

Present: Sri M.C.Pant &
Sri L.K.Maithani, Ld. Counsel
for the petitioners
Sri V.P.Devrani, Ld. A.P.O.
for the respondents

JUDGMENT

DATED: MAY 23, 2018

HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioners have filed the present claim petition for seeking the following reliefs:

“(i) To issue order or direction to quash the impugned order dated 04.03.2016 passed by the respondent no.1 by which the representations of the petitioners for granting of benefit of Assured Career Progression after completion of 26 years of service has been rejected after calling the entire records from the respondents and further to declare the Clause 3(7) of the Government Order dated 08.03.2011 and 07.04.2011 by putting such embargo is unreasonable, illegal and void ab-initio and to quash the same, if the such condition still exists in the Government Order.

(ii) To issue order or direction directing the respondents to allow the benefit of stepping up of pay and financial upgradation under ACP after completion of 26 years of service to the petitioners at par to their juniors along with all arrears and consequential benefits together with 18% interest thereof had it been the impugned order was never in existence.

(iii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) Cost of the petition be awarded to the petitioners.”

2. There are nine petitioners in all in the present claim petition. All these petitioners were initially appointed on the post of junior clerk from 1972 to 1981 in various departments of the erstwhile

State of U.P. After creation of the State of Uttarakhand on 09.11.2000, they were attached to the State Secretariat. As there was shortage of staff in the State Secretariat, Government of Uttarakhand by exercising powers under proviso of Article 309, framed “उत्तरांचल सचिवालय वैयक्तिक सहायक, अवर वर्ग सहायक, सहायक लेखाकार, टंकक, अनुसेवक के पदों पर संविलियन नियमावली, 2002”, hereinafter referred as Absorption Rules, 2002 (Annexure: A-2). All the petitioners and many others were absorbed under the said Rules in 2002. Thereafter, all the petitioners were promoted on the post of ‘Samiksha Adhikari’ in 2005. A final seniority list of ‘Samiksha Adhikari’ was also notified by the department of Secretariat Administration, Government of Uttarakhand on 13.07.2011 (Annexure: A-4) in which names of all the petitioners and others were included. The petitioners no. 1, 2, 3, 4, 5 and 8 have retired. The petitioner No. 6 retired during pendency of the claim petition. The petitioners No. 7 and 9 are still in service.

3. It is admitted that all the petitioners have been given three regular promotions in their entire service including the services they rendered before their absorption in the Government Secretariat.

4. The State Government issued the G.O. on 08.03.2011 (Annexure: A-5) and introduced a scheme of Assured Career Progression (ACP) for its employees. According to para 1(2)(i) of the G.O., the employees were made entitled to get three promotional pay scales from their first regular appointment after completion of continuous and satisfactory service of 10 years, 18 years and 26 years subject to various conditions laid down in the said G.O.

5. Paragraph 1(2)(v) of the G.O. dated 08.03.2011 provides as under:-

“ए0सी0पी0 की व्यवस्था लागू होने के पश्चात् सीधी भर्ती के किसी पद पर प्रथम नियुक्ति के पश्चात् संवर्ग में प्रथम पदोन्नति होने के उपरान्त केवल द्वितीय एवं तृतीय वित्तीय स्तरों पर तथा द्वितीय पदोन्नति प्राप्त होने के उपरान्त

तृतीय वित्तीय स्तरोन्नयन का लाभ ही देय रह जायेगा। तीसरी पदोन्नति प्राप्त होने की तिथि के पश्चात् किसी भी दशा में वित्तीय स्तरोन्नयन का लाभ अनुमन्य न होगा। इस सन्दर्भ में यह भी उल्लेखनीय है कि दिनांक 1-1-2006 से लागू पुनरीक्षित वेतन संरचना में एक ही संवर्ग में यदि समान ग्रेड वेतन वाले पद पर पदोन्नति हुई है, तो उसे भी वित्तीय स्तरोन्नयन की अनुमन्यता हेतु पदोन्नति माना जायेगा।

परन्तु,

उक्तानुसार पदोन्नति प्राप्त वरिष्ठ कर्मचारी का वेतन ए0सी0पी0 की व्यवस्था से लाभान्वित किसी कनिष्ठ कार्मिक से कम होने की दशा में वरिष्ठ कार्मिक का वेतन कनिष्ठ कार्मिक के बराबर कर दिया जायेगा।”

Perusal of the above provision of the G.O. dated 8.3.2011 makes it clear that the employees will not be entitled for any promotional pay scale after they have received three promotions in their service. **However, it has also been clarified in the proviso that if the pay of any employee who has got promotion and who is senior and his pay is less than the pay of an employee junior to him who has been given the benefit of ACP, then the pay of the senior person shall be stepped up to make it equal to the pay of the employee junior to him.**

6. Another provision of the G.O. dated 08.03.2011 relevant to the present case is given under paragraph 1(7) of the G.O. which is reproduced below:

“इस योजना के अन्तर्गत प्राप्त वित्तीय स्तरोन्नयन पूर्णतयः वैयक्तिक है और इसका कर्मचारी की वरिष्ठता से कोई संबंध नहीं है। कोई कनिष्ठ कर्मचारी इस व्यवस्था के अन्तर्गत उच्च वेतन/ग्रेड वेतन प्राप्त करता है, तो वरिष्ठ कर्मचारी इस आधार पर उच्च वेतन/ग्रेड वेतन की मांग नहीं कर सकेगा कि उससे कनिष्ठ कर्मचारी को अधिक वेतन/ग्रेड वेतन प्राप्त हो रहा है।”

Perusal of the above provision shows that the benefit of ACP is a personal benefit and a senior employee cannot claim higher pay which an employee junior to him is getting.

7.1 Some amendments were made in the G.O. dated 08.03.2011 by issuing another G.O. dated 30.10.2012 (Annexure: A-6) to clarify certain issues stated in the G.O. dated 08.03.2011. The provision in paragraph 2(3) of the G.O. dated 30.10.2012 is reproduced as under:-

“2(3) एश्योर्ड कैरियर प्रोग्रेशन स्कीम (ए0सी0पी0) की व्यवस्था लागू होने के पूर्व अथवा बाद में, प्रथम पदोन्नति होने के उपरान्त केवल द्वितीय एवं तृतीय वित्तीय स्तरोंन्नयन तथा द्वितीय पदोन्नति प्राप्त होने के उपरान्त तृतीय वित्तीय स्तरोंन्नयन का लाभ ही देय रह जायेगा। तीसरी पदोन्नति प्राप्त होने की तिथि के पश्चात् किसी भी दशा में वित्तीय स्तरोंन्नयन का लाभ अनुमन्य न होगा। इस संदर्भ में यह भी उल्लेखनीय है कि दिनांक 01.01.2006 से लागू पुनरीक्षित वेतन संरचना में यदि समान ग्रेड वेतन वाले पद पर प्रोन्नति हुयी है, तो उसे भी वित्तीय स्तरोंन्नयन की अनुमन्यता हेतु पदोन्नति माना जायेगा। यहां “समान ग्रेड वेतन” का आशय, उस ग्रेड वेतन से तुलना का है, जो कार्मिक की पदोन्नति की तिथि को, उसे किसी भी रूप में (पद के साधारण वेतनमान या समयमान वेतनमान या ए0सी0पी0 यथास्थिति) वास्तविक रूप से प्राप्त ग्रेड वेतन होगा। इस प्रकार यदि किसी कार्मिक की पदोन्नति के पद का ग्रेड वेतन, उसे प्राप्त पदोन्नति की तिथि को, पूर्व से वास्तविक रूप में प्राप्त ग्रेड वेतन से निम्न होगा, तो ऐसी पदोन्नति को एश्योर्ड कैरियर प्रोग्रेशन स्कीम (ए0सी0पी0) के प्रसंग में वित्तीय स्तरोंन्नयन के रूप में नहीं माना जायेगा। इस सीमा तक उक्त शासनादेश दिनांक 08 मार्च 2011 का प्रस्तर-1(2)(v) संशोधित समझा जायेगा किन्तु उसके अधीन “परन्तुक” यथावत लागू रहेगा।”

The above provision also makes it clear that no benefit of ACP is permissible after an employee gets three promotions. Some amendments in the form of clarifications have been made in paragraph 1(2)(v) of the G.O. dated 08.03.2011 in regard to the definition of grade pay received by an employee after promotion for the purpose of the ACP. **However, the proviso of the paragraph 1(2)(v) of the G.O. dated 08.03.2011 (reproduced in paragraph 5 of this order) has been kept intact in the G.O. dated 30.10.2012. Thus, the G.O. dated 30.10.2012 has not amended the provision of the**

G.O. dated 08.03.2011 for equal pay (which an employee junior to him is getting) to the senior employee as a result of promotion in case an employee junior to him is getting higher pay as a result of benefit of ACP.

7.2 The G.O. dated 30.10.2012 has also replaced paragraph 1(7) of the G.O. dated 08.03.2011 (quoted in paragraph 6 of this order) by following provision in paragraph 2(4) of the G.O. dated 30.10.2012, which is reproduced as under:-

“किसी कार्मिक को पदोन्नति पर प्राप्त होने वाला ग्रेड वेतन, एश्योर्ड कैरियर प्रोग्रेशन स्कीम (ए0सी0पी0) की व्यवस्था के अन्तर्गत किसी कनिष्ठ कार्मिक को प्राप्त हो रहे ग्रेड वेतन से निम्न होने की स्थिति में वरिष्ठ कार्मिक को कनिष्ठ के समान ग्रेड वेतन, कनिष्ठ को देय तिथि से अनुमन्य कराया जायेगा, जब वरिष्ठ तथा कनिष्ठ कार्मिकों की भर्ती का स्रोत तथा सेवा-शर्तें समान हो तथा यह भी कि वरिष्ठ कार्मिक की यदि पदोन्नति न हुई होती, तो वह निम्न पद पर कनिष्ठ कार्मिक को एश्योर्ड कैरियर प्रोग्रेशन स्कीम (ए0सी0पी0) के अन्तर्गत उक्त वित्तीय स्तरोंनयन की अनुमन्यता की तिथि से अथवा उसके पूर्व की तिथि से एश्योर्ड कैरियर प्रोग्रेशन स्कीम (ए0सी0पी0) के अन्तर्गत उक्त वित्तीय स्तरोंनयन के लिये अर्ह होता।”

8. The contention of the petitioners is that though they have received three promotions yet their pay is less than those who are junior to the petitioners and these junior persons are getting higher pay as a result of benefit of the ACP given to them. Therefore, the petitioners have stated that they should get the pay equal to their juniors in accordance with *proviso* under paragraph 1(2)(v) of the G.O. dated 08.03.2011 and the paragraph 2(4) of the G.O. dated 30.10.2012.

9. The petitioners made representations to the respondents on 24.09.2013, 09.10.2013 and 27.5.2014 for providing them pay equal to their juniors which were considered by the respondent no. 1 and the same were rejected (Annexure: A-1).

10. The respondent No. 1 while deciding representations of the petitioners consulted the Finance Department of the State Government and quoted the advice given by the Finance Department, which is reproduced below:-

“उत्तराखण्ड सचिवालय संविलियन नियमावली, 2002 के नियम-4(3) में यह व्यवस्था है कि वरिष्ठ सहायक, वरिष्ठ लिपिक का अवर वर्ग सहायक (सहायक समीक्षा अधिकारी) के पद पर मौलिक नियुक्ति एवं सेवा अवधि को आधार मानते हुये आदेश किया जायेगा। वित्त विभाग के शासनादेश, दिनांक 08.03.2011 के नियम-3(7) में यह व्यवस्था है कि इस योजना के अन्तर्गत प्राप्त वित्तीय स्तरोन्नयन पूर्णतया वैयक्तिक है और इसका कर्मचारी की वरिष्ठता से कोई सम्बन्ध नहीं है। कोई कनिष्ठ कर्मचारी इस व्यवस्था के अन्तर्गत उच्च वेतन/ग्रेड वेतन प्राप्त करता है तो वरिष्ठ कर्मचारी इस आधार पर उच्च वेतन/ग्रेड वेतन की मांग नहीं कर सकेगा कि कनिष्ठ कर्मचारी को अधिक वेतन/ग्रेड वेतन प्राप्त हो रहा है। चूंकि सचिवालय में संविलियन कार्मिकों की प्रास्थिति समान नहीं है जिसके दृष्टिगत शासनादेश दिनांक 30.10.2012 की व्यवस्थाएँ इन पर लागू नहीं होगी।”

11. It is pertinent to note that the Finance Department in its above advice has stated that the benefit of ACP is a personal benefit and a senior employee cannot claim higher pay which an employee junior to him is getting as per paragraph 1(7) (which has been wrongly mentioned as paragraph 3(7) in the advice of the Finance Department) of the G.O. dated 08.03.2011. In fact, the paragraph 1(7) of the G.O. dated 08.03.2011 has been replaced by G.O. dated 30.10.2012 as paragraph 2(4) of the G.O. dated 30.10.2012 (the same has been reproduced in paragraph 7.2 of this order).

12. Respondent No. 1 has mentioned the following in the concluding paragraph of his rejection order dated 04.03.2016:-

“वित्त विभाग के उक्त मन्तव्य/परामर्श के आलोक में स्पष्ट है कि श्री वीरेन्द्र सिंह कण्डारी व अन्य कार्मिक, जो तीन पदोन्नतियां प्राप्त कर चुके हैं, उन्हें ए0सी0पी0 का लाभ अनुमन्य नहीं होगा। उक्तानुसार श्री वीरेन्द्र सिंह कण्डारी व

अन्य कार्मिकों के प्रत्यावेदन दिनांक 24.09.2013, 09.10.2013, 27.05.2014 तथा दिनांक रहित में किये गये अनुरोध को अस्वीकार करते हुये उक्त प्रत्यावेदनों को निस्तारित किया जाता है।”

13. **The reason which has been given by the respondent No. 1 for rejection of the representations of the petitioners is that the petitioners have already got three promotions and, therefore, they are not entitled for any further benefit under the scheme of ACP.**

14. Respondents No. 1 & 2 have filed their joint written statement and they have opposed the claim petition and their contentions are the same which are there in the order of the respondent no.1 dated 04.03.2016 by which representations of the petitioners have been rejected.

15. The petitioners have filed rejoinder affidavit and the same averments have been reiterated which were stated in the claim petition. The petitioners have also filed a Supplementary Affidavit in support of their claim petition and they have shown in it a list of 36 employees who are also absorbed in the State Secretariat like the petitioners and who are getting higher pay as compared to the petitioners.

16. After hearing learned counsel for the petitioners and learned A.P.O. on behalf of the respondents and perusal of record, we find that the reason for rejection of representations of the petitioners given by respondent No. 1 in his order dated 04.03.2016 (Annexure: A-1) that the petitioners have already received three promotions and, therefore, they are not entitled for any other benefits under the ACP, cannot sustain because of the *proviso* under paragraph 1(2)(v) of the G.O. dated 08.03.011 and paragraph 2(4) of the G.O. dated 30.10.2012 which have been described in detail in the preceding paragraphs. Respondent no. 1 has not at all discussed the said provision in its order dated 04.03.2016.

17. There are, of course certain conditions, which have been laid down in paragraph 2(4) of the G.O. dated 30.10.2012 for allowing the senior employees who have received promotions, equal pay (which their juniors are getting) as a result of benefit received by the juniors under the ACP. These conditions are as under:-

- (i) The source of recruitment and the service conditions of the seniors and the juniors are the same.
- (ii) Had the senior employees not got promotions, they were eligible for promotional pay scale under the scheme of ACP.

Learned counsel for the petitioners has submitted that the petitioners and their juniors were initially appointed on the post of Junior Clerk in various departments of the State Government under the same Service Rules. The petitioners and their juniors were absorbed under the Absorption Rules of 2002. The service conditions of the petitioners and their juniors are governed by the same Rules. Though, the Finance Department in its advice has stated that “चूंकि सचिवालय में संविलियन कार्मिकों की प्रास्थिति समान नहीं है जिसके दृष्टिगत शासनादेश दिनांक 30.10.2012 की व्यवस्थायें इन पर लागू नहीं होगी” yet it has not been made clear in the advice as to how and in what respect the service conditions of absorbed employees are not similar to each other that the provision of paragraph 2(4) of the G.O. dated 30.10.2012 is not applicable on the petitioners. Moreover, the respondent no. 1 in its order has stated that the petitioners have already received three promotions and this is the only reason for rejecting their representations.

18. For the reasons stated above, we are of the view that the representations of the petitioners have not been decided in accordance with the G.Os. dated 08.03.2011 and 30.10.2012 as has been described in detail in the preceding paragraphs and the impugned order dated 04.03.2016 (Annexure: A-1) cannot sustain

and is liable to be set aside and, therefore, claim petition deserves to be allowed.

ORDER

The claim petition is allowed. The impugned order dated 04.03.2016 (Annexure: A-1) is hereby set aside. Respondent no.1 is directed to reconsider the representations of the petitioners with regard to allowing pay to the petitioners which their juniors are getting in accordance with the *proviso* under paragraph 1(2)(v) of the G.O. dated 08.03.2011 and paragraph 2(4) of the G.O. 30.10.2012 by passing a reasoned and speaking order within a period of two months from the date of presentation of certified copy of this order by the petitioners to the respondent no.1. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: MAY 23, 2018
DEHRADUN

KNP