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

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CM-20726-CWP-2024 in/&
CWP-15412-2017
Date of Decision:- 16.01.2025

Surinder Singla

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Nitika Garg, Advcoate for
Mr. Mohit Sadana, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

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Present application has been filed for recalling the order dated 21.11.2024 passed by this Court by which, the main writ petition was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Ms. Akshita Chauhan, DAG, Punjab accepts notice and raises no objection for the grant of prayer as made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Order dated 21.11.2024 passed by this Court is recalled and the main writ petition is ordered to be restored to its original number and status and is taken up for



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hearing today itself.

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1. In the present petition, the grievance being raised by the petitioner is that his date of grant of benefit of ACP after rendering service for a period of 09 years and 14 years has been changed to his disadvantage and that too without giving any notice to him and hence, the order postponing the date of grant of benefit of ACP after rendering 09 years and 14 years of service is arbitrary and illegal and the said action of the respondents is liable to be set aside being violative of principle of natural justice.

2. Learned counsel for the respondents submits that action has been taken against the petitioner keeping in view the direction given by the Division Bench of this Court in **CWP-15473-2009 titled as, Sham Lal Saini vs. State of Punjab and others.**

3. Learned counsel for the respondents submits that record of the petitioner was such that he was not entitled for promotion and once, it was found that the petitioner was not entitled for promotion as on 1996 and the benefit of ACP granted to him was incorrect, the date of grant of benefit of ACP was corrected as the benefit of ACP can only be given to an employee who was fit for promotion but was stagnating due to non-availability of avenue in the promotional cadre.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. From the facts, it transpires that action against the petitioner has been taken keeping in view the direction given by the Division Bench



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of this Court in *CWP-15473-2009 titled as, Sham Lal Saini vs. State of Punjab and others.* Once Division Bench was supervising the grant of ACP after a plea was raised that ACP has been given to the employees who were not entitled for, the respondents were under an obligation to review the grant of benefit of ACP to the petitioner as well.

6. Further, the question is whether the petitioner was entitled for an opportunity of hearing before passing of the impugned order (Annexure P-4) or not. Though, it would have been a perfect case, had the respondents granted the petitioner opportunity of hearing before passing the impugned order dated 12.01.2011 (Annexure P-4) despite the fact that there is a judgment to review the entitlement of the employees including the petitioner for the grant of benefit of ACP. But, as the action was being taken against the petitioner in view of the judgment passed by this Court in Sham Lal Saini (supra), the Court will only interfere in case, the petitioner makes out that in case the notice would have been given, he had valid justification to retain the claim.

7. On being asked, learned counsel for the petitioner has not been able to point out that petitioner was entitled to continue with the benefit of ACP after rendering 09 years service starting from the year 1999 keeping in view his Annual Confidential record. That being so, once the petitioner has not made out a case on merits, accepting his claim so as to set aside the order on the ground of violation of principle of natural of justice, will be to much especially, when as of now, the petitioner has already retired from service and in case, the order is set aside on technicalities, the petitioner will



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be able to get the relief despite not being entitled.

8. Under Article 226 of the Constitution of India, this Court has to do justice and in the facts and circumstances of the present case, the prayer of the petitioner that impugned order was passed violating the rules of natural justice cannot not accepted so as to set aside the impugned order.

9. As mentioned earlier, the petitioner has not been able to substantiate his entitlement for the grant of benefit of ACP after rendering service for a period of 09 years keeping in view his Annual Confidential record, which has already been depicted by the respondents in their written statement which fact has gone unrebutted. Keeping in view the Annual Confidential record of the petitioner, the petitioner was not entitled for promotion hence, the grant ACP from the year 1996 was not admissible to the petitioner. The petitioner has already been released the said benefit subsequent to year 1996 when the record of the petitioner improved hence, no grievance can be raised by the petitioner qua the impugned order.

10. Keeping in view the facts and circumstances recorded hereinbefore, no ground for interference by this Court is made out and the writ petition is accordingly dismissed.

January 16, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No