya Samiti, Regional Office,  
A-135a, Gate No. 2, Drm Road, Alkapuri, Habib Ganj Bhopal (M.P.)

**4** - The Commissioner Navodaya Vidyalaya Samiti Department Of School  
Education And Literacy, Government Of India, B-15, Institutional Area, Sector-  
62, Goutam Budh Nagar, Noida (U.P.) Pin – 201307.

5 - The Principal Navodaya Vidyalaya, Mana, District- Raipur (C.G.), Pin - 492015

... Respondent(s)

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For Petitioner : Mr. Sudeep Verma, Advocate

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For Respondents : Mr. Ramakant Mishra, Dy. Solicitor General

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**D.B. : Hon'ble Shri Justice Parth Prateem Sahu & Hon'ble Shri Justice Sachin Singh Rajput**

**Judgment on Board**

**22/06/2026**

**Per Parth Prateem Sahu, J.**

1. Challenge in this writ petition is to the order dated 24.02.2025 passed by the Central Administrative Tribunal, Jabalpur Bench (Circuit Sitting at Bilaspur) in Original Application No.855 of 2018 whereby claim of the petitioner for grant of senior scale/time-bound pay scale on completion of 12 years and 24 years of service has been rejected.
2. Learned counsel for the petitioner submits that the petitioner was appointed as a Trained Graduate Teacher in October, 1992 and thereafter was promoted to the next higher post. However, owing to compelling personal circumstances, she could not join the promotional post. It is contended that under the Assured Career Progression (ACP) Scheme formulated by the Government of India, an employee who completes 12 years and 24 years of satisfactory service is entitled to financial upgradation. The petitioner has rendered more than 24 years of unblemished service and no punishment or adverse remark has ever been recorded against her. It is further submitted that denial of the

benefit of senior scale/time-bound pay scale solely on the ground that the petitioner did not join the promotional post is arbitrary and illegal. He submits that other similarly situated employees, despite having declined promotions, were granted the benefit of senior scale and, therefore, denial of the same benefit to the petitioner amounts to hostile discrimination in violation of Articles 14 and 16 of the Constitution of India. He further submitted that, notwithstanding the fact that the petitioner had lastly, foregone her promotion in the year 2010 and, therefore, in terms of the ACP Scheme formulated by the respondents, the respondent department ought to have considered her case for grant of benefits envisaged thereunder. Learned Administrative Tribunal failed to appreciate the petitioner's case in its correct perspective and rejected the Original Application without properly considering the relevant facts as pleaded by the petitioner. The impugned order, being unsustainable in law be set aside and respondents be directed to grant benefit of higher pay scale/senior pay scale in favour of petitioner.

3. Per contra, learned counsel for the respondents supports the order passed by the Administrative Tribunal and submits that the petitioner was afforded repeated opportunities of promotion during the years 2002, 2005, 2006 and 2010, but she declined to avail the same on each occasion. It is submitted that as per the clarification issued by the Navodaya Vidyalaya Samiti vide letter dated 28.04.2010 (Annexure R-2) in which it is clarified that "where a teacher is offered financial upgradation through promotion before completion of 12 years of service and refuses such promotion, he/she shall not be entitled to

grant of senior scale on completion of 12 years". It is further contended that the plea of parity raised by the petitioner is misconceived. Teachers posted in the Hyderabad Region were granted the benefit prior to the issuance of the clarification. However, no teacher who had refused promotion was considered for grant of the Senior Scale. Subsequently, pursuant to the clarification dated 28.04.2010, even the benefit that had been extended to a teacher posted at Jawahar Navodaya Vidyalaya, Surajpur, was withdrawn vide order dated 18.12.2015.. Therefore, no case of discrimination is made out. In support of his submission, he places reliance upon the decision of Hon'ble Supreme Court in case of *Union of India & Ors. Vs. Manju Arora & Anr.* reported in (2022) 2 SCC 151.

4. We have heard learned counsel for the parties and also perused the documents annexed along with writ petition.
5. It is not in dispute that the petitioner was offered promotion to the next higher post on more than one occasion i.e. in the years 2002, 2005, 2006 and 2010, but she chose not to accept the promotional avenues. The sole question that arises for consideration is whether an employee who has voluntarily refused promotion can still claim the benefit of senior scale/time-bound financial upgradation as a matter of right.
6. The object of the ACP/time-bound advancement scheme is to alleviate stagnation, where no promotional avenue is made available to an employee. The scheme cannot be interpreted so as to permit an employee to voluntarily forego available promotional opportunities and yet claim financial advancement, intended for those who have

remained stagnant for reasons beyond their control. In the case at hand, the clarification issued by the respondent- Navoday Vidyalay Samiti vide its letter dated 28.04.2010 specifically provides that where an employee has been afforded an opportunity of financial advancement through promotion before completion of the prescribed period and such promotion is declined, the employee shall not be entitled to the benefit of senior scale on completion of the qualifying service. The said clarification has neither been challenged nor shown to be contrary to any statutory provision. In the return filed by the respondents, they have specifically averred and have placed on record the relevant documents to establish that the petitioner was offered promotion on several occasions from time to time; however, she declined to accept the same on each occasion. This fact is not disputed by petitioner.

7. Hon'ble Supreme Court in case of **Manju Arora** (supra) while dealing with the similar issue of withdrawal of benefit of ACP scheme on the ground of refusal of accepting regular promotion by the employee, held as under:

“17. We are quite certain that if a regular promotion is offered but is refused by the employee before becoming entitled to a financial upgradation, she/he shall not be entitled to financial upgradation only because she has suffered stagnation. This is because, it is not a case of lack of promotional opportunities but an employee opting to forfeit offered promotion, for her own personal reasons. However, this vital aspect was not appropriately appreciated by the High Court while granting relief to the employees.

**18.** It may also be observed that when an employee refuses the offered promotion, difficulties in manning the higher position might arise which give rise to administrative difficulties as the concerned employee very often refuse promotion in order to continue in his/her own place of posting.

**19.** In the above circumstances, we find merit in the submissions made on behalf of the appellants. Consequently, it is declared that the employees who have refused the offer of regular promotion are disentitled to the financial upgradation benefits envisaged under the O.M. dated 9.8.1999. In this situation, the Scottish doctrine of “Approbate and Reprobate” springs to mind. The English equivalent of the doctrine was explained in *Lissenden v. CAV Bosch Ltd.* wherein Lord Atkin observed at : (at AC p.429)

“.....In cases where the doctrine does apply the person concerned has the choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with knowledge adopts the one he cannot afterwards assert the other.”

The above doctrine is attracted to the circumstances in this case. The employees concerned cannot therefore be allowed to simultaneously approbate and reprobate, or to put it colloquially, “eat their cake and have it too”. It is declared accordingly for the respondents in the C.A. Nos.7027-28/2009.”

8. The Administrative Tribunal, after considering the applicable policy, clarifications issued by the competent authority and the admitted

conduct of the petitioner in repeatedly refusing promotion, has recorded a finding that the petitioner is not entitled to grant of senior scale/time-bound pay scale. The finding is based on relevant material and does not suffer from perversity, arbitrariness or any jurisdictional error warranting interference in exercise of powers under Article 226 of the Constitution of India.

9. So far as the plea of discrimination is concerned, respondents have satisfactorily explained that the instances cited by the petitioner pertain to a period prior to issuance of the relevant clarification. It has also been brought on record that where benefits were granted contrary to the clarification, corrective action was subsequently taken and such benefits were withdrawn. In any case, Article 14 does not envisage negative equality, and merely because an incorrect benefit may have been extended to some other employee, the petitioner cannot claim a similar benefit contrary to the governing rules.
10. The contention advanced by learned counsel for the petitioner that, notwithstanding the fact that the petitioner had foregone promotion in the year 2010, she had completed more than 12 years of service and was, therefore, entitled to consideration for grant of benefits under the ACP Scheme, is concerned, record reveals that the petitioner had approached the Central Administrative Tribunal challenging rejection of her claim for grant of ACP in the year 2018. On the date of filing of original application, she has not completed 12 years. The Administrative Tribunal, upon considering the grievance raised as on 2018, dismissed the petitioner's claim on merits on the grounds mentioned therein.

11. For the foregoing reasons and the judgment of Hon'ble Supreme Court as referred to above, we are of the considered opinion that the Administrative Tribunal has not committed any error in rejecting the claim of the petitioner.
12. Accordingly, the writ petition being devoid of merit deserves to be and is hereby dismissed. No order as to costs.
13. However, petitioner will be at liberty to submit fresh application for grant of ACP to be considered by respondents in accordance with law.

Sd/-  
**(Parth Prateem Sahu)**  
Judge

Sd/-  
**(Sachin Singh Rajput)**  
Judge