

(2010) 11 P&H CK 0425**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Writ Petition No. 10225 of 2009 (O and M)

Smt. Joginder Sethi

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Nov. 10, 2010**Hon'ble Judges:** Ranjit Singh, J**Bench:** Single Bench

Judgement

Ranjit Singh, J.

The Petitioner has filed this writ petition for quashing the orders dated 17.3.2008 (Annexure P-2) and 29.4.2008 (Annexure P-5) vide which pay of the Petitioner has been refixed after withdrawing of 2nd ACP and further for issuing direction to Respondents to grant 2nd ACP pay scale to her along with arrears of revised pay, commutation, gratuity and revised pension etc.

2. The Petitioner was appointed as Clerk on 31.8.1972 in the office of Land Acquisition officer, Harayna PWD B & R, Ambala Cantt. She was granted benefit of 1st Higher Standard Pay Scale on 8.2.1996. The Government of Haryana replaced Higher Standard Pay Scale with the ACP Pay Rules, 1998 w.e.f. 1.1.1996. The Petitioner was granted 1st ACP on 7.1.1998. She became entitled to 2nd ACP w.e.f. January, 2007. She was also granted this benefit, but her claim was rejected on the ground that she had foregone her promotion as SDC and her pay was fixed in the pay scale of Rs. 5000-6000/-after 36 years of service. The similar situated employees, however, even junior to the Petitioner, were getting the pay scale of Rs. 5000-7850/-in the 2nd ACP pay scale. The Petitioner, accordingly, has filed this writ petition.

3. Reply on behalf of the State is filed. The prayer of the Petitioner has been opposed by making reference to the Rule 11 of ACP Rules 1998, which provides that the Government servant, who chose to forego any functional promotion on any ground whatsoever, while drawing pay in any ACP scale with reference to him/her, he/she shall cease to be entitled to draw his/her pay in the ACP pay scales and shall draw

his/her pay in the functional pay scales prescribed for the post.

4. Counsel for the Petitioner, however, has placed on record a judgment passed by the Division Bench of this Court in C.W.P. No. 5786 of 2007, decided on 11.8.2008. In this case, it has been held that mere refusal to promotion would not entail the consequences of forfeiture of proficiency step up or Assured Career Progression. This view has been taken by making reference to a decision in case of C.W.P. No. 7642 of 2001, decided on 28.11.2002. The Respondents, accordingly, were directed to consider the case of the Petitioner for ACP Scale on completion of 10/20 years of service in a cadre as per rules. The State of Haryana had filed the SLP against the said order, which was dismissed by the Hon"ble Supreme Court. Thereafter, the State had filed a review petition, which was also dismissed on February 23, 2010. Thus, the issue of denial of ACP scale on the ground of foregoing promotion, is now finally settled.

5. The present writ petition is, accordingly, disposed of in terms of the order passed in Annexure P-11. The action of the Respondents in denying the ACP scale to the Petitioner is, therefore, set aside. The Respondents are directed to consider the case afresh and grant relevant ACP scale to the Petitioner and thereafter, fix her pensionary benefits accordingly. Let the needful be done within a period of three months from the date of receipt of certified copy of this order.