



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6720-2020 (O&M)
Reserved on: 14.01.2025
Pronounced on: 18.01.2025

SONIA

...PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Amrik Singh, Advocate, for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. H.P.S. Ghuman, Advocate, for respondent No.3.

DEEPAK GUPTA, J.

By way of this petition filed under Article 226/227 of the Constitution of India, petitioner prays for issuance of the following writs:-

- (i) Issue a writ in the nature of certiorari quashing the order dated 15.11.2019 (*Annexure P-7*) vide which the claim of the petitioner for grant of due increments in respect of the pay of her deceased husband has been rejected.
- (ii) Issue a writ in the nature of Mandamus directing the respondents to grant the accrued increments to the deceased husband of the petitioner and to fix the pay and consequently pension accordingly as the deceased was not given 24 years ACP accrued as Inspector, increments on promotion as Superintendent Grade-II on 21.12.2006 and 4 years ACP as Superintendent Grade-II for which he had exercised the option before his death and to pay the arrears and release the pension and other accrued benefits to the petitioner, which has not been paid so far by the respondent Corporation along with interest @ 18% per annum from its date of accrual till actual realization.

2.1 According to the petitioner, her husband late Sukhwinder Singh was appointed as Inspector on 10.02.1979 in the respondent-Corporation and thereafter, he was promoted as Superintendent Grade-II on 21.12.2006. He died in a road accident on 06.12.2011. It is alleged that salary of the husband of the petitioner was not correctly fixed during his lifetime, which forced the petitioner to approach the respondents, but in vain. Elaborating, it is contended that during service, her husband was charge-sheeted in the year 2000 and was suspended on 13.09.2002. He was reinstated on 13.12.2004. Before that, his pay was fixed by granting annual increment on 01.01.2002 as ₹8,925/-. The husband of the petitioner was awarded punishment of stoppage of three increments with cumulative effect vide order dated 18.11.2004, which was later on modified by the Appellate authority to stoppage of two increments without cumulative effect w.e.f. 30.01.2006. The pay of the husband of the petitioner was then fixed in the year 2008 by taking the pay of the deceased-husband of the petitioner as on 01.01.2002 as ₹8,925/- and thereafter, no increment was granted to him in the year 2003 and 2004. Husband of the petitioner was then promoted as Superintendent Grade-II vide order dated 20.12.2006 and he joined at Bathinda.

2.2 Petitioner filed CWP-1980-2017 before this Court for release of due amount, annual increment etc., which was disposed of by this Court vide order dated 03.02.2017 (*Annexure P4*), whereby respondent No.3 was directed to decide the representation of the petitioner dated 02.08.2016 within two months. Another CWP-4768-2019 was filed by the petitioner, which was dismissed with liberty to file fresh representation and then respondent No.2 was directed to pass appropriate order on the said representation. Petitioner then filed COCP-3441-2019 and during the pendency of that petition, respondents passed impugned speaking order dated 15.11.2019 partly accepting the claim of the petitioner. This Court then disposed of the contempt petition on 25.11.2019 with liberty to the petitioner to avail remedy in accordance with law for the surviving grievances. Copies of these orders are *Annexure P7 & P8* respectively.

2.3 Petitioner has challenged the order dated 15.11.2019 to be illegal, arbitrary and in violation of law, as respondents have failed to consider the fact that order dated 18.11.2004 for stopping three increments with cumulative effect was modified to only one increment vide order dated 30.01.2006. Meaning thereby, only one increment of the deceased husband of the petitioner was to be stopped permanently and thereafter, the respondents were not entitled to withhold the five increments as has been done while fixing the pay of the deceased husband of the petitioner.

2.4 It is further the grievance of the petitioner that though husband of the petitioner was promoted on 20.12.2006, he was fulfilling the eligibility criteria for grant of 24 years ACP, which was required to be considered after his reinstatement on 13.12.2004, but the respondents failed to grant the said benefit before his promotion on 20.12.2006. It is contended that respondents have failed to grant due increments on promotion to the deceased husband of the petitioner as per rules, as he was to be granted two increments on promotion according to the Punjab Civil Service Revised Pay Rules and the increments on account of 24 years ACP on 10.09.2003 and 4 years ACP as Superintendent Grade II, which has been declined wrongly.

2.5 By putting forth the above grievances, petitioner has assailed the order dated 15.11.2019 on various grounds praying for setting it aside.

3.1 The stand of the respondents N: 1 & 2 is that the deceased husband of the petitioner i.e. Sh. Sukhwinder Singh was appointed as inspector as on 10-02-1979 at Municipal Counsel Phillaur and the benefit of 8 years ACP was given to him on completion of 8 years of service on 01-02-1987 and as per government instructions, benefit of 18 years of ACP was given to him on 22-02-1997 on completion of 18 years of service. As per the advice of account branch and instructions issued by the Finance department, the deceased husband of the petitioner was given the benefits of 8 and 18 years ACP from 1988 but since the ACP scheme was implemented from 01-01-1996 under the 4th Pay Commission, according to which the employees were to be given the benefit of 8,16,24 and 32 years ACP, hence the benefit of 18 years of ACP given to the

husband of the deceased as on 22-02-1997 was converted to 16 years. The 24 years of ACP benefit became due to the deceased husband of the petitioner on 10-02-2003 but since he was issued chargesheet for the charges of embezzlement of the Government funds and tempering of the Government record and since the deceased husband of the petitioner could not produce any evidence in his favour, the Department of Local Government vide order Dated 18-11-2004 ordered to stop three annual increments with cumulative effect, which was modified by the Principal Secretary Local Government of Punjab vide order Dated 30-01-2006, whereby out of three annual increments, it was ordered to grant one annual increment and stop two annual increments without cumulative effect. Therefore, according to the above situation and record, the deceased husband of the petitioner has already been given the benefit of 8 and 18 years ACP and under 4th Pay Commission ACP scheme merged to 8 and 16. The benefits of 24 years in inspector cadre was due to deceased husbands of the Petitioner on 10-02-2003 and 4 years ACP on 02-01-2011 but due to pendency of the disciplinary proceeding case against the employee and because the deceased husband of the petitioner was punished in the same, cannot be granted since the employee was facing disciplinary action at the relevant time. It is further submitted that since the deceased husband of the petitioner had not submitted the option form for benefit of 4 years ACP, which was due on 02-01-2011 which is compulsory to take benefit of 4-9-14 ACP scheme, the same cannot be granted and was rightly rejected vide speaking order Dated 15-11-2019.

3.2 Similar stand has been taken by the respondent No.3 in its separate written statement.

4.1 In rejoinder, petitioner submitted that the respondents have categorically conceded that the husband of the petitioner was awarded the punishment of stoppage of 3 increments with cumulative effect in two separate charge sheet vide order dated 17.08.2004 and order dated 18.08.2005 and the said punishments were reduced by the appellate authority (Government) vide order dated 18.11.2004 to stoppage of one annual increment with cumulative

effect; and the second punishment awarded to the husband of the petitioner of stoppage of 3 annual increments vide order dated 18.08.2005 was also reduced by the Principal Secretary (Appellate Authority) to stoppage of 2 annual increments without cumulative effect vide order dated 30.01.2006. It is contended that it is thus apparent that the punishment awarded to the husband of the petitioner was twofold as one increment was to be stopped with cumulative effect and two increments were without cumulative effect, therefore, the department did not grant annual increment to the husband of the petitioner on 08.04.2005 after his suspension and the said increment can be taken as, "Increment stopped with cumulative effect" and thereafter other two increments which were due on 01.01.2006 and 01.01.2007 can be taken as increment, which are required to be granted to the husband of the petitioner on 01.01.2008, meaning thereby the husband of the petitioner was required to have three annual increments on 01.01.2008 as the two annual increments required to be granted to the husband of the petitioner after two years.

4.2 Petitioner submits further that 24 years of ACP became due to the husband of the petitioner on 10.02.2003 and since he was under suspension on the said date, which is required to be postponed and after his reinstatement that is required to be granted to the husband of the petitioner, as in spite of the punishment awarded to the husband of the petitioner, he got promotion on 29.12.2006, meaning thereby he was fulfilling the criteria laid down for the grant of 24 years of ACP, which is required to be granted in the year 2005, if even, the period of suspension is excluded from 24 years required for grant of 24 years ACP as the same was due on 10.02.2003 but as the husband of the petitioner was under suspension from 06.09.2002, so the period from 06.09.2002 to 10.02.2003 is required to be extended when the husband of the petitioner got reinstated but the said ACP was never granted to the husband of the petitioner. As the husband of the petitioner got promoted on 29.12.2006, so he was fulfilling the requisite conditions for grant of ACP also before the said date.

5. I have considered submissions made by Ld. Counsels for both the sides and have perused the paper-book.

6. As the speaking order (*Annexure P7*) passed by respondent No.1 reveals, petitioner has already been paid the following benefits:

1.	Gratuity	₹10,10,000/-
2.	Leave Encashment	₹3,70,510/-
3.	Arrear of Pension w.e.f. 06.12.2011 to 30.04.2013	₹3,60,076/-
4.	Provident Fund	₹3,39,338/-
5.	Ex-Gratia	₹1,00,000/- ₹3,00,000/-

7. The grievance of the petitioner is now confined to non-payment of the increments and 24 years ACP. It is not in dispute that husband of the petitioner was given the benefit of 8 years ACP on completion of 8 years' service on 01.02.1987 and benefit of 18 year's ACP on 22.02.1997 on completion of 18 years' service as per the Govt. Instructions. The Assured Career Progression Pension Scheme was implemented from 01.01.1996 under the 4th Pay Commission, as per which employees were given the benefit of 8, 16, 24 and 32 years ACP benefit and as such, the husband of the petitioner was given the benefit of 18 year's ACP on 22.02.1997, which was converted to 16 years.

8. The respondents have justified non grant of 24 years ACP by passing following order: -

“As the benefit of 24 years ACP became due to the employee as Inspector on 10.02.2003 but the employee was issued charge sheet for the charges of embezzlement of the Government amount and tempering with the Government record vide Government letter dated 27.07.2000 and thereafter charge sheet was issued but the employee could not prove any solid evidence in his favour and thereafter by Local Government Department, Punjab vide

order No. 1/83/02-7SS 13/59/2000-7SS1/19321 dated 18.11.2004 ordered to stop three annual increments with cumulative effect which was modified by Principal Secretary, Local Government Department Punjab vide Endst.No.13/7/2003-7LG1/639-40 dated 30.01.2006 out of three annual increments ordered to grant one annual increment and stop two annual increments without cumulative effect. Therefore, the employee due to issuance of charge sheet during this period, he cannot be given the benefit of 24 years ACP according to the Government instructions nor the period of the employee from 06.09.2002 to 13.12.2004 can be treated as duty period.

As the employee was promoted by the Government vide letter dated 21.12.2006 as Superintendent Grade-II and deployed at Municipal Counsel Bathinda and the employee submitted his joining report before noon on 02.01.2007 and therefore, the benefit of 4 years ACP of this employee was due on 02.01.2011 but according to the report of the Municipal Counsel Bathinda, the option form of this employee for taking the benefit of ACP is not available in the record and according to the Punjab Government Personnel Department and Administrative Department letter No.7/6020065PP1/15963 dated 03.11.2006 the option form is compulsory to take the benefit of 4-9-14 ACP Scheme.

According to the above situation and record because the employee has already been given the benefit of 8 and 18 years ACP and under 4th Pay Commission Assured Career Progression Scheme which was implemented from 01.01.1996 has been merged to 8 and 16. The benefit of 24 years in the Inspector Cadre was due to the employee on 10.02.2003 and 4 years ACP on 02.01.2011 but due to the pendency of the disciplinary proceeding case against the employee and thereafter due to getting punishment in this case therefore, the benefit of 24 years ACP, to treat the suspension period from 06.09.2002 to 13.12.2004 as duty period and to grant the benefit of 4 years ACP in the Superintendent Cadre for not submitting the option form therefore, the claim is hereby rejected.

9. It is, thus, clear that though the benefit of 24 years in Inspector cadre was due to the employee i.e. husband of the petitioner on 10.02.2003, but it is due to the pendency of the disciplinary proceedings against him. Thus,

it is by keeping in view the fact that he was facing disciplinary proceedings, in which he was ultimately punished in the year 2004, hence, any employee, who has suffered punishment, is not entitled for promotion with retrospective effect. As such, the question of grant of ACP on completion of 24 years in the year 2004 with retrospective effect, on completion of the disciplinary proceedings, wherein the employee has been punished, is not made out, keeping in view the facts and circumstances of the present case.

10. With regard to the claim of the petitioner that her husband has not been granted the benefit of ACP on completion of 4 years of service, which was due to him w.e.f 02.01.2011, the same was declined by respondents on the ground that he had not submitted an option. In this regard, it is held that the reason being given by the Department that the deceased husband of the petitioner had to apply for the said benefit is not correct and cannot be upheld. Once, under the Rules or the scheme, an employee is entitled for any benefit, it is the duty of the Department to extend the said benefit admissible to the employee concerned, without any demand raised qua the grant of the said benefit/entitlement.

11. Hence, the respondents are directed to consider the claim of the petitioner for the grant of ACP on completion of 4 years of service, which was due to her deceased husband on 02.01.2011 and the same be granted in case, he is found fit for the grant of the said benefit of ACP keeping in view the service record, without there being any insistence that the same should have been applied for by the deceased employee.

12. The last contention of the petitioner is that despite certain increments were stopped without cumulative effect in the service career, the same have not been restored even after the operation of the punishment was over, so as to fix the entitled salary of the deceased husband of petitioner.

13. Qua the same, as complete record has not been placed before this Court, the respondents are directed to look into the said issue so to ascertain as to whether the increments, which were stopped without cumulative effect have been restored while fixing the salary on completion of the said

punishments or not. In case, the same have been restored, a detailed chart be given to the petitioner depicting the restoration of the same as to what was the salary being drawn by the husband of the petitioner during the pendency of the punishment and the salary computed after the punishment was over i.e. after restoration of the increment, so that the petitioner could be satisfied that due benefit has been given to him. In case, it is found that the stopped increments were not restored inadvertently after the completion of the punishment, the same be done by passing appropriate speaking order and by refixing the salary of the husband of petitioner, so that the petitioner does not suffer any financial loss and in case, the pay of the husband of the petitioner is refixed, he be also granted the consequential benefits on the arrears of salary upon the said re-fixation so as to avoid any financial hardship.

14. Let the order be complied with within a period of 2 months from the receipt of copy of this order.

The petition is disposed of accordingly.

18.01.2025

Vivek

(DEEPAK GUPTA)

JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>