



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 5th DAY OF AUGUST 2022

BEFORE

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

CIVIL WRIT PETITION(ORIGINAL APPLICATION) No. 4077 OF 2020

Between:-

DR. RAVI KUMAR VAID,
SON OF SH, SHYAM LAL,
RESIDENT OF WARD NO.2.
SWADESH SHYAM SADAN,
PROFESSOR COLONY,
MEHATPUR, UNA,
DISTRICT UNA, H.P.

.....APPLICANT

(BY SH. AJAY SHARMA, SR. ADVOCATE
WITH SMT. KAVITA KAJAL, ADVOCATE)

AND

1. STATE OF H.P.
THROUGH SECRETARY EDUCATION TO THE
GOVT. OF H.P., SHIMLA-2.
2. DIRECTOR,
OF HIGHER EDUCATION,
GOVT. OF H.P. SHIMLA- 171001.
3. DEPUTY DIRECTOR,
HIGHER EDUCATION, UNA,
DISTRICT UNA, H.P.
4. PRINCIPAL, GOVERNMENT SENIOR
SECONDARY SCHOOL, NANGAL
KHURD, TEHSIL HAROLI, UNA,
DISTRICT UNA, H.P.

.....RESPONDENTS

(BY SH. NARENDER THAKUR,
DEPUTY ADVOCATE GENERAL)

Whether approved for reporting? Yes.

*This petition coming on for orders this day, the
Court passed the following:*

ORDER

Benefit of Assured Career Progression Scheme 9.8.2012 made available to the petitioner from the year 2012 vide order dated 30.7.2014 was withdrawn on 6.10.2017 and recovery of excess payment was ordered. The order dated 6.10.2017 has been impugned herein.

2. Case of the petitioner is that he was promoted as Principal on 19.04.2008. On completion of four years of service, his case fell due for grant of benefit under the Assured Career Progression Scheme (In short ACPS) w.e.f. 19.04.2012. Due to fault at the level of the respondents-department, ACP was not granted to the petitioner immediately on completion of four years of service. The same, however, was allowed to him and several others vide office order dated 30.07.2014. The pay of the petitioner and the other officers mentioned in this office order was fixed on notional basis up-to 08.08.2012 and on actual basis w.e.f. 09.08.2012. On 6.10.2017, respondents issued an office

order (Annexure A/2) withdrawing the ACP benefit earlier allowed to the petitioner & also ordered to recover the excess payment made to him. In the aforesaid circumstances, the petitioner has preferred the present petition, seeking quashing of the order dated 6.10.2017 (Annexure A-2).

3. Contentions

3.1. The arguments advanced by learned Senior Counsel for the petitioner are that the impugned order was issued in violation of principles of natural justice. Benefit of ACPS was allowed not only to the petitioner, but several other officials, whose names figured in the impugned order. The benefit could not have been withdrawn only from the petitioner in an arbitrary manner. It was also contended that the impugned order was passed statedly on the strength of circular dated 7.7.2014, which came into force with immediate effect i.e. on 07.07.2014. Hence, the benefit of ACPS, which stood conferred upon the petitioner in terms of office order dated 30.07.2014 granting ACP on notional basis up-to 08.8.2012 and on actual basis w.e.f. 09.08.2012 could not have been withdrawn on the strength of the circular/instructions dated 07.07.2014. Reliance in this regard was also placed upon instructions dated 09.09.2014, which

clarified that instructions dated 7.7.2014 were made applicable with immediate effect with the objective that all the cases pending on that day or arising after that have to be examined in light of instructions *ibid*.

The respondents short-stand in the reply is that the ACPS introduced under notification dated 09.08.2012 was explained by the Government of Himachal Pradesh Finance (Pay Revision) Department letter dated 7.7.2014 and 9.9.2014, whereby it was held out that an employee, who has already received three enhancement/financial up-gradations i.e. grant of progression under the new or old ACPS or promotion or any other financial enhancement except the annual increment or the general pay revision based on the pay commission in fourteen years or more of his entire service, will not be entitled for placement in next higher grade in the ACPS introduced on 9.8.2012. In compliance to the interlocutory orders passed in the matter, the respondents have further submitted that the following benefits had already been extended to the petitioner prior to issuance of office order dated 30.07.2014:-

“(1) 1st ACP benefit after 8 years of regular service paid on 21.04.1997. (1st benefit).

(II) 1st proficiency step up after 16 years of regular service on 21.4.2002 (2nd benefit).

(II) On promotion as Principal dated 19.4.2008. (3rd benefit).

The case of the respondents is that the petitioner had already been granted three financial up-gradations in all. Thus, he was not entitled to the 4th financial up-gradation on completion of four years of service as Principal. The financial benefit granted to the petitioner vide office order dated 30.07.2014 was contrary to the ACPS dated 09.08.2012. Hence, it was correctly withdrawn vide impugned order passed on 6.10.2017.

4. Observations

On hearing learned counsel for the parties and after considering the case file, my observations are as under:-

4.1. An Assured Career Progression Scheme was introduced by the respondents on 15.12.1998 w.e.f. 01.01.1996. Subsequent to revision of pay-scale w.e.f. 01.01.2006, the operation of this scheme was stopped after 26.08.2009. A new Assured Career Progression Scheme was introduced on 09.08.2012, wherein an existing employee including employee having less than 4 years service was given the option either to continue in the existing ACP scheme after

service of 8, 16, 24 & 32 years of service or to opt for 4,9, & 14 years ACP Scheme 2012.

4.2. As per para-4 (a) of 09.08.2012 ACP scheme, an employee was entitled to a maximum of three placements in the next higher grade pays in the hierarchy of grade pays with benefit of one increment each at every placement. Para 3(a) of the ACP scheme dated 9.8.2012 envisaged that a Government employee after rendering service of 4, 9 and 14 years in a post or posts without any financial enhancement in the same cadre/post, who is not promoted to a higher level on account of non availability of a vacancy or non existence of a promotional avenue in the cadre, shall be granted the grade pay, which is next higher in the hierarchy of grade pays.

4.3. It is not in dispute in the instant case that the petitioner got first ACP benefit after 8 years of regular service on 21.04.1997. He got second financial benefit on 21.04.2002, when he was given first proficiency step up after putting in 16 years of regular service. The petitioner got third benefit on his promotion as Principal on 19.04.2008. Thus, the petitioner having already received three enhancements/financial up-gradations/promotion was not entitled for the 4th financial benefit, that was granted to him under office order dated 30.07.2014. Though ACP scheme dated 9.8.2012 was clarified to this an extent by the Government of H.P. Finance (Pay Revision) Department on 07.07.2014 (Annexure A-3), however,

provisions to this effect were already there in the ACP Scheme dated 09.08.2012 itself. For convenience, relevant portions from the circular issued by the respondents on 07.07.2014 clarifying ACP scheme dated 09.08.2012 are reproduced as under:-

“3. Similarly, Para 3(a) of this Department’s letter No.Fin(PR)B(7)-59/2010 dated 9th August 2012 vide which new ACP Scheme has been introduced on optional basis envisage that a government employee after rendering a service of 4,9 and 14 years in a post or posts without any financial enhancement in the same cadre/post, who is not promoted to a higher level on account of non availability of a vacancy or non existence of a promotional avenue in the cadre, shall be granted the grade pay, which is next higher in the hierarchy of grade pays given in the schedule annexed to Revised Pay Rules 2009 upto the maximum grade pay of Rs.8900 and on placement in the next higher grade pay in the hierarchy of grade pays after a service of 4,9 and 14 years, the pay of an employee shall be fixed at the next higher stage in the pay band. As per Para 4 (a) of this scheme an employee shall be entitled to a maximum of three placements in the next higher grade pays in the hierarchy of grade pays with benefit of one increment each at every placement under this scheme. Para 4 (f) provides that other existing conditions governing the grant of ACPS shall continue to be applicable.

5. Moreover, the overriding objective of an assured career progression scheme is to ensure at least three financial up gradations/enhancements/promotions to a regular employee in his entire service career. Therefore, in partial modification of earlier orders on ACP schemes it is directed, that, once an employee has already got three enhancements/financial up-

gradations i.e. grant of progression under the new or old ACPS, or promotion or any other financial enhancement except the annual increment or the general pay revision based on the pay commission in fourteen years or more of his/her entire service, thereafter, he will not be entitled for placement in next higher grade pay in the ACPS scheme introduced vide FD's instructions dated 9th August, 2012. However it is clarified that after availing three enhancements/up-gradation/promotion, an employee will be eligible to take the benefit of normal promotions available in his service career."

Since the petitioner was wrongly given benefit of ACP Scheme 2012 under order dated 30.07.2014 as he had already received three financial up-gradations by that date, the benefit of ACP scheme allowed to him w.e.f. the year 2012 was correctly withdrawn vide office order dated 6.10.2017.

4.4. Insofar as argument of discrimination viz-a-viz the other officials, who were granted the benefits of ACP scheme (4-9-14) in the order dated 30.07.2014 is concerned, suffice to observe that:-

4.4(a) The officials to whom the benefit of ACPS dated 09.08.2012 have been granted allegedly at par with the petitioner are not parties to the present lis.

4.4(b) The respondents in their counter affidavit filed to the supplementary affidavit of the petitioner indicating names of

certain officials to whom the similar benefit of ACPS have been allowed, have submitted as under:-

“ That in reply to these paras it is submitted that the benefit of ACPs granted to the petitioner was not in order therefore, the same was withdrawn on 6.10.2017. The benefit of ACPs of Sr. No.8 and other six (deponent) were also reviewed and withdrawn. Rest of the cases will also be reviewed in view of finance department notification dated 9.9.2014 and 3.11.2016.”

4.4(c) It is well established that no benefit can be given to the petitioner on the basis of negative parity. A wrong order passed in favour of some does not confer any legal right on the petitioner to claim the same relief. In this regard, it would be apt to refer to judgment rendered by Hon’ble Apex Court in **(2011) 3 SCC 436** titled **State of Orissa and another Vs. Mamata Mohanty**. Relevant part of the judgment reads as under:-

“56. It is a settled legal proposition that [Article 14](#) is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide [Chandigarh Administration & Anr v. Jagjit Singh Yogesh Kumar v. Government of NCT Delhi](#), [Anand Buttons Ltd. v. State of Haryana](#), [K.K. Bhalla v. State of M.P.](#) [Krishan Bhatt v. State of Jammu & Kashmir](#), [Upendra Narayan Singh and Union of India & Anr. v. Kartick Chandra Mondal](#))

57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has

been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in *Hotel Balaji v. State of A.P.*, observed as under: (SCC p.551, para 12)

"12.... 2. To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in *Pierce v. Delameter* at p.18:

"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".

In ***R. Muthukumar & Ors. Vs. The Chairman and Managing Director Tangedco & Ors.*** (Civil Appeal No.1144/2022) decided on 7.2.2022, the principle of negative equality was reiterated in following manner:-

"24. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In *Basawaraj & Anr. v. Special Land Acquisition Officer*, this court ruled that:

"8. It is a settled legal proposition that [Article 14](#) of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same

relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.”

Other decisions have enunciated or applied this principle (Ref: Chandigarh Admn. v. Jagjit Singh (1995) 1 SCC 745; Anand Buttons Ltd. v State of Haryana (2005) 9 SCC 164, K.K. Bhalla v. State of M.P. (2006) 3 SCC 581; Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455, and Chaman Lal v. State of Punjab (2014) 15 SCC 715. Recently, in The State of Odisha v. Anup Kumar Senapati (2019) SCC Online SC 1207 this court observed as follows:

“If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.”

4.5. Having observed that the benefit of ACP scheme (4-9-14) was wrongly given to the petitioner under office order dated 30.07.2014, the next question emerges whether the respondents could have ordered recovery of over payment from the petitioner in terms of impugned Annexure A-2 dated 6.10.2017. In respect of recovery of excess payment from the employees, it would be apt to refer to judgment rendered by Hon’ble Division Bench of this Court in CWPOA No.3145/2019 titled **S.S. Chaudhary Vs. State of H.P. & ors.**, wherein after considering various precedents following was held:-

“35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is not possible to postulate all situations of hardship, where payments have mistakenly been made by the employer, yet in the following situations, recovery by the employer would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(vi) Recovery on the basis of undertaking from the employees essentially has to be confined to Class-I/Group-A and Class-II/Group-B, but even then, the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(vii) Recovery from the employees belonging to Class-III and Class-IV even on the basis of undertaking is impermissible.

(viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formula and to give any exhaustive list of myriad kinds of cases. Therefore, each of such cases would be required to be decided on its own merit.

38. *Thus, it would be clear that no inflexible rules regarding the recovery can be culled out and each case will have to be decided on its own merit keeping in view the broad guidelines as mentioned above."*

In light of above legal position following observations become germane:-

4.5(a) It is not the case of the respondents that the petitioner had misled or concealed any relevant fact from the respondents. The benefit of ACP (4-9-14) was granted by the respondents on their own to the petitioner in terms of office order issued on 30.07.2014.

4.5(b) The petitioner enjoyed the benefit of ACP scheme (4-9-14) granted to him from the year 2012 onwards vide office order dated 30.07.2014. Petitioner is stated to have superannuated in January 2017.

More than 9 months after petitioner's retirement, the respondents issued office order dated 6.10.2017 (impugned

herein) withdrawing the ACP benefit from the petitioner and ordered recovery of over-payment made to him.

From the pleadings of the parties, it comes out that the petitioner had received benefit of ACP scheme till June 2018.

4.5(c) It would be evident that the case of the petitioner falls under para 35(iii) and (v) of the judgment rendered in S.S. Chaudhary's case (supra) as the excess amount was paid to the petitioner w.e.f the year 2012 onwards and the order of recovery of over payment was issued only on 6.10.2017. The over payment was made to the petitioner in excess of 5 years. Even otherwise recovery of the excess payment in factual scenario of the case would be iniquitous and harsh upon the petitioner, who stood superannuated from service about nine months prior to the issuance of impugned order.

5. Conclusions:

In view of above discussions, this writ petition is disposed of with following observations:-

(a) There is no illegality in office order dated 6.10.2017 withdrawing the benefit of APS scheme (4-9-14) wrongly given to the petitioner under order dated 30.7.2014 (Annexure A-1).

(b) In view of the settled legal position, coupled with the factual scenario of the case, the over payment made to the petitioner under order dated 30.07.2014 (Annexure A-1) shall not be recovered from him.

(c) The pension to the petitioner shall be worked out on the basis of his eligibility and entitlement in accordance with law.

(d) Any retiral benefits of the petitioner withheld by the respondents shall be released to him after making out the adjustment, if any.

With these observations, the instant petition is disposed of, so also the pending miscellaneous applications, if any.

**Jyotsna Rewal Dua
Judge**

05th August 2022 (rohit)