



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.1895 of 2025(O&M)
Date of Decision :**August 25, 2025**

Rajesh KumarAppellant
Vs
State of Haryana and others
Respondents

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present : Mr. Shish Pal Laler, Advocate (Through VC)
for the appellant.

Mr.Sourabh Mohunta, DAG, Haryana

ROHIT KAPOOR, J.

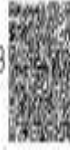
CM-4693-LPA-2025

The present application has been filed under Section 5 of Limitation Act seeking condonation of delay of 80 days in filing the appeal.

For the reasons stated in the application, the same is allowed and the delay of 80 days in filing the accompanying appeal is condoned.

LPA-1895-2025

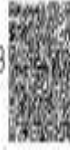
1. The present Letters Patent Appeal has been filed against the judgment and order dated 28.02.2025 passed by the learned Single Judge in CWP-4932-2025, whereby the writ petition filed by the appellant, has been dismissed.



2. Prayer in the said petition was for quashing of order dated 14.08.2023 (Annexure P-4) and order dated 04.01.2024 (Annexure P-3), vide which the second ACP given to appellant, has been withdrawn w.e.f. 20.07.2016. Further prayer was made for commanding the respondents to restore the second ACP granted to him with GP of 4800/- w.e.f. 04.03.2014 and to grant him next/3rd ACP with grade pay of Rs.5400/- w.e.f. 01.11.2019; or to grant him pay scale of the post of PGT w.e.f. 13.07.2016, i.e. the date of promotion orders on the post of PGT; and further to direct the respondents to revise his retiral benefits and his pension by granting him GP-5400/- and pay scale of PGT with 12% per annum from due date.

3. Facts involved are not in dispute.

The appellant was appointed as JBT teacher on 28.11.1995 on regular basis and retired on 30.04.2023 as SS Master and was released due pensionary benefits. He was awarded the first ACP vide order dated 28.10.2008 w.e.f. 01.04.2006. Subsequently, he was promoted as Social Studies Master vide order dated 09.11.2010 and joined as such on 12.11.2010. Thereafter he was deputed as Action Research Associate (ARA) with Research and Experiments for Action and Policies Cell (REAP) and was posted in DIET Mohra vide order dated 29.11.2011 and joined on 06.12.2011. It emanates from the record that the appellant was promoted as PGT Economics vide order dated 20.07.2016 (Annexure P-2) passed by the Director Secondary Education Haryana, Panchkula. However, he failed to



comply with the directions issued in the promotions orders, whereby the station of posting was required to be filled up online through MIS portal.

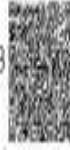
4. In December 2021, the appellant sent an Email raising a demand for his second ACP as JBT, while working in the master cadre after a delay of more than 07 years. The same was followed with a legal notice dated 04.07.2022 inter-alia seeking second and third ACP w.e.f. 04.03.2014 and 01.04.2020, respectively.

5. The stand of the appellant in the legal notice was that the promotion orders were never conveyed, and therefore the question of foregoing the promotion, does not arise. It was simultaneously stated that promotion to the post of PGT Economics is not a promotion in the hierarchy.

6. Aggrieved by inaction of the authorities, he filed CWP-2407-2023, which was disposed of vide order dated 06.02.2023 with a direction to the respondents to decide the legal notice dated 04.07.2022 within a period of three months from the date of receipt of certified copy of the order, by passing a speaking order, in accordance with law. He was granted the second ACP as JBT w.e.f. 04.03.2014 vide order dated 10.07.2023.

7. In pursuance to the order dated 06.02.2023 passed by this Court, the legal notice dated 04.07.2022 sent by the appellant was considered by respondent No.4, who decided the same by passing a detailed speaking order dated 04.01.2024 (Annexure P-3). The relevant observations made therein are extracted as under:-

“It is pertinent to mention here that the applicant had submitted an email regarding demand of his 2nd ACP as JBT



(while working in master cadre) with more than 07 years of delay in December 2021. He was granted 2nd ACP as JBT w.e.f. 04.03.2014 vide DSE- Haryana order No. 25/19-2023 TGT A&G(1) dated 10.07.2023 endst. no. of even dated 24.08.2023. However, as per Rule 14 of HCS (ACP) Rules 2008 and Rule 14 of HCS (ACP) Rules 2016, 2nd ACP granted as JBT to the claimant is liable to be withdrawn w.e.f. 20.07.2016 i.e. from the date of deemed forgoing of promotion on the post of PGT Economics. The relevant rule regarding ceasing of entitlement of ACP on account of forgoing of promotion in Rule 14 of HCS ACP rule 2008 is reproduced below:-

14. Ceasing of entitlement of ACP pay structure-

In case the Government servant chooses to forego any functional promotion on any ground whatsoever while drawing his pay in any ACP pay structure with reference to him, he shall cease to be entitled to draw his pay in the ACP pay structure last granted to him and shall draw his pay in the pay band and grade pay he was drawing before the grant of the last ACP grade pay from the date of such forgoing of promotion.

Further the relevant rule regarding ceasing of entitlement of ACP and ineligibility for further ACP on account of forgoing of promotion in Rule 14 of HCS ACP rule 2016 is reproduced below:

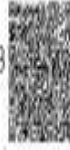
“14. Ceasing of entitlement of ACP level:-

(1) A Government employee who forgoes his promotion in the line of hierarchy or seeks reversion on his own accord to feeder post on any ground whatsoever, while drawing pay in-

- a) 3rd ACP level, the pay shall be re-fixed in 2nd ACP Level;*
- b) 2nd ACP level, the pay shall be re-fixed in 1st ACP level;*
- c) 1st ACP level, the pay shall be re-fixed in functional pay structure.*

Equal to the presumptive pay shall have been admissible had he not been granted 3rd/2nd/1st ACP level, as the case may be.

(2) If such Government employee becomes ready to accept promotion, in such case the period of service between the date of forgoing promotion/reversion and date of application indicating readiness to accept the promotion/reversion and date of the application indicating readiness to accept the promotion, subject to minimum one year, shall be executed from the regular satisfactory service for the purpose of grant of ACP level. On assuming the



charge of promotional post the pay shall be re-fixed equal to the pay drawn in ACP structure immediately before foregoing promotion or fixation of pay structure immediately before foregoing promotion or fixation of pay of the promotional post under normal rules, whichever is higher.

Provided that the request for seeking reversion or foregoing promotion once accepted by the competent authority shall not be withdrawn. Once a government employee has foregone his promotion or sought reversion to a feeder post, such foregoing/reversion shall remain in force for a minimum period of one year or upto the period he gives in writing to re-consider his name for promotion, whichever is late.”

It is pertinent to mention here that claimant is well aware about his promotional orders and its conditions as promotion orders are directly addressed to all promoted employees with directions to fill the station of posting through their own MIS portal IDs and easily available in public domain/departmental website. Moreover, directorate promotes eligible and interested employees after submitting the copy of required documents and certificates by them. The claim of claimant that PGT Economics is not his line of promotion also shows that the intention of claimant regarding joining as PGT Economics. Moreover, the claim of claimant that PGT Economics is not his line of promotion is also not sustainable in the eye of law because as per Haryana State Education School Cadre Group-B Service Rules 2012 at Rule 9(i)(g)(ii) it is mentioned that 33% of PGT's are recruited by way of promotion from TGT. The relevant portion of these rules for the promotion to the post of PGT Economics is as under:-

9.(i) Recruitment in service shall be made-

xxx xxx xxx

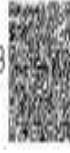
(g) In case of PGT Economics-

(i) 67% by direct appointment

(ii) 33% by promotion among TGT Social Studies.

xxx xxx xxx

Thus, it is wrong to allege that PGT Economics post is not promotional post in the hierarchy since, as per departmental service rules, master cadre employee on the basis of their seniority and qualification, promoted to the post of PGT by way of promotion and for this purpose out of total posts of PGT cadre 33 % posts are reserved for filling by way of promotion from master cadre.



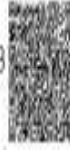
It is also relevant to mention here that the claimant would be entitled for 3rd ACP benefits as JBT while working in Master cadre if he had not deemed forgo the promotion as PGT by not filling up station for promotional posting though his MIS ID in compliance of his promotion orders as PGT Economics issued by DSE-Haryana, Panchkula vide order No. 15/11-2016 PGT-II(3) dated 20.07.2016.”

8. It is a matter of record that respondent No.4 vide its letter dated 14.08.2023 (Annexure P4) informed respondent No.2 that the second ACP case as JBT (GP of 4800) of the appellant, was forwarded for sanction but the same was sanctioned in GP of 5400, which is the second ACP of Master Cadre. Therefore, the service book and copy of the ACP order was forwarded for necessary rectification as second ACP of JBT in GP of 4800.

9. Aggrieved by the letter dated 14.08.2023 and order dated 04.01.2024, the appellant filed CWP-4932-2025, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

10. Learned Single Judge after hearing the contentions of learned counsel for the parties and examining the material on record, was pleased to dismiss the writ petition vide order dated 28.02.2025 in limine. Findings of learned Single Judge in paragraphs No.2 to 5 are relevant and are extracted as under:-

“2. Learned counsel for the petitioner contends that the petitioner worked as S.S. Master in the Department, retired as such with effect from 30.04.2023, and was released due pensionary benefits. He is aggrieved against the impugned order, dated 04.01.2024, whereby the benefit of second ACP given to him with effect from 04.03.2014, vide order dated 10.07.2023, has been withdrawn with effect from 20.07.2016, i.e., from the date of foregoing promotion to the post of PGT Economics. The basis to withdraw the benefit is



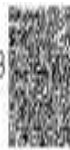
wrong as non-submission of options for posting through MIS portal in response to the promotion order cannot be termed as foregoing the promotion intentionally. Therefore, the impugned order has been passed on wrong premise and is not sustainable in the eyes of law.

3. As apparent on record, the petitioner was promoted as PGT Economics along with 1174 other employees, vide office order dated 13.07.2016, Annexure P-1. In terms therewith, he was directed to give options for posting online through MIS portal which he, admittedly, failed to do. He continued working in the Department as S.S. Master and retired as such on 30.04.2023. The order giving the benefit of second ACP, dated 10.07.2023, is subject to the condition that it is liable to be withdrawn without any notice in case the hierarchical promotion is declined/foregone by him. It is also a matter of record that the petitioner did not accept his promotion as PGT Economics, and never joined on the promotional post by not submitting the options for posting.

4. In these facts and circumstances, in case the Department has drawn an inference that the petitioner has intentionally foregone his promotion and withdrawn the benefit of ACP from that date, no exception can be taken to it. His conduct in not joining on the promotional post, nor taking any other step seeking departmental intervention to enable him to join, leads to no other conclusion.

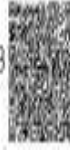
5. In view thereof, no exception can be taken to the impugned order, dated 04.01.2024, withdrawing the second ACP given to the petitioner, as also the order dated 14.08.2023, making necessary correction in his service book in terms therewith. Accordingly, the petition stands dismissed in limine.”

11. On the basis of the claim, that the appellant was able to lay his hands on certain documents subsequent to passing of the aforementioned order, review application i.e. RA-CW No 161-2025 was filed by him before the learned Single Judge, which was dismissed vide order dated 28.04.2025. The additional documents relied upon by the appellant have been appended as Annexures A-1 to A-7 with the present appeal.



12. Learned counsel appearing on behalf of the appellant, through virtual mode, has argued that the mere non-compliance of filling up of option for place of posting online through MIS portal, would not amount to foregoing the promotion in terms of the provisions of Rule 14 of Haryana Civil Services (Assured Career Progression) Rules, 2008/2016. He contends that it was the duty of the respondent-department to issue posting orders at any place in the State of Haryana. If an employee fails to fill up his station on MIS portal then it could not be assumed that such employee has foregone his promotion. He refers to the document i.e. memo dated 04.06.2016 (Annexure A-2) issued by respondent No.2 to contend that it is mentioned therein that in case any PGT does not submit his/her profile on the portal within the time given and his profile is not approved and choice of zone and schools is not filled up by him/her, he/she shall not be given any further chance to opt for zone/school for posting on this appointment and he/she shall be posted by the Department at its own and any subsequent request for change in place of posting shall not be entertained by the department.

13. It is further contention of learned counsel for the appellant that learned Single Judge failed to rely on the documents placed with the review application filed by him, which clearly show that no posting orders were issued by the department. He also submits that the appellant submitted all requisite documents to respondent No.4 and the same were forwarded to respondent No.2 on 21.06.2022, vide letter of even date, which is placed on record as Annexure A-6. It is thus argued, that the judgment dated



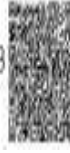
28.02.2025 passed in the writ petition as well as order dated 28.04.2025 passed in the review application be set aside.

14. No other argument has been raised before us.

15. Per contra, learned counsel appearing on behalf of the respondents has argued that the appellant cannot be permitted to take benefit of his own wrong, since he failed to comply with the directions which were mentioned in the promotion order dated 13.07.2016, whereby it was mandatory for giving the option for place of posting online through MIS portal.

16. It is further contended that the argument of the appellant, that in the situation where an employee does not fill up the option, it was incumbent upon the department to have posted the said employee at its own, is an afterthought, since no such claim was raised by the appellant and he continued to serve on his place of posting till his retirement. It is also contended that the act and conduct of the appellant would clearly show that he had chosen to forego the promotion, which is also apparent from his claim that PGT Economics is not his line of promotion, which reveals the actual intent for not joining the promotional post of PGT Economics.

17. Learned counsel appearing on behalf of the respondents has placed reliance upon the judgment passed by the Division Bench of this Court in case of *Shakuntla Devi Vs. State of Haryana, 2003 (4) SLR 414,* where, after examining the provisions of Rule 11 of the ACP Rules, 1998, it was held that a Government employee, who chooses to forego any



functional promotion on any ground whatsoever while drawing his pay in any ACP scale, shall cease to be entitled to draw his pay in that scale and shall draw his pay in functional pay scale prescribed for the post on which he is substantially working.

18. We have heard learned counsel for the parties and have gone through the material available on record, with their able assistance.

19. The record reveals that the appellant was issued promotional order on 13.07.2016, vide Endst. Dated 20.07.2016 whereby a direction was given for opting the place of posting online through MIS portal is required to be done by the concerned employee. Despite being aware of the orders dated 13.07.2016 and the requirement to apply for the posting online through MIS portal, the appellant did not take any action thereupon and continue to work at his place of posting and retired as such on 30.04.2023. It is only at a very belated stage in December 2021 that he raised a demand for his second ACP as JBT, while working in the master cadre. In such circumstances, the department has rightly drawn an inference that the appellant has intentionally foregone his promotion and taken action of withdrawing the benefit of ACP, which is in consonance with the ACP Rules. It is not disputed that the appellant at the time of consideration of his legal notice, took a stand that PGT Economics was not his line of promotion. If the appellant had any such objection or was inclined to join on the promotional post in accordance with the discretion of the department, as is now sought to be alleged, it was necessary for seeking timely redressal in



that case. Thus, it is apparent that the ground now sought to be raised by him is only an afterthought. He intentionally chose to work at the place of posting of his choice and thus, it would be deemed that he had foregone the promotion as offered vide order dated 13.07.2016. The observations of the Hon'ble Supreme Court in the case of **Union of India and others vs. Manju Arora and another (2022) 2 SCC 151** are relevant and are thus reproduced hereunder:-

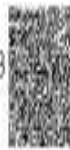
“16. We are quite certain that if a regular promotion is offered but is refused by the employee before becoming entitled to a financial upgradation, she/he shall not be entitled to financial upgradation only because she has suffered stagnation. This is because, it is not a case of lack of promotional 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.

17. 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.

*18. 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 09.08.1999. 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 Page 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 concerned employee 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 CA Nos.7027-28/2009.”



20. In view thereof, we do not find any illegality, irregularity or perversity in the order passed by learned Single Judge and therefore the present Letters Patent Appeal is dismissed.

21. Pending application(s), if any, shall stand disposed of accordingly.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

August 25, 2025

dinesh

Whether speaking/reasoned. : Yes

Whether Reportable. : No