

**2023 STPL(Web) 17 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

PANKJAKSHI SHARMA

Petitioner

VERSUS

STATE OF H.P & ORS.

Respondents

CWPOA No. 5952 of 2020-Decided on 6-7-2023

Service Law

Service Law – Increment – Enhancement of benefits - Assured Career Progression Scheme – Held: Application of petitioner rejected without application of mind - Since, the pay of the petitioner came to be enhanced twice on account of pay revision based on the recommendations of pay commission, benefit of financial upgradation in terms of provision contained under ACPS cannot be denied. Direction to consider the case of the petitioner for grant of financial upgradation under ACPS (4-9-14) time scale/enhancement after her having completed nine years of service at par with her counterparts.

(Para 9, 10)

Advocate(s): For the Petitioner: Mr. Sanjay Sharma, Advocate.

For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Addl. AGs.

JUDGMENT

Sandeep Sharma, Judge (oral).-Being aggrieved and dissatisfied with order dated 18.5.2016 issued under the signatures of Additional Director, Treasuries, Accounts & Lotteries, Shimla, H.P (Annexure A-4) whereby prayer made on behalf of the petitioner herein for grant of benefit under Assured Career Progression Scheme (hereinafter referred to as 'ACPS') came to be rejected, petitioner approached erstwhile H.P. Administrative Tribunal by way of Original Application No.294 of 2018, which now on account of abolishment of Tribunal stands transferred to this Court and the same has been reregistered bearing CWPOA No.5952 of 2020, praying therein for following substantive reliefs:-

- a. The office order of rejection dated 18.5.2016 vide Annexure A/4 be quashed/set aside.
- b. The Annexure A/5 and A/6, the notifications dated 7.7.2014 and 9.9.2014 respectively be declared null and void in respect of the applicant and be quashed accordingly to that extent.
- c. The respondents be directed to consider the name of the applicant for the grant of 4-9-14 time scale/enhancement and release the second time scale increment/enhancement or benefits under New ACP Scheme of 4-9-14 to the applicant on completion of nine years service at par with her counterparts in sequel to Annexure A/7.

d. If the applicant is fallen due to the third time scale enhancement under the New ACP Scheme of 4-9-14, the respondents further be directed to release the same to the applicant forthwith alongwith arrears thereof.

2. Precisely, the facts of the case as emerge from the record are that the petitioner was appointed as Clerk on 24.10.1989 in the Department of Treasuries, Accounts & Lotteries, Shimla, H.P, in the pay scale of Rs.950-1800. On 1.11.1994, petitioner was promoted to the post of Senior Clerk, as a result of which, she came to be entitled to the pay scale 1200-2130 w.e.f. 1.11.1994 and her pay was fixed at Rs.1200/-. Subsequently, on account of pay revision, pay scale of Rs.1200-2130 was revised to Rs.4020-6200, as a result of which, the petitioner was fixed at Rs.4400/- instead of Rs.4020/-, vide Government of Himachal Pradesh Finance (Pay Revision) Department Notification No.FIN-(PR)B (7)-1/98-II, dated 31.5.2001 (Annexure R-1). On 1.11.2002, petitioner was granted first benefit under old ACPS i.e. 8-16-24-32. On 9.8.2012, Government of Himachal Pradesh, Finance (Pay Revision) Department, vide communication (Annexure A/2) replaced the old ACPS retrospectively from 27.8.2009 (on notional basis till 9.8.2012 and on actual basis w.e.f. 9.8.2012) with the new one called 4-9-14. Pursuant to the provision contained in the new ACPS, petitioner gave an undertaking dated 24.8.2012 and opted out for new ACPS i.e. 4-9-14. The representation filed by the petitioner to grant the benefit of ACPS came to be rejected vide communication dated 18.5.2016 issued under the signatures of Department of Treasuries, Accounts & Lotteries, Shimla, wherein authorities concerned by merely giving reference of Notification dated 7th July, 2014 issued by the Government of Himachal Pradesh, held the petitioner not entitled for the benefit of ACPS.

3. In the aforesaid background, the petitioner approached erstwhile H.P. Administrative Tribunal in the instant proceedings, praying therein for reliefs reproduced hereinabove.

4. Having heard learned counsel representing the parties and perused the pleadings adduced on record, especially reply filed by the respondents/State, this Court finds that facts of the case as noticed hereinabove are not in dispute. Precisely, the case of the respondent is that the petitioner has been already given three financial up-gradations, under ACPS and as such, present petition deserves dismissal.

5. Learned counsel representing the petitioner submitted that the financial upgradations/enhancement, if any, on account of the pay revision cannot be counted towards the benefit, if any, under ACPS, rather for that purpose three clear cut financial up-gradations are required to be given to an employee in terms of ACPS opted by him.

6. Mr. Rajan Kahol, learned Additional Advocate General strenuously argued that after being appointed as Clerk, petitioner was given Pay Scale of Rs. 950-1800, but subsequently first financial upgradation was granted in favour of the petitioner under ACPS on account of her being promoted to the post of Sr. Clerk, whereby her pay scale was enhanced to Rs. 950-1800/- on 01.01.1994. He contended that on account of promotion to the post of Senior Clerk, pay of the petitioner was enhanced. He submitted that subsequently on account of revision of pay scale i.e. 01.01.1996 the corresponding pay scale of Rs. 1200-2130/- was revised to Rs. 4020-6200/- as a result of which pay of the petitioner was enhanced, meaning thereby second upgradation was granted to her at that stage. Mr. Kahol further submitted that petitioner was granted first financial upgradation under ACPS after completion of eight years of service w.e.f. 01.11.2002 and as such, there is no force in the submissions made by learned counsel for the petitioner that she has not been given three financial up-gradations in terms of ACPS. While inviting attention of this Court to communication dated 07.07.2014 issued by the Government of Himachal Pradesh Finance (Pay Revision) Department, whereby old ACPS came to be replaced by new ACPS, Mr. Kahol, vehemently argued that the grant of ACPS is to ensure that at least three financial up-gradations is given to an employee in his/her entire service career. Since, in the case at hand, petitioner after being promoted

to the post of Sr. Clerk was given two financial upgradations on account of pay revision, her claim for third up-gradations after completion of 24 years of service is not tenable.

7. Careful perusal of the record reveals that the petitioner after being appointed as Clerk was promoted to the post of Sr. Clerk on 1.11.1994, as a result of which, pay scale was revised of Rs.950-1800/- w.e.f. 1.11.1994. Subsequently, the petitioner was not promoted to the higher post, but admittedly, her pay scale was revised to account of pay revision w.e.f. 1.1.1996, the corresponding pay scale of Rs.1200-2130 was revised to Rs.4020-6200 and the pay of the petitioner was fixed at Rs.4400/- instead of Rs.4020/-. It is also not in dispute that the petitioner was granted first financial upgradation under ACPS after completion of eight years service. The respondents may be right in contending that first benefit of ACPS has been granted to the petitioner on account of her being promoted to the post of Sr. Clerk, but question which remains to be decided as to “whether pay revision, if any, made in the pay scale of the employee can be termed to be “financial upgradation” so as to deny the benefit of financial upgradation under ACPS.

8. Careful perusal of communication dated 7th July, 2014, whereby old ACPS came to be replaced by new ACPS clearly reveals that annual increment or general pay revision shall not be considered as financial upgradation for the purpose of benefit, if any, under ACPS. If it is so, there appears to be merit in the contentions of the petitioner that she is entitled to the benefit of ACPS after her having completed 24 years of service. At this stage, it would be apt to take note of para-5 of the afore letter, which reads as under:-

“Moreover, the overriding objective on 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 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 / upgradation/ promotion, an employee will be eligible to take the benefit of normal promotions available in his service career.”

9. True it is that in the afore instructions it has been stated that in case, an employee is granted three enhancements/upgradations/promotion, he/she shall not be eligible for grant of further benefit, if any, under ACPS, but in the case at hand, petitioner after being appointed as Clerk though was given promotion to the post of Sr. Clerk on 1.11.1994, but thereafter on two occasions her pay came to be enhanced on account of pay revision. Financial upgradations, if any, on account of pay revision cannot be a ground to deny benefit of financial upgradations under ACPS, which become due after completion of four, nine and fourteen years as per new ACPS. Though, it has been claimed on behalf of the respondents/State that on two occasions pay of the petitioner was revised, as a result of which, her pay was enhanced, but as has been taken note above, financial enhancement on account of annual increment or general pay revision based on pay commission is not to be considered while considering the case of an employee for grant of benefit of ACPS. Since, the pay of the petitioner came to be enhanced twice on account of pay revision based on the recommendations of pay commission, benefit of financial upgradation in terms of provision contained under ACPS cannot be denied. Moreover, this Court finds that the department had rejected the case of the petitioner by way of communication dated 18th May, 2016 (Annexure A/4), perusal whereof clearly reveals that there is no application of mind and the concerned authority while merely placing reliance upon instructions dated 7.11.2014 rejected the case of petitioner. Had, authority concerned bothered to peruse the afore instructions in its entirety, it would not have passed order dated 18.5.2016, which is otherwise not sustainable in the eye of law.

10. Consequently, in view of the aforesaid discussions made hereinabove, this Court finds merit in the instant petition and accordingly same is allowed. Office order dated 18.5.2016 (Annexure A/4) is quashed and set aside and the respondents are directed to consider the case of the petitioner for grant of financial upgradation under ACPS (4-9-14) time scale/enhancement after her having completed nine years of service at par with her counterparts.
