



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

207-1

Date of Decision: 29.09.2025

1. CWP-7154-2016 (O&M)

CHANCHAL RANI AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

2. CWP-3222-2023 (O&M)

CHANCHAL RANI @ CHANCHAL YADAV AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Shiv Kumar Sharma, Advocate for the petitioners

Mr. Ravi Partap Singh, DAG Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-7154-2016**.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of orders dated 04.03.2013, 11.03.2013, 26.04.2013, 16.01.2014, 25.04.2013, 04.03.2013, 10.07.2013, 09.01.2015, 09.01.2015 whereby benefit of 1st Assured Career Progression (in short 'ACP') has been withdrawn on the ground of foregoing Police Wireless Operator-III Course (in short 'PWO').

3. The petitioners joined Haryana Police Force in 1989. They were made part of Wireless/Telecommunication Wing. The State

Government issued Haryana Civil Services (Assured Career Progression) Rules, 1998 (in short '1998 Rules') which were followed by Haryana Civil Services (Assured Career Progression) Rules, 2008 (in short '2008 Rules'). As per these Rules, an employee is eligible to higher pay scale in the form of 1st ACP on completion of 10 years' service if he has not received financial upgradation during said period. He is entitled to 2nd ACP on completion of 20 years' service provided he has not received financial upgradation during said period. The petitioners completed 10 years' service in 1999 and 20 years' in 2009. They were eligible to 1st ACP in 1999. The respondent passed order extending benefit of 1st ACP. Relevant extract of order dated 09.07.1994 passed in the case of one petitioner is reproduced as below:-

"It is certified that the service record of Constable L/C Chanchal Rani No. 1714C is satisfactory grant of 1st ACP Pay Scale and he completed 10 years regular satisfactory service as on 20.01.1999 and under Rule 5 of HCS (ACP) Rule, 1998. He is eligible for the grant of ACP Scale. Therefore, ACP scale sanctioned under rule 8 ibid.

Sd/- 9/7/99

Superintending of Police

Telecommunication, Haryana"

4. The respondent invited petitioners No.1 & 2 for PWO in 2005, No.4, 5 & 6 in 2010, No. 7 & 8 in 2009, No.3 in 2012 and No.9 in 2007. They expressed their unwillingness to undergo promotion course. They filed affidavits claiming that they do not wish to undergo promotion course and would not claim seniority. They also deposed that they would not claim benefits arising out of promotion course. The respondent accepted their request. Scanned copy of one such affidavit and order of respondent is reproduced as below:-

AFFIDAVIT

P/11

I, EHC Chanchal No.1714/C(police Telecom) W/o Shri Satya Pal Singh resident of House No.1572, Sector-3, Ballabgarh, Distt. Faridabad (Haryana) do hereby solemnly affirm and declare as under-

1. That at present I am working as Constable Operator(Wireless) in Control Room, Faridabad.
2. That as per the Orders of SP/Telecom TPM No.26813-842 dated 29.07.2004, I have been directed for the course of Police Wireless Operator Grade-III Course in Batch no.37.
3. That at present I am unable to do this course, because nobody is there to look after my family.
4. That due to the above facts and circumstances, I may kindly be exempted to do the course of Police Wireless Operator Grade-III in Batch No.37.
5. That I shall not claim any seniority and any other service benefit, if I may be exempted from this course in future.



Deponent.

L/EHC Chanchal 1714/C

Verifications:

I know responsibility and signed thumb impression confirmed by me.
m. L. Yadav

and I have verified that the contents of my above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therein.

Verified at Faridabad on 20-04-05.

Deponent.

L/EHC Chanchal 1714

ATTESTED AS IDENTIFIED

NOTARY FARIDABAD (INDIA) 20 APR 2005

T.P.M.

To DRO Faridabad

Copy to TI/PWTC KKR, DRO JJR Acctt., OSI/Tele

From S.P./Telecom Hr P/L



No. 8415-21 dated 12-4-05 (i) Ref your office

TPM No. 176-1D dated 1.4.2005 reg: Exemption from

PWO-III course in r/o L/EHC Chanchal 1714/C^o she

and appeared her case considered sympathically and

exempted from PWO-III course commenced w.e.f. 4.4.2005

at PWTC KKR with the condition that she will produced

an affidavit mentioning that I will not claim any

seniority and other service benefit accruing from the

said course (.) Get the affidavit from L/EHC Chanchal

1714/C and sent to this office for record (.) For DRO

JJR only (.) Relieve const. Ram Mohar 1745/C and direct him

to report to TI/PWTC KKR atonce under intimation to this

office (.) Ensure compliance (.)

5. The respondent in compliance of judgment dated 22.05.2012 of this Court passed in CWP-15713-2011 revised pay scale of the petitioners. The respondent while revising pay scale of petitioners withdrew benefit of 1st ACP from 2005 i.e. year in which offer to undergo promotion course was made. The petitioners requested for another opportunity to undergo promotion course. The respondent conceded their request and restored ACP, the moment they cleared promotion course.

6. Learned Senior Counsel for the petitioner submits that respondent has withdrawn benefit of 1st ACP on the ground that petitioners did not undergo/complete promotional course i.e. PWO Course. They were not offered opportunity to undergo said course, thus, could not undergo. They were first time offered promotional course in 2005. There are few petitioners who were offered even in 2009 or thereafter. By the date of making offer to undergo aforesaid course, they had already been granted 1st ACP. The benefit of ACP could not be withdrawn because there was no lapse on their part.

7. *Per contra*, learned State counsel submits that petitioners submitted affidavit to the effect that they do not want to undergo promotional course and would not claim seniority, promotion as well consequential benefits. They are bound by their affidavit. They cannot take summersault. At a subsequent point of time, they underwent promotional course and became eligible for ACP. As soon as they completed promotional course, ACP was restored, however, with prospective effect.

8. I have heard learned counsel for the parties and perused the record of the case.

9. Benefit of ACP accrued from 1998 Rules and 2008 Rules.

For the ready reference Rule 5 of 1998 Rules is reproduced as below:-

“5. Eligibility for Grant of ACP Scales.—

(1) Every Government servant who, after a regular satisfactory service for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995,

shall for the purposes of drawal of pay, be eligible for placement into the First ACP scale with reference to him.

(2) Every Government servant who after a regular satisfactory service for a minimum period of 20 years, if the minimum period is not otherwise prescribed to be different than 20 years either in these rules or by the Government for any class or categories of Government servant from time to time has not got more than one financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995 on which he was recruited as a direct recruited fresh entrant :-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay, be eligible for placement into the Second ACP scale with reference to him;

***Provided** that grant of ACP scale shall also be considered financial upgradation for the purposes of this rule.*

***Note :** For the purpose of these rules, “Regular satisfactory service” would mean continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government before re-organisation commencing from the date on which the Government servant joined his service after being recruited through the prescribed procedure or rules etc. for regular recruitment in the cadre in which he is working at the time of being considered his eligibility for grant of ACP scales under these rules and after further fulfilling all the requirements prescribed for determining the suitability of grant of ACP scales.*

***EXPLANATION:** The ACP scale upgradation will come into play only if due to functional promotion or upgradation of scale for the same post as specified above, the Government servant has not got the benefit of at least one pay scale upgradation within the prescribed period of 10 years or any other prescribed period for the grant of 1st ACP scale or two such financial upgradations within a period of 20 years or within the period otherwise specified for grant of second ACP scale. If within 10 years of service or within the prescribed period of service for the grant of 1st ACP, the employee has already got at least one financial upgradation or within 20 years of service, as the case may be, or otherwise prescribed period of service for the grant of second ACP scale, the Government servant has already got at least two financial upgradations, benefit of these*

rules will not be extended to such employees save if otherwise provided in these rules.

(3) For determining the eligibility of grant of ACP Scale, following conditions must also be fulfilled by the Government servant :-

(a) After completing the respective prescribed period for eligibility for the grant of ACP scales the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

(b) If such promotion involves test of any departmental post or other test etc. such condition should also be fulfilled by such Government servant.

(4) The eligibility for grant of the ACP scales shall further be subject to any other restriction as may be prescribed by the Government from time to time including the restriction of the number of Government servant to be granted the respective ACP scales in terms of percentage of posts in the cadre to which such ACP placements shall be limited; Provided that till the time such restrictions are not imposed by the Government.—

(a) there shall be no restriction on the number of Government servants to be granted the first or second ACP scales with reference to the Government servants covered in sub-rule (2) of rule 4.

(b) for the Government servants covered in sub-rule (1) of rule 4, there shall be no restriction on the number of Government servants for grant of first ACP scale. However, the grant of the second ACP scale for such Government servants as covered in sub-rule (1) of rule 4 shall be limited to 20% of the total posts in the cadre.”

[Emphasis supplied]

From the perusal of Rule 5(3), it is evident that a

Government servant is eligible for ACP if he has completed promotional course where promotion is subject to completion of some course. It is undisputed that promotion of Constable is subject to completion of PWO Course. The petitioners did not complete said course and completed 10 years' service in 1999. They were granted benefit of ACP without completing promotional course. The benefit was granted contrary to terms and conditions of the policy, thus, could be withdrawn.

10. In the wake of afore-stated provisions and factual position, question arises whether respondent was competent and rightly withdrew benefit of ACP which was extended on completion of 10 years' service. The respondent is not disputing the fact that PWO Course was offered to petitioners either in 2005 or 2009 or thereafter. There are two-three petitioners who were offered promotion course even after completion of 20 years' service. It was prerogative of the respondent to offer promotion course. The petitioners could not arrange or ask the respondent to arrange for promotion course. It means they were hapless for not undergoing promotion course. The things were beyond their control. If it is held that they did not complete PWO within 10 years from the date of appointment, it would amount to asking the petitioners to do something which was impossible for them. It is settled law that no one can be asked to do something which he cannot do. Hon'ble Supreme Court in *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors., (2020) 7 SCC 1* has clearly held that law does not demand the impossible. When there is disability that makes it impossible to obey the law, the alleged disobedience of law is excused. The law does not compel one to do that which one cannot possibly perform. Where the law creates a duty or

charge and a party is disabled to perform it without any default in him and has no remedy over it, there the law will in general excuse it. When the performance of formalities prescribed by statute has been rendered impossible by circumstances over which a person entrusted has no control, the circumstances will be taken as a valid excuse.

11. In the case in hand, the promotion course was offered in 2005 and 10 years' service completed in 1999. For ACP, they were supposed to complete promotion course within 10 years of service. They were not at fault for not completing promotion course. The respondent could not offer them promotional course because of lack of vacancies. Thus, it cannot be concluded that there was lapse on the part of the petitioners. As per 1998 Rules, they became eligible for ACP on completion of 10 years' service.

12. The State Government has framed 1998 and 2008 Rules to get rid over stagnation. Employees sometimes on account of many reasons do not get opportunity of promotion which leads to stagnation. To resolve the problem of stagnation, the State Government has introduced 1998 and 2008 Rules whereby higher pay scales have been granted to those who could not get promotion. The embargo under Rule 5(3) has been carved out to deny benefit to ones who intentionally despite avenues, do not undergo promotional course. Intention of the Legislature is stark and lucid. Case of petitioners cannot be brought within the four walls of aforesaid embargo because they were never offered opportunity to undergo promotion course which led to stagnation.

13. The matter also needs to be examined from the angle of vested right. 1998 Rules created right of ACP in favour of those

employees who complete 10 years' service without promotion. The petitioners completed 10 years' service without promotion in 1999. Right of ACP accrued in their favour. The respondent conceded their right and extended them 1st ACP. For the said purpose an order was passed. On the said date, neither vacancies for promotion were available nor respondent had invited applications for conducting promotion course. The right of ACP accrued on completion of 10 years' service. The rules deny benefit of ACP to an employee who has not passed promotion course. Question of passing of promotion course was required to be examined on the date of completion of 10 years' service. As per 1998 Rules, right of ACP accrued to petitioners and respondent extended said benefit. Offer to undergo promotion course was made in 2005. The subsequent event could not take away already accrued as well extended right. It is settled proposition of law that vested right cannot be taken away on the basis of subsequent event. Hon'ble Supreme Court time and again has declared amendments invalid which take away vested right from retrospective date. As per judgments, vested right in a particular situation cannot be taken away even by retrospective amendment. In the case in hand, there is no retrospective amendment. The respondent took away vested right on the basis of subsequent event which was not having retrospective effect. Right of ACP accrued in favour of petitioners in 1999 and said right could not be taken away on occurrence of subsequent event which was not having retrospective effect.

14. The respondent is wrongly placing reliance upon affidavits of petitioners. The respondent has failed to consider that affidavits were filed in 2005 whereas right of ACP accrued as well was granted in 1999.

The petitioners in view of affidavits were ineligible to future benefits and could not be denied benefits already granted.

15. In the wake of above discussions and findings, this Court is of the conceded opinion that every petitioner who was granted ACP on completion of 10 years' service was entitled to ACP despite non-completion of promotion course because he was not offered opportunity to undergo promotion course within 10 years from the date of appointment. The State could not withdraw said benefit at a later stage. If any employee was not extended benefit of ACP and he completed promotion course at a later stage and got benefit of ACP after completion of promotion course, he would not get ACP from retrospective date because he never claimed ACP on completion of 10 years' service. At the cost of repetition, it is made clear that withdrawal of ACP after couple of years was bad in the eye of law if an employee had complied conditions of 1998 Rules in entirety except promotion course.

16. Accordingly, the impugned orders are hereby set aside and respondents are directed to refix ACP in terms of above observations.

17. **Disposed of** in above terms.

18. Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

September 29, 2025

Deepak DPA

Whether Speaking/reasoned: Yes/No
Whether Reportable: Yes/No