

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 577 OF 2014.

Bramhanand M. Dessai, major of
age, Indian, Executive Engineer
(Civil) Electricity Department,
Division XV (Civil) Patto, Panaji, Goa. Petitioner.

Versus

- 1 State of Goa, through, The
Chief Secretary, Government of
Goa, Secretariat, Bardez, Goa.
- 2 The Secretary (Power)
Government of Goa, Secretariat,
Bardez, Goa.
- 3 The Chief Electrical Engineer,
Electricity Department,
Government of Goa, Vidhyut
Bhavan, Panaji, Goa. Respondents.

Mr. A. F. Diniz and Mr. R. Menezes, Advocates for the petitioner.
Mr. V. Rodrigues, Additional Government Advocate for the
respondents.

**Coram:-F. M. REIS,
K. L. Wadane,JJ.**

Date:-15th April, 2015.

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. A. F. Diniz, learned Counsel appearing for the
petitioner and Mr. V. Rodrigues, learned Additional Government
Advocate appearing for the respondents.

2. The above petition inter alia prays for a direction to quash

and set aside the decision conveyed by order dated 6.9.2013 to notionally fix the pay of the petitioner in the pay scale of 10,000-325-13,200(pre-revised) w.e.f. 11.2.2005 and to release actual monetary benefits w.e.f.7.3.2013. The petitioner has also prayed inter alia to direct the respondents to grant to the petitioner promotion on actual basis w.e.f. 11.2.2005 with full monetary benefits.

3. Mr. A. F. Diniz, learned counsel appearing for the petitioner has pointed out that this is the second time the petitioner has approached this Court, as according to him, on the earlier DPC meeting, the petitioner was unlawfully excluded to be promoted. The learned counsel further points out that in view of the direction issued by this Court in Writ Petition No.33/2006 by judgment dated 11.10.2012 a fresh review DPC was called and ultimately the petitioner was duly promoted for the post by the impugned communication. The learned counsel, however, points out that though the petitioner is entitled for all the past monetary benefits, the communication specifies that the petitioner is notionally promoted as from 11.2.2005 and the monetary benefits have been granted as from 7.3.2013, which according to him, is untenable. The learned counsel further points out that the petitioner has been erroneously refused the promotion in the year 2005 on no fault of the petitioner which would disentitle the petitioner from all the monetary benefits

from 11.3.2005. In support of his submission Mr. Diniz, learned counsel has relied upon the judgment of the Apex Court reported in 2007 DGLS(soft) 414 in the case of State of Kerala and ors Vs. E. K. Bhaskaran Pillai, judgment reported in 2007(6) SC 259 in the case of Union of India Vs. Tarsem Lal and others, judgment reported in 1993(Supp.2) SCC 324 in the case of Vasant Rao Roman vs Union of India Through the Central Railway, Bombay and gave emphasis to para 4 therein as well as para 5 in the judgment reported in 1999(4) SCC 181 in the case reported in State of Andhra Pradesh Vs. K. V. L. Narasimha Rao, in the judgment of Punjab and Haryana High Court passed in Letters Patent Appeal No. 1245 of 2013 in the case of State of Punjab and others Vs. Upinder Singh giving emphasis to para 3 to 6.

4. Learned counsel, as such, submits that the petitioner is entitled for all the monetary benefits from the year 2005 and, as such, the impugned communication by the respondents deserves to be accordingly modified.

5. On the other hand Shri Rodrigues, learned Additional government Advocate appearing for the respondents has supported the impugned communication. Learned counsel points out that the petitioner has not performed the function of the new post, and as such, the question of getting any higher

wages would not arise. The learned counsel further points out that the petitioner is not entitled for any monetary benefits from the year 2005 as admittedly he had not performed such duties from the said date. In support of his submission the learned counsel has relied upon the judgment of the Apex Court reported in 1996(1) Supreme 716 in the case of State of Haryana Vs. O. P. Gupta, Judgment reported in 2003(7) SCC 238 in the case of A. K. Soumini Vs. State Bank of Travancore and judgment reported in 1990(3) SCC 472 in the case of Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others.

6. We have given our thoughtful consideration to the rival contentions and we find that the only point to be examined in the present petition is whether the promotion granted to the petitioner in terms of the impugned communication dated 6.9.2013 would entitled the petitioner for monetary benefits from 11.2.2005.

7. The facts of the case clearly reveal that immediately after the petitioner was not recommended for promotion by the DPC the petitioner approached this Court in the year 2006. While issuing Rule, all the promotions were made subject to the result of the said petition. Petition was thereafter finally disposed of in the year 2012 by judgment dated 11.10.2012 wherein this Court

found favour with the contention of the petitioner and, accordingly, quashed and set aside the recommendation of the DPC and directed review DPC to be conducted in terms thereof. Admittedly, the review DPC was conducted and in fact the petitioner was recommended for promotion.

8. On going through the averments made in the petition and on record, it reveals that the delay in the promotion cannot in any way be attributed to the petitioner herein. The material on record as well as the facts stated in the petition disclose that there was no fault of the petitioner nor there was any breach committed by the petitioner whereby the review DPC was ordered. In such circumstances, the observation of the Apex Court in the case of E. K. Bhaskaran Pillai (supra) at paragraph 4 wherein the Apex Court has observed thus:-

“Learned counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15.6.1972. In support thereof, the learned counsel invited our attention to the decisions of this Court in Paluru Ramkrishnaiah & Ors. Vs. Union of India & Anr. [(1989) 2 SCC 541], Virender Kumar, G.M., Northern Railways Vs. Avinash Chandra Chadha &

Ors.[(1990) 3 SCC 472] , State of Haryana & Ors. Vs. O.P. Gupta & Ors. [(1996) 7 SCC 533], A.K. Soumini Vs. State Bank of Travancore & Anr.[(2003) 7 SCC 238] and Union of India & Anr. Vs. Tarsem Lal & Ors. [(2006) 10 SCC 145]. As against this, the learned counsel for the respondent has invited our attention to the decisions given by this Court in Union of India & Ors. Vs. K.V. Jankiraman & Ors. [(1991) 4 SCC 109], State of A.P. Vs. K.V.L. Narasimha Rao & Ors.[(1999) 4 SCC 181], Vasant Rao Roman Vs. Union of India & Ors. [1993 Supp. (2) SCC 324] and State of U.P. & Anr. Vs. Vinod Kumar Srivastava [(2006) 9 SCC 621]. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is

superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

9. On going through the said observations, the Apex Court noted that when administration has wrongfully denied the dues such person would be entitled for full benefits including monetary benefits as from such date subject to there being any change in law or for some supervisory factor.

10. In the present case, the petitioner challenged the action of the respondents and approached this Court in the year 2006 and his petition came to be disposed of in the year 2012

whereby directions were issued to reconsider the case of the petitioner. In such circumstances, we find that the respondents were not justified to refuse the monetary benefits as from 5.2.2005 as the delay cannot be attributed to the petitioner. The petitioner had to suffer on account of his non-promotion in the year 2005 and he cannot be allowed to suffer by refusing the monetary benefits from the said date at the time of his promotion.

11. In this connection the Punjab and Haryana High Court in the judgment in the case of Upinder Singh (supra) has observed at paragraph 5 and 6 thus:-

5. A Division Bench of this Court in Kanwaljeet Singh v. State of Haryana and others 2008(6) SLR 212 noted that where promotion had been granted from retrospective date, the doctrine of no work no pay cannot be applied where the competent authority was at fault in not promoting the employee on the due date without sufficient reasons and the employee would be entitled to arrears of pay of promotional post. The relevant observations recorded therein read thus:-

"Having heard learned counsel for the parties we are of the considered view that this writ petition deserves to be succeed. The petitioner was illegally

denied promotion with effect from the date persons junior to him were given promotion. In para 2 of the writ petition the petitioner has asserted that when he was transferred to Ambala Range from H.A.P. Ist Battalion, Ambala City, ASIs junior to him in seniority in his cadre of H.A.P. were promoted to the rank of Sub Inspector and his case was not considered. The averments made in Para 2 of the writ petition have not been denied in the corresponding para of the written statement. In other words, it is conceded position that the rightful claim of the petitioner was denied to him for a period of more than three years. The petitioner suffered on account of his non-promotion and is also made to suffer by the stipulation in his promotion order by refusing to give him arrears of salary. The suffering of the petitioner in this manner cannot be continenced. It is not a case where there was dispute regarding seniority and promotion could not have been given because of uncertainty on the issue of seniority as per the law laid down by Hon'ble the Supreme Court in the case of [State of Haryana v. O.P. Gupta](#), 1996(2) SCT 294: (1996) 7 SCC 533.

However, Hon'ble the Supreme Court in the case of [State of Kerala v. E.K. Bhaskaran Pillai](#), 2007(2) SCT

757: (2007) 6 SCC 524, has held that the principle of 'no work no pay' cannot be regarded as a rule of thumb and grant of full back wages in certain eventualities is inoperative particularly when promotion is wrongly denied. In Para 4, their Lordships have made reference to various judgments rendered by the Supreme Court in the cases of [Paluru Ramkrishnaiah v. Union of India](#), (1989) 2 SCC 541; [Virender Kumar v. Avinash Chandra Chadha](#), (1990) 3 SCC 472; [A.K. Soumini v. State Bank of Travancore](#), 2004(2) SCT 315; (2003) 7 SCC 238; [Union of India v. Tarsem Lal](#), 2006(4) SCT 355; (2006) 10 SCC 145; [Union of India v. K.V. Jankiraman](#), 1991(3) SCT 317; (1991) 4 SCC 109; [State of A.P. v. K.V.L. Narasimha Rao](#), 1999(2) SCT 684; (1999) 4 SCC 181; Vasant Rao Roman v. Union of India, 1993 Supp. (2) SCC 324; [State of U.P. v. Vinod Kumar Srivastava](#), (2006) 9 SCC 621; and O.P. Gupta's case (supra) and held as under:

"....So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages

or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also." It is, thus, evident from the aforementioned principle that in cases where the respondents have wrongly denied due promotion to their employee then in that eventuality he should be given full benefit including monetary benefit and the principle of 'no work no pay' would not govern the

issue."

6. Similar view has been expressed in [Om Parkash Gupta v. State of Haryana](#) 2003(4) SLR 410 and [Roop Chand v. State of Haryana and](#) another 2009(2) SLR 525."

12. In fact on going through the said judgment, we find that all the three judgments relied upon by Shri Rodrigues leaned counsel appearing for the respondents have been considered by the Punjab and Haryana High Court. We respectfully agree with the observation in the said judgment and, as such, find that as the petitioner was wrongfully denied promotion in the year 2005, he is entitled for monetary benefits from said date.

13. In the present case as already held above there is no fault attributed to the petitioner and consequently, the petitioner is entitled for full monetary benefit as from 5.2.2005/11.2.2005.

14. In view of the above, we pass the following:-

O R D E R

- i. The impugned part of the communication dated 6.9.2013 to the extent it grants monetary benefit to the petitioner only from 7.3.2013 is quashed and set aside. The Petitioner is entitled for the monetary benefit as from 11.2.2005 in accordance with law.

- ii. The Respondents are directed to accordingly pay the arrears of such amount in terms of the above direction within twelve weeks from today.
- iii. Rule is made absolute in the above terms.

vn* K. L. WADANE, J.

F. M. REIS, J.