

**2023 STPL(Web) 36 HP
HIGH COURT OF HIMACHAL PRADESH**

(MS. JYOTSNA REWAL DUA, J.)

HARMOHINI

Petitioner

VERSUS

STATE OF H.P. AND OTHERS

Respondents

CWPOA No. 6606 of 2019-Decided on 20-07-2023

Service Law

Service Law – Adverse Entries in ACR – Decline of benefit of Assured Career Progression Scheme - Uncommunicated adverse entries - Respondent has recorded ACRs of the petitioner for the period for which he had never seen petitioner's working – There are no endorsements in the ACRs of the petitioner for the years 2006-2007 to 2011-2012 of the reviewing and accepting authorities. - Held: The decision of the respondents in not extending the benefit of ACP Scheme to the petitioner, merely on account of uncommunicated adverse entries in her ACRs for the years 2006-2007 to 2011-2012 and written in flagrant violation of the instructions in place, is quashed and set aside. The respondents are directed to consider the case of the petitioner for grant of benefit under the ACP Scheme without taking into consideration the ACRs for these years.

(Para 4, 5)

Advocate(s): For the Petitioner : Mr. Sanjeev Bhushan, Senior Advocate, with Sohail Khan, Advocate.
For the Respondents : Mr. Y.P.S. Dhaulta, Additional Advocate General with Ms. Seema Sharma and Mr. Sumit Sharma, Deputy Advocates General.

JUDGMENT

Jyotsna Rewal Dua, Judge-The case Scenario in the instant petition is that annual confidential reports (ACRs) of the petitioner for the years 2006 to 2012 were written enblock by a person, who became petitioner's reporting authority only in the year 2011. On the basis of adverse entries in the ACRs of the petitioner for these years, she was declined the benefit of Assured Career Progression Scheme (ACP Scheme) commonly known as 04-09-14 Scheme. Petitioner has instituted this petition stacking claim to the benefits under ACP Scheme.

2. The petitioner was appointed initially as Drawing Master on contract basis in the year 1997. Her services were regularized w.e.f. 15.01.2003. On attaining the age of superannuation, she retired from service on 30.07.2013. The petitioner had opted for the benefit of ACP Scheme (04-09-14). The Deputy Director of Elementary Education, Kangra, after scrutiny sent her case back to the Principal of the concerned school i.e. GSSS Baroh, District Kangra, H.P. on 30.12.2015 with remarks that petitioner did not have good ACRs for the years 2006- 2011. The Principal, Government Senior Secondary School Baroh vide communication dated 18.01.2016 informed the petitioner that benefit of ACP Scheme cannot be granted to her in view of adverse entries in her ACRs for the years 2006 to 2011. In this background, the petitioner has instituted instant writ petition seeking following reliefs :-

“(i) That the impugned letter dated 18.01.2016 Annexure A-1 and letter dated 30.12.2015 Annexure A- 2 may kindly be quashed and set aside with further directions to the respondents to grant Assured Career Progression scheme, i.e. (04-09-14) to the applicant from the due dates alongwith arrears and with interest @ 12% p.a. on the delayed payment.

(ii) That respondents No. 1 and 2 may kindly be directed to hold a thorough and proper inquiry that how a person who was not even the Controlling Officer of the applicant, i.e. respondent No.4, written ACRs of the applicant for a period of five years and thereafter punish him in accordance with law.

(iii) That the OA may be allowed with exemplary cost of Rs. 1.00 lacs for unnecessarily and frequently harassing the applicant and the same may kindly be ordered to be recovered from respondent No. 4 for his acts and deeds.”

3. Heard learned Senior Counsel for the petitioner and the learned Additional Advocate General for the respondents-State and considered the case record. Common reply has been filed on behalf of respondents No. 1 to 4.

4. Observations

4(i) Following germane facts are not in dispute. The petitioner was serving as Drawing Master in Government Senior Secondary School Jassai, District Kangra during the years 2006 to 2012. Her ACRs for the years 2006-2007 to 2011-2012 have been placed on record as Annexure A-3 colly. These ACRs have not been disputed by the respondents in their reply. The gist of these ACRs relevant for the purpose of deciding controversy involved herein is as under :-

“ACR for the year 2006-2007”

This ACR has been written by respondent No. 4 Vijay Kumar Awasthi on 17.11.2013 in his capacity as the Principal of the School i.e. the Reporting Officer. The final entry in the ACR has been recorded as “satisfactory as per available record for the year”.

There is no endorsement in the ACR of any reviewing or accepting authority whatsoever. “ACR for the year 2007-2008” The petitioner has been graded as “not satisfactory” in this ACR by respondent No. 4. Date of writing of ACR has not been mentioned. Reference to some complaints against the petitioner has been made in some columns of the ACR. Endorsement of reviewing and accepting authority is not there.

“ACR for the year 2008-2009”

The ACR grades the petitioner as “satisfactory”. It is written by respondent No. 4 without mentioning the date of writing the ACR. Reference to some complaints regarding use of foul language by the petitioner has been made. Endorsement of reviewing and accepting authority is not there.

“ACR for the year 2009-2010”

No date of writing of the ACR can be discerned from the document. The petitioner has been graded as “satisfactory as per available record”. Respondent No. 4 has written this ACR. There are no remarks of the reviewing or the accepting authority.

“ACR for the year 2010-2011”

This ACR has also been written by respondent No. 4 without indicating any date of writing. The petitioner has been graded as “satisfactory as per available record”. Reference to some complaints against the petitioner has been made. Here again, endorsements of reviewing and accepting authority are missing.

“ACR for the year 2011-2012”

This undated ACR recorded by respondent No. 4 grades the petitioner as “not satisfactory”. Reference to foul language used by the petitioner has been made. Petitioner has been recorded as “not cooperative, short tempered and disobedient”. Further reference to some adverse remarks made against her by some inquiry committee has been made. There are no remarks either of reviewing or the accepting authority.

4(ii) Procedure for writing the ACRs vis-à-vis authority competent to write the ACR. All the ACRs of the petitioner for the years 2006- 2007 to 2011-2012 were written by respondent No. 4 Vijay Prakash Awasthi. The petitioner has placed on record information supplied to her under the Right to Information Act, according to which, respondent No. 4 remained posted as Principal in the concerned school and became her controlling officer only w.e.f. 23.05.2011 to 04.03.2014.

4(ii) (a) Chapter 19 of the Handbook on Personnel Matters Volume-II gives out instructions, guidelines etc. issued by the State concerning writing of ACRs. Clause 19.11.2(2) provides for minimum period of 3 months for which the reporting authority should have seen the work of a subordinate before recording remarks on him. The mechanism to write ACR of an employee where work has been seen by the reporting officer for less than the requisite period has also been provided in the clause, which reads as under :-

“(2) Minimum period for which a Reporting Officer should have seen the work of a subordinate before recording remarks on him

i) No reporting officer should record his remarks in confidential reports of an officer under him unless he has seen his work and conduct for at least three months. If the officer has served under the reporting authority for less than three months the opinion of the officer under whom he has previously served for at least three months should be obtained.

ii) A reporting officer while recording annual remarks may request his predecessor who has seen the work of the subordinate concerned for a period of more than 3 months to record his remarks but these later remarks should be submitted by the recording officer direct to the next higher authority who before adding his own remarks will take both sets of remarks, that is, those recorded by the present reporting officer as well as those recorded by his predecessor, into consideration.

iii) In the case of subordinate whose work has been seen by the reporting officer for a period of less than six months in the year (and of course more than 3 months), if there is another officer who has seen the work for more than six months during the same year, the latter must invariably be called upon to record his remarks and submit them direct to the next higher authority before the present superior records his own remarks.”

4(ii) (b) Clause 19.15.5 of Chapter 19 of the Handbook on Personnel matters Volume-II states that authority who had not seen the work of the subordinate for at least three months in the concerned year should not write his ACR. The Clause reads as under :-

“19.15.5 Officers who have not seen the work for atleast three months should not write the ACR. Confidential Reports are generally recorded for full year from 1st April to 31st March. In case an officer has not worked under an officer for the whole year, the confidential report on him should be recorded by officers under whom he has worked for a minimum period of three months. Periods less than three months should be ignored. If an officer has not worked under any one officer for this minimum period, his case should be put up to the reviewing authority for orders as to how his report for that particular year should be recorded. (H.P. Govt. Appointment Department Memo. No. Apptt.I-1163/57, dated 18-10- 1958 as referred to in the compendium at Annexure-19.3)”

The above procedure was also not followed by respondent No. 4 in the instant case. In the facts of the instant case, as discussed above, the reporting authority i.e. respondent No. 4 has recorded ACRs of the petitioner for the period for which he had never seen petitioner’s working. Respondent No. 4 was not posted as Principal in the school in question prior to 03.05.2011 but he has written petitioner’s ACR for the years 2006-2007, 2007- 2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012. Admittedly, respondent No. 4 had not resorted to the instructions in place for writing ACRs of the petitioner. Respondent No. 4’s writing the ACRs of the petitioner prior to 03.05.2011 is not only contrary to instructions in place, but is also beyond common sense logic. Working of the petitioner could never be judged by respondent No. 4 for the period for which he had never seen the petitioner’s work. Here is a case where that period swells in years. In view of above, it has to be held that respondent No. 4 was not competent to write the ACRs of the petitioner for the years 2006-2007 to 2010-2011 when he had himself joined the school in question only on 23.05.2011. The procedure contained in Chapter 19 of the Handbook on Personnel Matters Volume-II has been given a complete go-bye by respondent No. 4 while writing the ACRs of the petitioner.

4(iii) Writing the ACRs for different previous years in one go - Timely writing of ACRS :- ACR of the petitioner for the year 2006-2007 has been written on 17.11.2013 i.e. almost seven years later. Petitioner had already retired by this time. She superannuated on 30.07.2013. Her ACRs for the years 2007-2008 to 2011-2012 do not indicate any date on which they were written. Quite obviously, the ACRs of the petitioner for the years 2006-2007 to 2010-2011 have been written by respondent No. 4 enblock in one go. Respondent No. 4 had joined the school only on 23.05.2011, but naturally all these ACRs have been written by him after 23.05.2011. Writing of ACRs for a period of more than five years in one go cannot be countenanced. ACRs are to be written timely. It would also be appropriate to refer to State Government’s instructions indicating following time schedule in writing the ACRs of teaching staff :-

“Annexure 19.52

Copy of H.P. Govt. Deptt. of Personnel O.M. No: Per (AP-II)-B(15)-1/84 dated 22-2-1986 addressed to the Secretary Education, Director of Education etc.

[Referred to in para 19.3.1(d)]

Subject: Writing of Annual Confidential Reports-Time Schedule therefor.

The undersigned is directed to say that the matter regarding prescribing separate Time Schedule in respect of teaching staff under Education Department, Himachal Pradesh has been engaging the attention of the Government for quite some time past, for the main reason, that the general Time Schedule appears to be impracticable in their case as the examination results are generally declared by the end of June/July every year. In order that the Department could make objective

assessment on the working of Teaching staff in right perspective, the Government after careful consideration has decided in partial supersession of this Department O.M. No: 8-3/63- DP (Apptt. II) V. Dated the 28th March, 1984 that the Time Schedule in respect of teaching staff under Education Department will henceforth be as under:-

a) Self-appraisal of the officer to be reported upon.	7th September
b) Initiation of the report by Reporting Officer.	15th September
c) Review of the report by the reviewing Officer(s)	22nd September
d) Acceptance of the reports by the Accepting Authorities.	29th September
e) Communication of adverse remarks, if any.	31st October
f) Representations by Govt. servants against communicated remarks, if they so wish.	15th December
g) Maximum period upto which the report/comments of the authority recording adverse remarks on the representation are to be awaited.	15 days
h) Final date for taking a decision on representations against adverse remarks	31st December

2. Under the above calendar, the process of writing of A.C.Rs and taking final decisions on the representations against adverse remarks would be completed by the respective authorities within the prescribed period.

3. The above decision of the Government may kindly be brought to the notice of all concerned for information, guidance and compliance.” By virtue of Confidential Report of the employee being ‘Annual’, the same is required to be written annually i.e. every year for the service rendered by him. It is to be prepared accordingly for the reporting year. It is not to be clouded with the material of the succeeding years. This will also enable the employee to improve his work, conduct and to take a timely call on his ACR. The same holds good for the employer as well. The ACRs are to be made use of in service career of a government servant in several matters viz. determination of working/conduct, conformation, suitability for post, grant of senior scale, selection grade, promotion, punishment etc. There is no object in writing the ACRs of the petitioner for the years 2006-2007 to 2011-2012 enblock somewhere in the year 2013 when the petitioner stood already retired. Such ACRs cannot be held to be written validly.

4(iv) Endorsements of Reviewing & Accepting Authorities There are no endorsements in the ACRs of the petitioner for the years 2006-2007 to 2011-2012 of the reviewing and accepting authorities. Petitioner’s ACRs only contain remarks & grading by the reporting authority i.e. respondent No.4. Such ACRs cannot be held to be in consonance with the instructions issued by the State. Reference in this regard can be made to following para 19.11 of Chapter 19 of Handbook on Personnel Matters Volume-II, whereunder the reporting authority in case of classical/vernacular and Junior Basic Teacher is the Head of the school concerned, reviewing authority is the Block Education Officer, whereas the District Education officer is the accepting authority.

“19.11.1 The State Government had been prescribing the reporting, reviewing and accepting authorities in certain particular cases from time to time. The question of prescribing these authorities in respect of all the categories of Government servants was considered during the year, 1972 and comprehensive orders prescribing reporting, reviewing and accepting authorities were for the first time issued vide letter No. 8-3/63-DP (Apptt.) dated 6-7-1972. These orders have been amended or additions made from time to time and a statement showing the latest up-to-date position is as under:- Statement showing the Reporting officers, Reviewing Authorities and Accepting Authorities.

Sr. No.	Designation of the post	Reporting Officer	Reviewing Authority	Accepting Authority
1.	2.	3.	4.	5.
1 -71	x	x	x	X
72	Classical Vernacular & JBT	Heads of school concerned	BEO/Dy. DEO as the case may be	District Education Officer

The ACRs of the petitioner for the years 2006-2007 to 2011-2012, without the remarks of reviewing & accepting authorities are incomplete ACRs and cannot be acted upon as such.

4(v) Un-communicated adverse entries in ACRs It is an admitted fact position that the above mentioned ACRs of the petitioner for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011 as well as 2011-2012 have never been communicated to the petitioner. It is by now well settled that un-communicated adverse ACR entry cannot be considered for denying promotion/service benefits to the employee. Reference in this regard can be safely made to the pronouncements of Hon’ble Apex Court in

Sukhdev Singh Vs. Union of India and others, reported in (2013) 9 SCC 566 ; Prabhu Dayal Khandewal Vs. Chairman, UPSC, reported in (2015) 14 SCC 427 (Paragraphs 7 to 9) and Rukhsana Shaheen Khan Vs. Union of India and others, reported in (2018) 18 SCC 640.

The action of the respondents in not releasing the benefit of ACP Scheme to the petitioner on account of uncommunicated adverse entries in her ACRs for the years 2006-2007 to 2010-2011 is, therefore, not in consonance with the settled legal position.

5. Conclusion

5(i) In view of above discussion, the decision of the respondents in not extending the benefit of ACP Scheme (04-09-14) to the petitioner, merely on account of uncommunicated adverse entries in her ACRs for the years 2006-2007 to 2011-2012 and written in flagrant violation of the instructions in place, is quashed and set aside. The respondents are directed to consider the case of the petitioner for grant of benefit under the ACP Scheme without taking into consideration the ACRs for these years. This exercise be completed within four weeks from today. Action in accordance with law be also taken against respondent No. 4 for writing the ACRs of the petitioner contrary to applicable instructions.

5(ii) Keeping in view the mode and manner in which a Principal of the Government Senior School has written the ACRs of a teacher (i) after the teacher's retirement ; (ii) written teacher's ACRs for the years 2006-2007 to 2010- 2011 when he himself was not even posted in the concerned school; (iii) wrote all the ACRs of the teacher for these years enblock after 23.05.2011 i.e. after becoming controlling officer of the petitioner ; (iv) without calling for remarks of reviewing and accepting authorities and (v) without even communicating the ACRs to the petitioner, it is ordered that respondent No. 1 shall ensure circulation of respondent State's guidelines/instructions in place for writing the ACRs to all concerned Principals/Headmasters etc. for strict adherence within three weeks from today. This shall be monitored by the concerned Deputy Directors/respective higher authorities. Any deviation from the same be viewed seriously and appropriate action be taken in the matter.

The writ petition stands disposed of in the aforesaid terms alongwith the pending applications, if any.
