



CWP-12262-2008 (O&M)

- 1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1142

CWP-12262-2008 (O&M)
Date of decision: 19.05.2025

Roshan Lal Gumber

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mrs. Aruna Sachdeva, Advocate for the petitioner.

Mr. Satnam Preet Singh, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition for quashing the Memo dated 19.09.2007 vide which claim of the petitioner for the salary for discharging the responsibility of the higher office was rejected.
2. Learned counsel, on instructions from the petitioner, restricts claim to the pay of higher post of Principal (Class-I Officer), for the period he worked i.e. from May, 1998 to 31.08.2005, till he retired and not for purpose of fixation of pension.
3. The Division Bench of this Court in **State of Haryana and another vs. Pardeep Narayan**, LPA-1629-2023, decided on 06.11.2023, which followed the judgment of Hon'ble the Supreme Court in **State of Punjab vs. B.K. Dhir**, (2017) 9 SCC 337; **State of Haryana vs. Sita Ram**, LPA-1491-2016, decided on 27.11.2019, against which SLP stands dismissed on 10.10.2022; **State of Punjab and another vs. Dharam Pal**, (2017) 9 SCC 395; **Raj Kumar Singh vs. Punjab Mandi Board and others**, CWP-128-1993, decided on 17.07.2014; **Subhash Chander vs. State of Haryana and others**, 2012(1) SCT 603 and **Pritam Singh Dhaliwal vs. State of Punjab**, 2004 (4) SCT 403.



CWP-12262-2008 (O&M)

- 2-

4. In **Pardeep Narayan** (supra), wherein the petitioner was mandated to perform the duties of a superior position without any entitlement to financial benefits, the Division Bench had propounded thus:

“4. As is evident that the respondent was assigned duties of a higher post by the Department against a vacant post on its own volition, he having no role to play whatsoever in the same, which was for a period of three years on the post of District Commander, till he retired on attaining the age of superannuation, albeit with a caveat that he shall not be entitled to the pay-scale or seniority of the said post.

5. The respondent, who is said to have received commendation certificates in recognition of maintenance of law and order displaying address acuteness, industry and devotion to duty and his active cooperation with Home Guards, Haryana and given cash reward on a number of occasion, Annexures A-1 (colly) appended with the writ petition, vacancy for the higher post being available and he being the senior most in the feeder cadre but ironically instead of considering him for grant of regular promotion, he was made to perform duties of the higher post without any financial benefit thereof. It is a clear case of the Department being in the wrong.

6. It is trite that there is no estoppel against law.

7. An endeavour to canvass non-entitlement to the pay of the higher post on account of the condition, is required to be deprecated, it being exploitative and incorporated by the State, which is in a dominant position. Needless to say that the aforesaid decision was unilateral and therefore not enforceable.

8. Gainful it would be to refer to the dictum in **State of Punjab vs. B.K. Dhir, (2017) 9 SCC 337**, which is intrinsically applicable to the present facts inasmuch as, the respondent therein was not paid the salary while having made to officiate on a higher post, wherein Hon’ble the Supreme Court while affirming the order of the Division Bench of the High Court observed that it was incumbent upon the Department to pay him the salary for the period he had worked on the said post, despite the condition imposed in the order that he would do so without any extra emoluments.

9. As a fall out and consequence of the afore-discussion, we find that the respondent was rightly allowed the benefit of salary for the period he performed duties on the higher post, regardless of any condition incorporated as an impediment to his cause.”

5. The pertinent excerpt from the ratio of the law as laid down by the Full Bench of this Court in **Subhash Chander** (supra) reads thus:

“12. A close examination of Rule 4.13 of the Rules would show that once a person like the petitioner has been given



independent charge of a post, which involves assumption of duties and responsibilities of greater importance than the one attaching to the post held by such an employee on which he holds a lien or would have held his lien had it not been suspended, then he is entitled to pay of the higher post. A post is regarded to involve assumption of duties and responsibilities of greater importance if it carries higher pay scale than the one on which he holds the lien. In the present case, the pay scale of the post of Accountant is lower than that of the post of the Secretary.

13. It has come on record that the petitioner Subhash Chander was given the charge of the post of Secretary of Municipal Committee, Ratia on 02.11.1996/11.12.1996 (P-1). The aforesaid charge was given to him against a vacant post without requiring him to work as Accountant in addition. In other words, it was not additional charge but was an independent charge of the post of Secretary. Therefore, it is evident that within the principle emerging from Rule 4.13 of the Rules, he would be entitled to higher pay scale of the post of Secretary because the post of Secretary has to be considered involving assumption of duties and responsibilities of greater importance than those attaching to the post of Accountant on which the petitioner had held the lien. The petitioner also fulfilled the conditions being in the line of promotion because he was senior most Accountant and would have been promoted on the basis of his seniority. Merely because he has been given officiating charge of the higher post without regular promotion, would not result into deprivation of higher salary from the date he has assumed the charge.

14. We wish to make it clear that the Rules laid down by us would not cover a case where a fortuitous officiating promotion is given to an employee working in the lower cadre on account of administrative exigency resulting in vacancy of a higher post. For illustration, if the post of Sub Division Officer is a feeder cadre for promotion to the post of Assistant Executive Engineer then on vacancy caused by retirement, death or promotion etc., the promotion of the Sub Division Officer available at the station on the post of Assistant Executive Engineer would not earn him higher pay scale because it is a fortuitous circumstance unless he is senior enough to stake his claim for regular promotion. The aforesaid principle has been laid down by their Lordships of Hon'ble the Supreme Court in the case of Ramakant Shripad Sinai Advalpalkar v. Union of India, 1993(3) S.C.T 586: 1991 (Suppl. 2) SCC 733.

15. We are further of the view that Rule 4.13 of the Rules would virtually sound like the principle laid down in the judgment of Hon'ble the Supreme Court in **Smt. P. Grover v. State of Haryana, AIR 1983 Supreme Court 1060**. In that case, an employee in the State of Haryana was given promotion as acting District Education Officer about two years before her superannuation. The order giving her promotion as an acting District Education Officer recited a condition that she was to



CWP-12262-2008 (O&M)

- 4-

draw salary in her own pay scale which meant that her scale would continue to be that of the post of Principal, Higher Secondary School. Accordingly, their Lordships' of Hon'ble the Supreme Court accepted the claim of Smt. P. Grover as if the principles laid down in Rule 4.13 of the Rules have been applied. The concluding para of the judgment reads as under :

"3. We mentioned that she was promoted as an acting District Education Officer with effect from July 19, 1976. The order of promotion contained a superadded condition that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order was extending her services recited that she was an acting District Education Officer, but contained a super added condition that her pay would not be more than the maximum of the principal's grade. Smt. Grover claims that having been promoted as District Education Officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Article 136 of the Constitution. The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt. P. Grover after she was promoted to act as District Education Officer. All that was said in the counter-affidavit was that there was no Class-I posts available and therefore she was not entitled to be paid the salary of District Education Officer. We, are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education Officer a Class-I post, on an acting basis. Our, attention was not invited to any Rule which provides that promotion on an Acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled be paid the salary of a District Education Officer from the date she was promoted to the post, that is, July 19, 1976, until she retired from service on August 31, 1980. The appeal is accordingly, allowed with costs."

16. The argument of learned State counsel based on the judgment rendered in R.K. Aggarwal's case (supra) would not require any detail consideration because there was serious dispute concerning seniority of the officers in the cases where disputes concerning seniority are involved. The officiating charge may not earn the fixation of higher pay scale for the post on which the officer is officiating. However, in the present case, there is no dispute of such nature. We are also not impressed with the argument that somewhere in 2006, the



CWP-12262-2008 (O&M)

- 5-

petitioner was charge-sheeted and, therefore, regular promotion has to be taken into account only from 27.10.2008 (P-10) and the salary is also required to be fixed in the higher grade from that date alone. The aforesaid argument is liable to be rejected for more than one reason. Firstly, the petitioner has been discharging the duties on a higher post of Secretary w.e.f. 2.11.1996/11.12.1996 (P-1). If any, charge-sheet in 2006 was issued then it was at a stage when the petitioner was discharging his duties as Secretary, therefore, the argument would have no effect insofar as the present case is concerned and the judgment in R.K. Aggarwal's case (supra) would have no application.

17. In view of the above, the question posed in para No. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

6. Learned State counsel, despite best efforts, has not been able to controvert as regards the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

7. The petition is disposed of in terms of **Pardeep Narayan** and **Subhash Chander** (supra).

(AMAN CHAUDHARY)
JUDGE

19.05.2025
ashok

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No