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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00765/2014

Order Reserved on 09.04.2015

Pronounced on 16.4.2015

...

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

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Sheela Masih W/o Sh. Surinder Masih, R/o SCF No.1, Punjab Modern Complex, Baltana, District, SAS Nagar, Mohali.

... Applicant

Versus

1. Union Territory Chandigarh through the Director Higher Education, Chandigarh Administration, U.T. Secretariat, Sector-9, Chandigarh.
2. The Principal, Govt. Home Science College, Sector 10, Chandigarh.

... Respondents

Present: Mr. Vikas Kuthiala, counsel for the applicant.
Mr. Rohit Mittal, proxy for Sh. Rakesh Verma, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"8 (ii) To quash the impugned order dated 31.03.2014 (Annexure P-8) of the Respondent U.T. being wrong and illegal and against the provisions of the Article 14 & 16 of the Constitution of India.

(iii) To direct the Respondent U.T. to release the benefit of ACP Scale to the applicant in pursuance to the Punjab Government letter No.7/60/2006-5PPI/15963 dated 03.11.2006 regarding the fixation of higher post pay after giving benefit of ACP Scheme on the completion of the

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4/9/14 years of regular service to the employees as duly adopted by the Personnel Department of the Respondent U.T. vide its letter no.28/43/95-IH(7)-2006/21532.

- (iv) To direct the Respondent U.T. to pay interest @ 12% p.a. on the above arrears of ACP benefits to be released to the applicant, from the due date till the actual date of payment."

2. Averment has been made in the OA that the applicant was appointed as Hostel Nurse by respondent no.1 in the Department of Higher Education, U.T. Administration, Chandigarh and joined as such on 17.08.1979. The applicant was given benefit of pay scale of higher post under the ACP Scheme after completion of 8/16/24 years of service as and when it was due to her. The Personnel Department of the U.T. vide its letter no.28/43/95-IH(7)-2006/21532 dated 21.11.2006 duly adopted the Punjab Government letter No.7/60/2006-5PPI/15963 dated 03.11.2006 regarding fixation of higher post pay after giving benefit of the ACP Scheme on the completion of 4/9/14 years of regular service to its employees. The applicant duly exercised the option of the fixation of pay after giving benefit of the ACP Scheme on the completion of 4/9/14 years of regular service in pursuance to the Personnel Department, Chandigarh Administration letter No.28/43/95-IH(7)-2006/21532, through proper channel by way of an application on the prescribed format duly supported by an affidavit (Annexure A-1). During the entire service period of 32 years the applicant was not promoted to any higher

12 —

post after joining as Hostel Nurse on 17.08.1979 and she retired on attaining the age of superannuation on 31.07.2011. Although she had been pursuing the matter with the authorities for grant of ACP benefit on completion of 4/9/14 years of regular service, it was denied to her on the ground that she failed to exercise her option within the stipulated period of opting for new ACP Scheme of 4/9/14 years (Annexure A-8). Hence this O.A.

3. In the written statement filed on behalf of the respondents it has been stated that the notification of the ACP Scheme was issued by Punjab Government letter No.7/60/2006-5PPI/15963 dated 03.11.2006 (Annexure R-2) adopted by Chandigarh Administration, Department of Personnel vide letter no.28/43/95-IH(7)-2006/21532 dated 21.11.2006 (Annexure R-3). The officials who wanted to opt for the New ACP Scheme 4/9/14 were required to exercise an option within stipulated period of two months from the date of issue of this letter alongwith an undertaking in the enclosed proforma (Form of undertaking) (Annexure R-1) through a sworn affidavit that he/she wants to accept this Scheme effective from 01.01.2006 and the same was pasted in their service books. Request of the applicant dated 18.05.2010 was forwarded in original to the Director, Higher Education, Chandigarh Administration whereby she had not opted for the New ACP Scheme

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15

(4/9/14) within the stipulated period as per requirements of Govt. instructions in the form of affidavit. In her application, she stated that she wished to opt for the Scheme due to loss in the pay fixation in the new pay scales. She had nowhere mentioned that she had already opted for the new ACP Scheme of 4/9/14 years and submitted affidavit. Hence the applicant is not entitled for the benefit under the New ACP Scheme. However, she has already been given benefit under old ACP Scheme on completion of 8, 16 and 24 years.

4. It has further been stated that the applicant made another request on 18.03.2011 (Annexure R-7) with a photocopy of affidavit dated 16.11.2006 (Annexure A-1) that she had opted for the New ACP Scheme and requested to grant the benefit of this Scheme. The Respondent College sought the guidance of the DHE, Chandigarh Administration that the applicant has made request for grant of new ACP Scheme with a photocopy of Affidavit dated 16.11.2006 whereas the Department of Personnel adopted the New ACP Scheme vide letter 28/43/95-IH(7)-2006/21532 dated 21.11.2006. Still the office of respondent no.2 searched personal file and service book/record but neither her option nor affidavit was found in the record. Almost all the staff members eligible under the New ACP Scheme submitted their respective option proforma in the month of December 2006 and January

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2007 (Annexure R-8). However, the applicant neither submitted fresh proforma nor gave any intimation regarding submission of option proforma or affidavit which shows that the applicant had never given any option/affidavit for opting New ACP Scheme-4/9/14 years. The photocopy of the same was endorsed to the applicant vide Endst. No.39 dated 30.04.2011 and informed that the benefit of New ACP Scheme-7/9/14 cannot be granted due to non completion of case. As per photocopy of affidavit submitted by the applicant, the same was issued on 16.11.2006. However, the notification of New ACP Scheme-4/9/14 was issued by the Punjab Government vide letter no. No.7/60/2006-5PPI/15963 dated 03.11.2006 (Annexure R-2) and was adopted by the Chandigarh Administration, Department of Personnel vide letter no.28/43/95-IH(7)-2006/21532 dated 21.11.2006 (Annexure R-3). The affidavit submitted by the applicant is not matching with the specimen (Form of Undertaking Annexure R-1) issued by the Chandigarh Administration to opt for the New ACP Scheme-4/9/14 and seems to be an after thought.

5. Rejoinder has not been filed on behalf of the applicant.
6. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant pressed that the applicant did not have any promotional avenue during her service and

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17

she retired after 32 years of service from the same post on which she was appointed. He stated that the 4/9/14 ACP Scheme was notified by Punjab Government on 03.11.2006 and U.T. adopted the same on 21.11.2006. The applicant had filed an affidavit on 06.11.2006 (Annexure A-1) but she had not been allowed the benefit of the 4/9/14 Scheme inspite of the matter having been pursued by the College authorities vide letters dated 02.08.2010 (Annexure A-3) and 24.03.2011 (Annexure A-5). He stated that since Scheme 4/9/14 was beneficial to the applicant, her option regarding the same should have been accepted and the applicant was entitled to refixation of her pay and release of arrears on this account.

7. Learned proxy counsel for the respondents referred to the content of written statement and stated that the applicant had not submitted her option for the 4/9/14 ACP Scheme timely, and hence she was not entitled to revision of her pay accordingly. Written arguments submitted subsequently by learned counsel for the respondents have been taken on record.

8. We have given our careful consideration to the matter. It does appear from the record that the affidavit regarding option for the 4/9/14 ACP Scheme was not submitted by the applicant timely but since

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the applicant was on an isolated post and had not got any promotion during the 32 years of her service, she should not be denied revision of her pay in accordance with 4/9/14 ACP Scheme as the same would appear to be beneficial to her. Hence the respondents are directed to treat the applicant as having opted for the 4/9/14 ACP Scheme and revision of her pay may be done accordingly. Arrears on this account may be released within a period of three months from a certified copy of this order being served upon the respondents. Interest is not allowed as delay in the matter can be ascribed to the applicant herself.

9. With these directions, the OA is disposed of.

B. A. AgSawal

(DR. BRAHM A. AGRAWAL)
MEMBER (J)

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(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 16.4.2015 .

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