IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

IN C.W.P. no. of 2021

MEMO OF PARTIES

Dharambir Singh , (aged about 52 Years) son of Sh. Mange Ram resident of Vill. Ahirka Tehsil & Distt. Jind .Presently posted as Beldar in the Office of the Executive Engineer, Provincial Division, P.W.D. B&R Br.Jind. (Haryana). -------------- Petitioner

VERSUS

1. State of Haryana through its Addl. Principal Secretary Govt. of Haryana , Department of P.W.D. B&R., Haryana Civil Secretariat, Sector,17, Chandigarh.
2. Superintendent Engineer ,Kaithal Circle, PWD B & R Br. Kaithal.
3. Executive Engineer, Provincial Division, PWD B&R Br. Jind.

---------------Respondents

**CHANDIGARH (SURESH AHLAWAT)**

**DATED: 15.11 .2021 ADVOCATE**

**COUNSEL FOR THE PETTIONER**

CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India for the issuance of a Writ, in the nature of Certiorari for quashing the impugned order dated 5.10.2021 (Annexure P-5) passed by the Respondent no.3 being illegal, arbitrary and contrary to the rules and law AND

further writ in the nature of Mandamus be issued directing the respondents to grant the 3rd ACP Scale on completion of 24 years regular service in January, 2021, as his services were regularized on 1.2.1996 as Baildar in Irrigation department vide order dated 19.3.2004 ( Annexure P-2) with all consequential benefits arising out therefrom along with 18% p.m. including grant the arrear of salary of 1378 days with annual increment by treating the same as duty period for all intents and purposes.

Any other appropriate writ, order or direction to which this Hon’ble High Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.

***RESPECTFULLY SHOWETH***

1. **­That** the petitioner is a resident of District Jind (Haryana) and as such being a citizen of India, he is fully competent to invoke the extraordinary writ jurisdiction of this Hon’ble Court under Articles 226/227 of the Constitution of India by way of the present writ petition.

2. That petitioner was appointed on daily wage basis in the office of the respondents in the year 1990. Govt. of Haryana took the policy decision on 7.3.1996 whereby it was decided that all daily wage employees who have completed three years of service on 31.1.1996 shall be regularized w.e.f. 1.2.1996.

3. That when the services of the petitioner were not regularized by the respondents than petitioner approached this Hon,ble Court vide C.W.P. no. 7497 of 2001. Than Hon’ble High passed the order on 20.2.2003 and directed the respondents to regularized the services of the petitioner in accordance with the regularization policy dt.7.3.1996 of the state . Than respondents, in compliance the said order, regularized the services of the petitioner vide office order no.41 dated 19.3.2004 w.e.f. 1.2.1996. True copy of the order dated 20.2.2003 passed by the Hon,ble Court and regularized order dated 19.3.2004 issued by the respondent no.2 i.e Executive Engineer Provincial . Division . P.W.D. B & R Jind are attached herewith as **Annexure P-1 and P-2 respectively.**

4. That when the respondents regularized the services of the petitioner vide order dated 19.3.2004, arrear of pay has been released from the date of regularization i.e. w.e.f. 1.2.1996 to 2004 except the arrear of 1370 days during the period i.e. March 1996 to Oct. 2003 on the ground that petitioner availed the 1370 days extra ordinary leave during this period but it is totally incorrect because petitioner was a daily wager, his name was not on muster roll in different-2 dates during this period he was willing to work but he was kept way from the work during this period further. It is submitted that when the services of the petitioner were regularized i.e. w.e.f. 1.2.1996 than regular duty has been started for all intents and purposes than there is no question arises for availing the extra ordinary leave by the petitioner. True Copy of letter dated 24.1.2005 of extra ordinary leaves is being attached here with **as Annexure P-3.**

5. That w.e.f 1.1.1996 Govt. of Haryana (F.D.) framed the ACP Rules for those govt. employees ,who have completed 10 years regular satisfactory service, and who have not got any promotion and financial up gradation during this period . Accordingly petitioner granted the First ACP Scale in correct time i.e. the year 2006 after completing his 10 years regular satisfactory service, without taking the benefit of any promotion and financial up gradation . After that, in the year 2013, State Govt. modified the ACP rules and reduced the period of ACP scale from 10 years to 8 years than petitioner granted accordingly, second ACP scale in time i.e on 4.3.2014. **For kind perusal of the ACP Rules -2016 are reproduced here as under :-**

HARYANA GOVERNMENT FINANCE DEPARTMENT

Notification **The 28th October, 2016** No. 1/20/2016(ACP)-5PR(FD)—

In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Haryana hereby makes the following rules, namely :—

**1. Short title, commencement and objective.— (1) These rules may be called the Haryana Civil Services (Assured Career Progression) Rules, 2016.**

(2) These rules shall be deemed to have come into force on the 1st day of January, 2016, unless otherwise provided by the Government for any class or category of persons.

(3) The objective of these rules is to provide two categories of assured career progression schemes for the employees of Haryana Government. The first category of scheme is cadre-specific Assured Career Progression Scheme for some cadres/ posts/ services. The second category of scheme is primarily to remove stagnation in service, in the form of a general assured career progression scheme. The second category scheme seeks to ensure that all Government employees, whose cadres are not covered by cadre-specific assured career progression scheme, get at least three financial upgradations, including financial upgradation, availed by such Government employees as a consequence of functional promotion during his entire career. It also seeks to ensure that no Government employee stagnates without any financial upgradation for more than eight years unless he has already availed three financial upgradations in his career.

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**3. Definitions.—** In these rules, unless the context otherwise requires; (a) “ACP Level” in relation to any Government employee means corresponding Assured Career Progression level in which the Government employee is eligible or entitled to be placed as a consequence of application of these rules in place of his present pay structure;

**xxxxxxxxxxxxxxxx**

**7. Eligibility for grant of ACP Level under the General ACP scheme.—**

(1) Every Government employee covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the first ACP Level (given in column 3 of Part II of Schedule I in respect of the functional pay structure as on 1st day of January, 2016 of his post) if he has completed 8 (eight) years of regular satisfactory service and has not got any financial upgradation in these 8 (eight) years with reference to the functional pay structure of the post to which he was recruited as a direct recruit.

(2) Every Government employee covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the second ACP Level (given in column 4 of Part II of Schedule I in respect of the functional pay structure as on 1st day of January, 2016 of his post) if he has completed 16 (sixteen) years of regular satisfactory service provided he has availed only one financial upgradation with reference to the functional pay structure of the post to which he was recruited as a direct recruit.

(3**) Every Government employee covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the third ACP Level (given in column 5 of Part II of Schedule I in respect of the functional pay structure as on 1st day of January, 2016 of his post) if he has completed 24 (twenty four) years of regular satisfactory service and has not got more than two financial up gradations so far with reference to the functional pay structure of the post to which he was recruited as a direct recruit.**

(4) In case of a Government employee who gets promoted, he shall be considered for the next ACP Level after he completes 8 (eight) years of regular satisfactory service in the promotional post without any financial up gradation after promotion and shall be entitled to the next ACP Level with reference to the level of the promotional post he holds: Provided that a Government employee shall not be entitled to avail ACP up gradation if, he has already availed of three financial up gradation of any kind in his career.

In this way, in above mentioned ACP rules petitioner squarely covered this rules and he is fully entitled to get the 3rd ACP scale because he completed 24 regular service in Dec.2020 and therefore, he is entitled to get the 3rd ACP scale from Jan, 2021

**6. That** in the month of Jan-2021, petitioner has been completed 24 years regularly satisfactory service as baildar without taking any benefit of promotion and financial up gradation and he was fully eligible for the 3rd ACP, but same is not granted to the petitioner till date. Than petitioner filled the writ petition no. 11759 of 2021 before this Hon,ble Court. This Hon,ble Court disposed of this petition on 5.7.2021 and directed to the respondents to decide the legal notice dated 10.3.2021 of the petitioner. A Copy of order dt. 5.7.2021 in CWP no 11759 of 2021 is being attached herewith as **ANNEXURE P-4.**

**7. That** whereas, respondents instead of granting the 3rd ACP scale, rejected his representation dated 10.3.2021 ( Annexure P-3) on 5.10.2021 on the ground that due to availing the 1378 days extra ordinary leave for the period from 3/1996 to 10/2003 after regularization of his services, now he will complete 24 years on 1.12.2023 instead of Dec.2020, require for grant of 3rd ACP and further mentioned that annual increment were allowed to the petitioner after excluding the period of Extra ordinary leaves. True copy of the rejection order dated 5.10.2021 is attached herewith as **Annexure P-5.**

1. That the impugned letter/rejection letter dated 5.10.2021 ( Annexure P-5) passed by the respondent no.2 is illegal, unjust, unwarranted and contrary to the rules and discriminatory, violative of Articles 14 and 16 of the Constitution of India and deserves to be set aside inter-alia on the grounds mentioned here-in-below:-

**A ) That** when the respondents regularized the services of the petitioner vide order dated 19.3.2004 w.e.f 1.2.1996 after the direction of this Hon,ble Court, than period of daily wager (i.e. w.e.f. 1.2.1996 to 2004) of the petitioner has been automatic regularized and it would be considered as duty period all intent and purposes of the services, than there is no question arose to excluded the 1370 days extra ordinary leaves during this period ( i.e. 1.2.1996 to 2004) .It is pertinent to mention that petitioner not availed or applied any extra ordinary leave during this period, his name was not on muster roll in different-2 dates during this period .He was willing to work but he was kept way from the work during this period which was beyond his control and he was unemployed during this period. In this way petitioner has completed 24 years regular service from the date of regularization i.e. 1.2.2004 to Dec.2020 than he is entitled to 3rd ACP scale from 1.1.2021 according to ACP rules -2016 and he is also entitled for the arrear of 1378 days and annual increment after added this period.

**B) That** respondents has not been granted any opportunity or hearing to the petitioner while stopping his 3rd ACP scale which was due from Jan.2021. Whereas, there is no misrepresentation or concealment of facts from the petitioner side, when the 1st and 2nd ACP scale were granted in time according to ACP rules .

**C ) That** further when the services of the petitioner were regularized w.e.f 1.2.1996 than period from 1996 to 2004 would be considered as duty period for all intent and purposes ,than not count the 1178 days from this period and withheld the arrear of 1178 days and not including this period for annual increment is also illegal ,arbitrary and against the rules.

**9. That** the following main law points arise in this writ petition for the kind consideration of this Hon’ble Court:-

a) Whether the action of respondents is illegal arbitrary and against the Haryana Govt., ACP Rules -2016, ?

b) Whether the 1178 days excluded from regular period of duty 1.2.1996 to 2004 is justified ?

c) Whether the action of the respondents is arbitrary and discriminatory which violative of Articles 14 and 16 of the Constitution of India?

d) Whether a grave manifest injustice has been caused to the petitioner?

**10.**  That there is no other alternative remedy of appeal or revision available to the petitioner except to approach this Hon’ble Court by way of the present writ petition under Article 226 of the Constitution of India.

**11.**  That the petitioner has not so far filed any such or similar writ petition either in this Hon’ble Court or in the Hon’ble Supreme Court of India for seeking the same relief against the impugned action of the respondents except C.W.P. no. 11759 of 2021.

PRAYER

It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to call for the records of the present case and after perusal thereof may be pleased to issue: -

i) a Writ, in the nature of Certiorari for quashing the impugned order dated 5.10.2021 (Annexure P-5) passed by the Respondent no.3 being illegal, arbitrary and contrary to the rules and law AND

further writ in the nature of Mandamus be issued directing the respondents to grant the 3rd ACP Scale on completion of 24 years regular service in January, 2021, as his services were regularized on 1.2.1996 as Baildar in Irrigation department vide order dated 19.3.2004 ( Annexure P-2) with all consequential benefits arising out therefrom along with 18% p.m. including grant the arrear of salary of 1378 days with annual increment by treating the same as duty period for all intents and purposes.

iii) Filing of true typed of annexures s and certified copies of annexures be also dispensed with;

iv) Costs of the present writ petition be also awarded in favour of the petitioner and against the respondents.

It is further prayed that during the pendency of this writ petition in this Hon’ble Court, operation of the propose action regarding recovery of ACP scale fixation be stayed in the interest of justice and equity.

CHANDIGARH Through:

DATED: 15.11.2021 (SURESH AHLAWAT)

Counsel for the petitioner.

*VERIFICATION*

Verified that the contents of Para No. 1 to 8 and 10 and 11 of the writ petition are true and correct to my knowledge. Legal submissions made in para Nos. 9 are believed to be true on the advice received from the learned Counsel. No part of it is false and nothing has been kept concealed there from

DATED:- 15.11.2021

Place:- Chandigarh

**SURESH AHLAWAT, Advocate**

**PUNJAB & HARYANA HIGH COURT**

**CHAMBER NO. 62, CHANDIGARH. ( 94171-11917)**

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**Registered A.D. Dated :- 10.3.2021**

**TO**

1. Superintendent Engineer ,Kaithal Circle, PWD B & R Br. Kaithal.

2. Executive Engineer, Provincial Division, PWD B&R Br. Jind.

**Sub. Legal Notice cum Final Demand Notice**

Under the instructions from and on behalf of Dharambir Singh ,Beldar presently posted as Beldar in your good office i.e. the Executive Engineer, Provincial Division, P.W.D. B&R Br. Jind. (hereinafter referred to my client ) I hereby serve upon you with the following legal notice:-

1. That my client was appointed on daily wage basis in your office in the year 1990. Govt. of Haryana took policy decision on 7.3.1996 whereby it was decided that all daily wage employees who have completed three years of service on 31.1.1996 shall be regularized .
2. That when the services of the petitioner were not regularized by your office than my client approached the Hon,ble Court vide CWP no. 7497 of 2001. Hon;ble High passed the order on 20.2.2003 and directed to your office to regularized the services of the petitioner according to the regularization policy dt.7.3.1996 of the state . Than your good office, in compliance the order of the Hon,ble High Court, services of my client were regularized, vide office order no.41 letter dt. 19.3.2004 w.e.f. 1.2.1996 issued by the XEN Provl. Divn. P.W.D. B & R Jind .
3. That w.e.f 1.1.1996 State govt. (F.D.) framed the ACP Rules for those govt. employees ,who have completed 10 years regular satisfactory service, and who have not got any promotion and financial up gradation during this period . Accordingly my client granted the First ACP Scale in the year 2006 after completing his 10 years regular satisfactory service, without taking the benefit of any promotion and financial up gradation . After that, in the year 2013, State govt. modified the ACP rules and reduced the period of ACP scale i.e 8 years instead of 10 years than my client granted accordingly, second ACP scale on 4.3.2014. Now in the month of Jan-2021, my client have completed 24 years regularly satisfactory service without taking any benefit of promotion and financial up gradation and he is fully eligible for the 3rd ACP , which is not granted to my client till date despite the repeated requests by him to their respective officers but no response has been given by the concerned authorities to my client whereas ,similar situated employee Mr. Balender Kumar peon /beldar who is working in same office along with my client was granted 3rd ACP after completing his 24 years service w.e.f 1.1.2021 vide order dated 19.1.2021 issued by the XEN Prov. Divn. PWD B& R Jind, who joined the govt. service along with my client on same period and services of both the employees were regularized on same date i.e in Feb. 1996 and 1st and 2nd ACP were granted to both employees i.e in the year 2006 and 2014 respectively but 3rd ACP is not granted to my client instead of completing his 24 years. My client has completed 24 years in the month of Jan.2021 with regular satisfactory service without taking any benefit of promotion and financial up gradation and he is fully entitled for 3rd ACP w.e.f Jan.2021 along with his counterpart Mr. Balender peon.

*4. This was the bounded duty of your , to have done .This way my client is being compelled to approach this Hon,ble High Court. It is further to mention here that you are doing step-motherly treatment in the case of my client which is continuing as no order has been passed as yet.*

*5. That there is sufficient judicial weight of precedents in favour of my client because you want to unsettled the settled position for the benefit of 3rd ACP scale .*

6. You are , therefore , requested through this Notice to allow the benefit of 3rd ACP scale w.e.f 1.1.2021 to my client from the date of completing his 24 years service **within a pried of 20 days** from the date of receipt of notice failing which my client will be left with no other alternative except to file the writ petition in the Hon.ble Punjab & Haryana High Court, Chandigarh and in that case all the concerned authorities shall be responsible for all types of costs and litigation expenses . Please take this notice and ensure compliance.

A copy of this notice has been retained in my office for further reference and record.

**Encl.Annexure-1** office order no.07 dt. 19.1.2021 of similar situated employee of my client, Mr. Balender Kumar peon/beldar

Yours faithfully

SURESH AHLAWAT

Advocate

Office order no.-**7 Dated 19.1.2021**

In pursuance of  **Haryana Civil Services (Assured Career Progression) Rules, 2016** Govt. Notification no.1/20/2016/(ACP) -5PR –(FD) dated 28.10.2016 published in Haryana Govt. Gaz. (Extra) dated 28.10.2016 the 1st ,2nd ,3rd ACP scales are granted to Group A to D employee who have completed 8 years , 16 years 24 years regular satisfactory service and who have not got financial up-gradation prescribed for the post in this service carrier.The official has completed 24 years regular satisfactory service as Peon. In view of above ,Sh. Balander ,peon , office of Executive Engineer ,Provincial Division, PWD ,B&R Br. Jind is hereby granted 3rd ACP scale in the pay band of ACP level 06 w.e.f. 1.1.2021 on completion of 24 years regular satisfactory vide S.E. Kaithal Circle , Kaithal office no. E/15 dated 5.1.2021 and O/o no. E/02 dated 5.1.2021 addressed to this office is hereby fixed as verified f Section Officer , Kaithal Circle ,PWD B&R ,Kaithal is as under:-

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name | Date | Pay already fixed | Pay now fixed | Next date of increment | Remarks |
| Sh. Balender ,Peon | 1.1.2021 | 33300/-  ACPL-04 | 35100/-  ACPL-04 | 1.7.2021 | 3rd ACP granted |

The above pay scale /grade pay so granted will be withdrawn at any time , if any ambiguity Contrary in the above is noticed at later stage , the office .official will be bound to get his pay re-fixed and also to refund the excess amount paid above their entitlement .

Executive Engineer

Provincial Division,

PWD B &R ,Br, Jind

No. 466-70 Dated 19.1.2021

LIST OF EVENTS

**1990** That petitioner was appointed on daily wage basis in the office of the respondents in the year 1990.

1996 Govt. of Haryana took policy decision on 7.3.1996 whereby it was decided that all daily wage employees who have completed three years of service on 31.1.1996 shall be regularized.

1. That when the services of the petitioner were not regularized by the respondents than petitioner approached the Hon,ble Court vide C.W.P. no. 7497 of 2001. Hon’ble High passed the order on 20.2.2003 and directed to your office to regularized the services of the petitioner in according with the regularization policy dt.7.3.1996 of the state .
2. Than respondents , in compliance the order of the Hon,ble High Court, regularized the services of the petitioner vide office order no.41 letter dt. 19.3.2004 w.e.f. 1.2.1996

That w.e.f 1.1.1996 Govt. of Haryana (F.D.) framed the ACP Rules for those govt. employees ,who have completed 10 years regular satisfactory service, and who have not got any promotion and financial up gradation during this period . Accordingly petitioner granted the First ACP Scale in time i.e in the year 2006 after completing his 10 years regular satisfactory service, without taking the benefit of any promotion and financial up gradation .

**4.3.2014** After that, in the year 2013, State Govt. modified the ACP rules and reduced the period of ACP scale i.e 8 years instead of 10 years than petitioner granted accordingly in time , second ACP scale on 4.3.2014 after completing his 16 years service .

**Jan. 2021**  In the month of Jan-2021, petitioner have completed 24 years regularly satisfactory service without taking any benefit of promotion and financial up gradation and he is fully eligible for the 3rd ACP, but same is not granted to the petitioner than petitioner filed the writ petition no.11759 of 2021 in this Hon,ble Court .

**5.7.2021** This Hon,ble Court directed to the respondents to decide the representation of the petitioner

**5.10.2021** Respondents rejected the representation of the petitioner vide order dated 5.10.2021 ( Annexure P-5)

Hence this writ petition is being filled .

**CHANDIGARH (SURESH AHLAWAT)**

**DATED: 15.11 .2021 ADVOCATE**

**COUNSEL FOR THE PETITIONER**

In supersession of T/O office order no. 159 dated 13.10.2003

Office order no. 41 **Dated 19-3-2004**

As per order dated 20.2.2003 of Hon’ble High Court in CWP no. 7497 of 2001 Dharmbir v/s State of Haryana , Sh. Dharmbir son of Sh. Mange Ram resident of Village Ahirka daily rated employee is hereby provisionally brought on regular Cadre as Beldar w.e.f., 1.2.1996 as per F.C. & P.S. Haryana Govt. PWD B&R deptt. Letter no. 13/166/2001-6/B&R (Works) dated 20.2.2004 in the pay scale of Rs. 2550-55-2660ED-60-3200/-

The above regularization is however ,subject to the following conditions:-

1.There will be a corresponding pro-rata reduction in the work component of the budget of the department as the establishment component will increase.

2. These post shall be abolished as and when employees drop off either through retirement of resignation or for any other reasons.

3. The official is declared medically fit.

4. Their antecedents are verified.

5. Each employee, so regularised ,will be placed on probation for a period of one year .

6. The above regularization is further subject to the condition that there is no ban to upset the above regularization on the representation are considered tenable and satisfactory . If the position in the seniority list undergoes any change as a result of any such appeal ,the order of regularization may if so facto have to be revised.

Executive Engineer

Provincial Division, PWD B& R Br. Jind

THE HIGH COURT OF PUNJAB AND HARYA AT CHANDIGARH

C.W.P. No. OF 2021

Dharmbir Singh ………..Petitioner

State of Haryana and others. ………….…Respondents

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| Sr. N. | Particulars | Date | Page | C.Fee |

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| 1. | List of Events | **15.11.2021** | 1-2 |  |
| 2. | Civil Writ Petition | **15.11.2021** | 3-12 | 50. 00 |
| 3 | Affidavit | **.11.2021** | 13 |  |
| 4 | Annexure P-1 (Copy of High Court order) | 20.2.2003 | 14-16 | 3.00 |
| 5 | Annexure P-2 ( Copy of Regularization letter | 19.3.2004 | 17 | 1.00 |
| 6 | Annexure P-3 ( Copy of Extra ordinary Letter | 24.1.20005 | 18-21 | 3.00 |
| 7 | Annexure P-4 (Copy of High Court order) | **5.7.2021** | 22-23 | 3.00 |
| 8 | Annexure P-5 ( Impugned Order) | **5.10.2021** | 24-27 | 3.00 |
| 9 | Power of Attorney |  | 28 | 3.00 |

*NOTES:-*

1. The main law points canvassed in this writ petition are contained in para No. at page and thereof.

2. *Relevant Acts and Statutes* - Constitution of India and Haryana Civil services (ACP Rules) -2016

3. Whether any Caveat/Petition has been filed in this case of not. NO

. 4. Whether any sitting /former MP/MLA is involved in the case of not -No-

5. *Similar Case, if any*. -Nil-

**CHANDIGARH ( SURESH AHLAWAT )**

**Dated ,15.11.2021 ADVOCATE**

**COUNSEL FOR THE PETITIONER**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

IN C.W.P. NO. OF 2021

Dharmbir Singh ………. Petitioner

Versus

State of Haryana and others. ……………Respondents

Affidavit Dharambir Singh , (aged about 52 Years) son of Sh. Mange Ram resident of Vill. Ahirka Tehsil & Distt. Jind

I , the above named deponent do hereby solemnly affirm and declare on oath as under: -

1. That the deponent has gone through the contents of the accompanying contempt petition which have been drafted by the counsel on my instructions. The contents of the same are admitted to be true and correct and be read as part and parcel of this affidavit.

2. That no such or similar petition has earlier been filed either before this Hon,ble Court or Hon,ble Supreme Court except CWP no.11759 of 2021.

Date :- 11.2021

CHANDIGARH

*VERIFICATION*

Verified that the contents of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been kept concealed therein.

CHANDIGARH

DATED 11.2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

IN C.W.P. NO. OF 2021

Dharmbir Singh ………. Petitioner

Versus

State of Haryana and others. ……………Respondents

COURT FEE

**CHANDIGARH ( SURESH AHLAWAT )**

**Dated ,15.11.2021 ADVOCATE**

**COUNSEL FOR THE PETITIONER**

PUBLIC WORKS DEPARTMENT (B&R)

Speaking Order

Office order no. 96 **Dated 5.10.2021**

Whereas Sh. Dharmbir Singh Beldar has filled CWP No. 11759 of 2021 in the Hon.ble Court of Punjab and Haryana at Chandigarh for issuance of writ in the nature of mandamus directing the respondents to grant him 3rd ACP scale w.e.f 1.1.2021 and release of arrears thereof along with interest.

The Hon,ble Court of Punjab and Haryana at Chandigarh vide order dated 5.7.2021 passed the following orders:-

“7.Without commenting on the merits of the case, the writ petition is disposed of with a direction to the competent authority to look into the grievance of the petitioner as per legal notice dated 10.03.2021 (Annexure P3) and also by keeping in view the contentions raised in the present petition by treating the same as supplementary representation and take a decision, in accordance with law.

8. Let the needful be done within a period of three months from today. In case, petitioner is found entitled to be benefit claimed by him, same be accorded to him within two months thereafter.

9. Disposed of accordingly.”

Where as in the legal notice dated 10.3.2021 ( Annexure P-3) the petitioner has claimed that he has completed 24 years regular satisfactory service in the month of Jan.2021 and that he is entitled to 3rd ACP Scale w.e.f 1.1.2021 on completion of 24 years of regular satisfactory service .he also contended that similar situated employee Mr. Balender Kumar Peon /Beldar was granted 3rd ACP Scale w.e.f 1.1.2021 vide order dated 19.1.2021 on completion of 24 years regular satisfactory service. The first contention of the petitioner is not correct that he has completed 24 years regular satisfactory service in the month of Jan. 2021 ,his contention would have been correct only if he had not remained on 1378 days Extra Ordinary Leaves .As the petitioner remained on 1378 days Extra Ordinary Leaves. Hence he did not complete 24 years regular satisfactory service in the month of Jan. 2021. He has , infect , completed 10 years regular satisfactory service on 1.12.2009 required for grant of 1st ACP Scale as on that date, 16 years regular satisfactory service on 1.12.2015 required for grant of 2nd ACP scale on that date and he will complete 24 for years regular satisfactory service on 1.12.2023 required for grant of 3rd ACP .The second contention that a similar situated employee has been granted 3rd ACP scale is also not correct because an employee remaining on Extra Ordinary leave more than the other similarly situated employee and thus having lesser regular satisfactory service cannot claim the parity or benefit from the date, it is granted to the other similar situated employee having more regular satisfactory service . In the instant case the petitioner remained on Extra ordinary leaves for a period of 1378 days whereas the counterpart or similar situated employee in whose comparison the benefit is claimed, remained on Extra Ordinary leaves only for 312 days.

Whereas, the facts of the case are that the services of the petitioner Sh. Dharmbir Singh were regularized as Beldar in the Pay Scale of 2550-3200 w.e.f. 1.2.1996 and Extra ordinary Leaves of 1378 days were sanctioned for the period from 3/1996 to 10/2003. The annual increments were allowed to the petitioner after excluding the period of Extra ordinary Leaves .But the 1st ACP scale of 4440-74440+GP Rs. 1650 was granted to the petitioner w.e.f 1.1.2006 without excluding the period spent on Extra ordinary Leaves .The 2nd ACP scale of Rs. 4440-74440 + GP Rs. 1800 was also granted to the petitioner w.e.f 4.3.2014 on completion of 16 years of service without excluding the period spent on Extra ordinary Leaves. However 3rd ACP scale is not granted till date.

Whereas in the present case the issue of grant of ACP scales is involved, which is to be granted as per Rule 7(1) of Haryana Civil Services ( ACP) Rules , 2008 on completion of 10 years regular satisfactory service as a precondition for grant for 1st ACP scale, hence the 1st the ACP scale granted to the petitioner w.e.f 1.1.2006 is not correct and it should have been granted on 1.12.2009 ,Similarly the 2nd ACP scale is to be granted on completion of 20 years of regular satisfactory service as per Rule 7(2) of the Haryana Civil Services ( ACP) Rules , 2008 as a pre condition for grant of 2nd ACP scale . later on this period of 20 years has been reduced to 16 years w.e.f. 4.3.2014 by the Govt. of Haryana vide Notification dated 4.3.2014 .hence the 2nd ACP scale granted to the petitioner on 4.3.2014 is also not correct and the 2nd ACP scale should have been granted to the petitioner on 1.12.2015 on completion of 16 years of regular satisfactory service after excluding Extra ordinary leaves of 1378 days .The petitioner will complete 24 years of regular satisfactory service only on 1.12.2023.

Whereas the undersigned has been directed by the Hon,ble Court to take a decision in accordance with law with in a period of 3 months of the order dated 5.7.2021 , on the legal notice dated 10.3.2021 ( Annexure P-3) after giving thoughtful consideration to the legal notice and taking into consideration all the facts and circumstances of the case ,ru;les and instructions issued by the govt. of Haryana in this regard, I, Sajjan Singh Superintendent Engineer ,is of the view that the petitioner Sh. Dharmbir Singh is not entitled to 3rd ACP scale w.e.f. from 1.1.2021 and his case will be considered on his completion of 24 years regular satisfactory service i.e. 1.12.2023

I order accordingly.

Superintendent Engineer

PWD ( B&R) Kaithal Circle

Kaithal .

**Order No.** Dated Jind ,the  **24.1.2005**

Recommended and verified by the Sub Divisional Officer (Province ) Sub Division no.1 Jind ,the Extra Ordinary Leaves for the period mentioned against the below noted is hereby sectioned under Rule 8.137 C.S.R. Vol. -1 Part-1

**Name of the Official Month Date Total no.**

**Days**

**============================================ Dharmbir 3/96 5 I day**

**s/o Mange Ram 6/96 1 to 9 9 days**

**7/96 1 to 6 6 days**

**8/96 18,25 2 days**

**9/96 1,7,15,22 4 days**

**10/96 6,13,20 3 days**

**11/96 1 to 4 4 days**

**1997 2/97 1,2 2 days**

**3/97 1,2,3 3 days**

**4/97 1 to 6 6 days**

**5/97 1 to 5 5 days**

**6/97 1 to 23 23 days**

**7/97 8,9,15,17 4 days**

**8/97 nill -**

**10/97 nil --**

**11/97 8 to 12,27,28 7 days**

**1998 1/98 1 to 4 ,15 5 days**

**3/98 13,17 2 days**

**5/98 1 to 6 6 days**

**8/98 7 to 10, 16 5 days**

**9/98 13 1 day**

**10/98 5,12 2 days**

**11/98 11 to 13 3 days**

**12/98 2 1 day**

**1999 1/99 19 to 31 13 days**

**2/99 1,7,21,28 4 days**

**3/99 1,2,13,14 4 days**

**4/99 1 1 day**

**5/99 1 to 3 3 days**

**6/99 13,20,27 3 days**

**8/99 1,2,3,22,25,26 26 days**

**9/99 1 to 9, 14, 23 to 25 17 days**

**27 to 29**

**10/99 1,2,24,30,31 5 days**

**11/99 7,20,24,25 4 days**

**12/99 1 to 31 31 days**

**2000 1/2000 1 to 31 31 days**

**2/2000 1 to 29 29 days**

**3/2000 1 to 31 31 days**

**4/2000 1 to 3 3 days**

**5/2000 1 to 3 28,31 5 days**

**6/2000 3,2,28,29 4 days**

**7/2000 1 to 11,22,to 31 21 days**

**8/2000 1,2,27,30,31 5 days**

**9/2000 1 to 7, 21to 24,29 12 days**

**10/2000 1 to 22,25,27,29 25 days**

**11/2000 1 to 7 7 days**

**12/2000 1 to 15 15 days**

**2001 1/2001 1 to 4, 25 to 31 11 days**

**2/2001 to 12/2001( Full Months) 334 days**

**2002 1/2002 to 12/2001 (Full Months) 365 days**

**2003 1/2003 1to 31 31 days**

**2/2003 1to 28 29 days**

**3/2003 1 to 31 31 days**

**4/2003 1 to 30 30 days**

**5/2003 1to 31 31 days**

**6/2003 1to 30 30 days**

**7/2003 1 to 31 31 days**

**8/2003 1 to 31 31 days**

**9/2003 1 to 30 30 days**

**10/2003 1 to 12 12 days**

**Total 1370 days**

**Executive Engineer**

**Prov. Division PWD B&R Br.**

**JIND**

**No. 266-67 Dated Jind ,the 24.1.2005**

From Executive Engineer

Prov. Division ,Jind

To

The Sub Divisional Engineer,

Prov.Sub Division no.2, JIND

**Memo No. 2197 Dated Jind the 26.4.2004**

Subject:- Estt. Beldar ( Dharmbir s/o Sh. Mange Ram

Ref:- This office end. No. 638-41 dated 19.3.2004

The services of Sh. Dharmbir s/o Sh. Mange Ram Beldar was regularized w.e.f 1.2.1996 instead of 13.10.2003 vide this office letter under reference. You are requested to verify the service of the Beldar from TMR etc. w.e.f 1.2.1996 to 12.10.2003 on the following performa in the Service Book which is yet to be opened by your office and send the same to this office within week positively.

**Month TMR No. Duty period Absent period Rate of Vr. No.**

**with date with date amount paid and date**

It is further directed that the absent period from 1.2.1995 to 12.10.2003 may also be got regularized by way granting of E.O.L and affidavit may also be obtained from the Beldar showing them in, that he has not worked any where during this period and the same with the Service Book.

From Executive Engineer

Prov. Division ,Jind

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

C.W.P. No. 7497 of 2001

Dharmbir

Versus

State of Haryana and Others

**M.L. Singhal**

Through this writ petition filed under Article 226/227 of the Constitution of India ,petitioner Dharmbir prayed for regularization in the service in view of the policy decision Annexure P-1 and P-2 and has prayed for quashing of the order Annexure P-4 whereby he was refused regularization in to service by Executive Engineer Provincial Division ,PWD B&R Branch ,Jind dated 20.4.2001 .

It is stated that he was appointed on daily wage basis in the year 1990.Since then ,he has been continuing in service without break and interruption .Government of Haryana took policy decision Ex p-1 dated 7.3.1996 whereby it was decided that all daily wage employees who have completed five years of service on 31.1.996 shall be regularized in service. In view of the policy decision P-2 dated 18.3.1996 ,this period of five years was brought down to 3 years . He had completed 240 days of work in each calendar year and was also in service on 31.1.1996 .Break in service from 1.8.1994 to 14.9.1994 was due to fact that the muster roll had been closed during that period . No muster roll was issued even for a signal person.

Respondent State of Haryana contested the case of the petitioner urging that he did not work continuously .There were break in his service .he remained absent for more than one or two time during the year 1994. Further he was not on the rolls of the department on 31.1.1996 .In the year 1996 ,he had worked only up to 19.1.1996 .he had not worked for 240 days during the year 1993,1994 and 1995.

We have heard the Ld. Counsel for the petitioner .Ld. AAG Haryana and have gone through the record. Muster roll Annexure R-2 shows that he had worked for 267 days in 1/1991 .Muster roll R-3 shows that he had worked 363 days in 1/1992 to 12/1992.Muster roll R-4 shows that in 1/1993 to 12/1993 he had worked for 273 days .Muster roll Annexure R-6 shows that he had worked for 321 days in 1/1995 to 12/1995. As per Annexure R-5 , he had worked for 202 days in 1/1994 to 12/1994 .He had thus worked for more than 240 days for three years since the inception of his job with the PWD B&R provincial division Jind. He was on the job for a goof number of days in 1/1996.If he was not present on 31.1.1996 that does not mean he had abandoned the job how could he be presumed to have abandoned the job when he was on the job since in the year 1991. In Giriraj and Others v/s State of Haryana 1997 (2) RSJ506 ,a division bench of this Court held that one who has served the state for three years is entitled to regularization . It would be sholly unjust and arbitrary if a person’s fulfilling these to conditions is thrown on the road merely because there was break of 30 days or more and that too not on account of his own fault but due to the instructions of the state banning the muster roll for that month . Implementing the instructions in letter rather than spirit ,would amount to frustrating the very object of the instructions .scheme as well as the law laid down in the State of Haryana versus Piere Singh and Others etc. 1992( 4) SLR 770 . In this case ,the petitioner had put in more than 240 days of work in three years. Break was also of not of more than 240 days of work in three years .break was also of not of more than 30 days at a stretch due to own fault of the petitioner .Petitioner is entitled to regularization in view of Ganpat versus State of Haryana reported as 1998(3) 114 where has been held by a Division Bench of this Court that if the instructions are read cumulatively, it cannot be said that there is any object or ratiopal principal which may warrant that the employee should be present in the office as on Jan.3,1996 .Petitioner is entitled to regularization in terms of the policy Annexure P-1 and P-2 /Order Annexure P-4 is quashed .Date from which the petitioner is to be regularized will be determined afresh. Keeping in view only this much that he had put in more than 240 days in any three years during the period of his employment with the and further he will be taken to have been present on 31.1.1996 from the sole fact that he had not abandoned the job and he will be taken in to have been on the job and the fact that he was not in the job for more than 240 days in 1994 will be ignored and instead his period of work during the year 1993 shall be taken note of while passing on order of regularization .Writ petition is allowed .

Sd/-

**Feb.20, 2003 M.L.Singhal**

**Viney Muttal**

**Judge**

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

C.W.P. no. of 2021

Dharambir Singh ----------------- Petitioner

VERSUS

State of Haryana and Others --------------- Respondents

**Court Fee**

**CHANDIGARH (SURESH AHLAWAT)**

**DATED: 15.11 .2021 ADVOCATE**

**COUNSEL FOR THE PETITIONER**