



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-5771-2024 (O&M)
Date of Decision:- 27.08.2026

Jaswant Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arvind Seth, Advocate
for the petitioner.

Mr. Harish Kumar Nain, DAG, Haryana.

NIDHI GUPTA, J.

Present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed by the petitioner for issuance of a writ nature of **certiorari** to quash the following portion of the office order dated 25.07.2014 "His pay as Assistant from the deemed date of promotion to the actual date of promotion, will be fixed notionally and he will not be entitled to any arrear on this account"; and issue a writ of **mandamus** directing the respondents to grant the arrear of pay from 12.08.2011 to 12.02.2012 when the juniors have been promoted alongwith interest @ 18% per annum.

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1. Brief facts of the case in chronological order are as follows: –

05.08.1976: Petitioner was appointed as a Clerk-cum-Typist in the Haryana Minerals Limited (A State Government Undertaking) on 05.08.1976.

18.4.1977: The petitioner was designated as Steno-Typist w.e.f. 18.04.1977.

22.08.1987: The petitioner was promoted as Junior Scale Stenographer w.e.f. 22.08.1987.

06.09.1990: The petitioner was further promoted as Assistant w.e.f. 06.09.1990.

25.01.2001: Vide order dated 25.01.2001, petitioner was declared surplus and retrenched from service.

21.06.2006: Vide Notification dated 21.06.2006 (Annexure P-1), respondent No. 1 had issued a Scheme regarding re-employment of regular retrenched Group 'C' and Group 'D' employees of Boards/Corporations/Public Sector Undertakings etc., who were retrenched during the period 01.03.2000 to 01.03.2005 against the vacancy of direct recruitment.

08.02.2007: Pursuant to the above, name of the petitioner was recommended for direct recruitment at the post of Clerk in Haryana Civil Secretariat, Chandigarh.

14.2.2007: The petitioner joined in the Haryana Civil Secretariat on post of Clerk.

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13.06.2011: The petitioner had then submitted representation dated 13.06.2011 (Annexure P-2) for grant of ACP grade.

12.08.2011: It is the case of the petitioner that junior of petitioner namely, Ashok Kumar Vyas was promoted at the post of Assistant.

09.09.2011: Petitioner raised a grievance against promotion of his junior vide representation dated 09.09.2011 (Annexure P-3).

31.03.2014: Petitioner retired from service after attaining age of superannuation i.e. 58 years vide order dated 20.03.2014 (Annexure P-5).

25/28.07.2014: Upon fixation of seniority, petitioner was promoted as Assistant w.e.f. 12.08.2011 i.e. the date on which, Sh. Ashok Kumar Vyas was promoted.

22.08.2014: Petitioner filed representation (Annexure P-6) seeking fixation of pay from 12.08.2011 onwards and release the arrear of pay from 12.08.2011 to 12.02.2012.

02.06.2016: Petitioner filed a CWP No. 13541 of 2016 before this Court seeking honorarium in lieu of pension and arrears upon retrospective promotion.

19.12.2023: Vide order dated 19.12.2023 (Annexure P-8), the said writ Petition was disposed of as having been not pressed with liberty to file afresh.

06/07.03.2024: As petitioner was not granted arrear of pay w.e.f. 12.08.2011 till 12.02.2012, hence the present writ petition.

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2. Ld. Counsel for the petitioner *inter alia* submits that the procedure as prescribed in the Notification dated 21.6.2006 (Annexure P-1) regarding seniority of age has not been followed in letter and spirit; and vide Memo. No. 23/23/2005-2GSIII dated 13.10.2006, name of the petitioner was deliberately recommended against the promotional post of Assistant in HUDA. As such, the name of the petitioner was referred back with the remarks that the scheme is regarding re-employment against the vacancies of direct recruitment, whereas the names of juniors of the petitioner were recommended against the vacancies of direct recruitment to the post of UDC and Clerk/Meter Reader in the pay scale of Rs. 4625-7000 and Rs. 4000-6000/- respectively in UHBVN/DHBVN and they joined their duties in October 2006.

3. Thereafter, the name of the petitioner was again recommended vide Memo. No. 23/23/2005-2GSIII dated 8.2.2007 against the vacancy of direct recruitment to the post of Clerk in Haryana Civil Secretariat, Chandigarh in the pay scale of Rs. 3050-4950/- + Rs. 40/- as special pay and the petitioner joined on the said post on 14.2.2007, whereas the juniors have got higher pay scale i.e. of Rs. 4625-7000 and Rs. 4000-6000/- respectively. Ld. Counsel points out that Sh. Ashok Kumar Vyas who joined his duty in October 2006 to the post of Clerk in Haryana Civil Secretariat was about 10 years junior from the petitioner in Haryana Minerals Limited and was also junior in age. Yet, he was made senior to the petitioner in Haryana Civil Secretariat. Whereas in the notification dated 21.6.2006, it is mentioned that senior in age will be the criteria for fixing the seniority. In the present case, petitioner is higher in age than the other person

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his basic pay was Rs. 8550/- but the basic pay of the petitioner was Rs.8300/-. It is urged that, therefore, the petitioner has to face financial loss as well.

4. It is further submitted that in the year 2011, when the junior of the petitioner (Ashok Kumar) was promoted as Assistant, petitioner had submitted his representation to respondent No. 1 on 09.09.2011 (Annexure P-3) and raised the grievance that as Ashok Kumar Vyas was junior to the petitioner therefore, petitioner may also be promoted to the post of Assistant from the date when his junior (Ashok Kumar Vyas) was promoted.

5. In the meantime, petitioner retired from service on 31.03.2014 on attaining the age of superannuation vide office order dated 20.03.2014 (Annexure P-5).

6. Thereafter, vide order dated 28.07.2014 (Annexure P-7), upon fixation of seniority, petitioner was deemed to be promoted as Assistant in PB-2 w.e.f. 12.08.2011, the date when his junior, Ashok Kumar Vyas, Clerk, had been promoted.

7. However, although petitioner had been granted seniority, no arrears or monetary benefits were granted to the petitioner from deemed date of promotion. As such, petitioner had submitted representation dated 22.08.2014 (Annexure P-6) to respondent No. 1 with the prayer to fix his pay from 12.08.2011 onwards and release arrears of pay from 12.08.2011 to 12.02.2012.

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8. As no action was taken upon the representation (Annexure P-6), petitioner had approached this Court by way of CWP No. 13541 of 2016, *inter alia* seeking the following prayers:-

“(i) A writ in the nature of certiorari to quash the letter dated 28.9.2015 (Annexure P-10) issued by the Respondent No. 1 vide which payment of Earned Leave to the petitioner has been denied.

(ii) A writ of mandamus directing the respondents to count the past service of the petitioner rendered by him in Haryana Mineral Limited.

(iii) A writ of mandamus directing the respondents to grant the arrear of pay from 12.8.2011 i.e. from the date when the junior of the petitioner has been promoted, which is clear from the order dated 28.7.2014 (Annexure P-6).

(iv) A writ of mandamus directing the respondents to grant Balance Leave Encashment, Gratuity and medical allowance @ Rs. 500/- per month which has not been given to the petitioner from the date of his retirement with interest @ 18% per annum.

(v) A writ of mandamus directing respondents to grant the pension per month to the petitioner for which he is entitled.

vi) A writ of mandamus directing the respondents to grant First ACP Grade to the petitioner in respect of past service benefit in the parent department.”



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9. It is pointed out that the said writ petition came to be disposed of by this Court vide order dated 19.12.2023 (Annexure P-8). It is submitted that in respect of the prayer made by the petitioner for grant of arrears of pay, this Court had specifically observed as follows:-

“4. The second grievance raised by the petitioner is that he has not been given the actual arrears upon the retrospective promotion as ordered vide Annexure P-6 dated 25.07.2014. He further submits that there is no challenge to order Annexure P-6 and the said order had already been implemented in its letter and spirit and as per the order Annexure P-6 dated 25.07.2014, the arrears were not to be given and the promotion was to be given notionally without any arrears. Hence, in the absence of any challenge to the said order, no benefit of arrears can be granted.

5. Faced with this situation, learned counsel for the petitioner submitted that the present prayer may kindly be disposed of as having been not pressed at this stage with liberty to agitate the same afresh by filing fresh petition challenging Annexure P-6.

6. Ordered accordingly.”

10. It is submitted that accordingly, petitioner is entitled for grant of arrears w.e.f. 12.08.2011 to 12.02.2012. In support, Id. Counsel relies upon judgment of the Hon'ble Supreme Court in **Ramesh Kumar v. Union of India (SC): Law Finder Doc Id # 697228 2015 (3) SCT 704.**

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11. Accordingly, prays that the present writ petition be allowed and prays to quash the following portion of the office order dated 25.07.2014 (Annexure P-7) "His pay as Assistant from the deemed date of promotion to the actual date of promotion, will be fixed notionally and he will not be entitled to any arrear on this account" and directions be issued to the respondents to grant the arrears of pay from 12.08.2011 to 12.02.2012 when the junior has been promoted alongwith interest @ 18% per annum.

12. *Per contra*, Id. State counsel has opposed submissions of the petitioner and contended that the petitioner had retired in the year 2014; whereas the present writ petition has been filed only in the year 2024. It is contended that therefore, the present writ petition is barred *by delay and laches*.

13. Id. State counsel further submits that petitioner has not worked on the post of Assistant. As such, on the principle of '*No Work No Pay*', petitioner is not entitled to any arrears on this account.

14. No other argument is made on behalf of learned counsel for the parties. I have heard Id. counsel and perused the case file and record in detail. I find no merit in the submissions advanced on behalf of the learned State counsel.

15. The entitlement of the petitioner for promotion from date his junior was promoted, is not disputed by the learned State Counsel. The only

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ground on which claim of the petitioner is opposed is delay. However, admittedly, upon his retrospective promotion as ordered vide Annexure P-7 dated 28.07.2014, petitioner had firstly approached the Department vide representation dated 22.08.2014 (Annexure P-6) seeking fixation of pay from 12.08.2011. As no action was taken upon the said representation, petitioner had then approached this Court by way of CWP No. 13541 of 2016 and had sought arrears of pay. As noted above, the said prayer of the petitioner was disposed of by this Court vide order dated 19.12.2023 (Annexure P-8), as having been "*not pressed at this stage with liberty to agitate the same afresh by filing fresh petition challenging....*". Soon thereafter, petitioner has filed the instant writ petition. Hence, it cannot be said that claim of the petitioner is barred by *delay and laches*.

16. As regards contention of the learned State counsel that petitioner is not entitled to arrears of pay in view of principle of '*No Work No Pay*', there is no merit in the said argument as well. It is established from the facts noted above that the petitioner was illegally denied promotion while his juniors were promoted. Denial of promotion to the petitioner is also in violation of the Instructions/P-1. Accordingly, the respondents had subsequently corrected their mistake vide order dated 28.07.2014 (Annexure P-7) granting deemed date of promotion with effect from 12.08.2011. This clearly shows that there was no fault of the petitioner and thus, denying arrears of pay for that period is illegal and has caused undue hardship and loss to the petitioner. Ld. State counsel has



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been unable to distinguish the judgment in **Ramesh Kumar supra** relied upon by the petitioner, wherein it has been held that:

“13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of NaibSubedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of NaibSubedar.”

14. The impugned orders passed by the High Court are set aside and this appeal is allowed. The respondents shall release the arrears of pay and allowances to the appellant for the period from 01.08.1997 till the date of his actual promotion that is 13.11.2000 in the promotional post of Naib Subedar within eight weeks from today. No order as to costs.”

(Emphasis added)

17. Similar view has been taken by this Court in **Harvinder Kaur vs**

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wherein it has been held as under:-



"24. Thus, the denial of benefit to the petitioners lies ill in the mouth of the respondent-department, for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialistic pattern of society cannot be permitted to advance such argument.

25. The court is of the opinion that since the petitioners were deprived of promotion due to an illegal act of the respondent department and was later promoted retrospectively after correction of the illegality, denial of actual monetary benefits would amount to perpetuating the original wrong. Equity, fairness, and settled service jurisprudence demand that the petitioner be placed, as far as possible, in the same position in which he would have been but for the illegal action of the department.

26. It is a sad paradox that a civil servant, who should be a partner in the State's mission of service, was forced into a multiple rounds of litigation not by choice, but by a department's unbending sternness. Having survived the first ordeal to secure his rightful promotion, he was met with a second, colder wall by denial of monetary benefits through a mechanical application of the 'No Work, No Pay' doctrine. When the State, a model employer obstructs the very work the employee is eager to perform, it cannot later plead the employee's 'absence' as a shield against paying his due wages. To do so is to allow the employer to 'take advantage of its own wrong' and to make an employee walk through the fire of two rounds of litigation just to reach his rightful position is a travesty that our constitutional conscience cannot condone.



Conclusion

27. In view of the above discussion, this Court holds that the petitioners were wrongly denied promotion due to the fault of the respondent-department, and thus, the principle of "no work no pay" is not applicable to the facts of the present case. The petitioners are entitled to actual monetary benefits from the date their juniors were promoted, ie. 20.01.2017. The impugned order dated 28.10.2024 (Annexure P-7) is illegal, arbitrary, and is hereby set aside.

28. The respondents are directed to release arrears of salary and all consequential benefits to the petitioners on the post of Assistant from 20.01.2017 to 26.05.2023 along with an interest @ 6% per annum on the arrears from 20.01.2017. This entire exercise be completed within a period of three months from the date of receipt of a certified copy of this order."

18. Ld. State counsel is unable to dispute or controvert the above said legal and factual position. Accordingly, the present writ petition is **allowed** and the respondents are directed to grant arrears of pay to the petitioner from 12.08.2011 to 12.02.2012 when junior of the petitioner has been promoted; and also the date from where petitioner was granted retrospective promotion, along with interest @ 6% per annum.

19. Pending application(s), if any, also stands disposed of.

(NIDHI GUPTA)
JUDGE

27.08.2026
Neelam

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No