

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**1. CWP No.11751-1994 (O&M)
DATE OF DECISION : 22.07.2015**

Pardeep Kumar Petitioner

Vs.

The State of Haryana & ors.Respondents

**2. CWP No.20400-2009 (O&M)
DATE OF DECISION : 22.07.2015**

Pardeep Kumar Petitioner

Vs.

State of Haryana & ors. ... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

**Present :- Mr. R.K. Malik, Senior Advocate with
Mr.Kuldeep Sheoran, Advocate
for the petitioner.**

Mr. Ashok Chaudhary, Addl. A.G., Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J.(ORAL)

This order shall dispose of the above mentioned two writ petitions. Since common questions of law and facts are involved therein, they are being decided by this common order.

Reply by way of additional affidavit of Jitender Kumar, HCS, Additional Deputy Commissioner-cum-CEO DRDA Kaithal, Haryana-respondent No.4 in CWP No.20400 of 2009 has been filed and the same

is taken on record.

In CWP No.11751 of 1994 the petitioner has challenged the order dated 19.08.1994 (Annexure P-6) reverting him from the post of Assistant Project Officer and in CWP No.20400 of 2009 the petitioner has challenged the orders dated 28.11.2008, 27.01.2009, 04.12.2008, 28.05.2009 and is claiming for grant of revised scales, benefit of ACP and promotion as Assistant Project Officer and also seeks further direction to revise the pay scales of the petitioner w.e.f. 1.1.1996/1.1.2006 and all consequential benefits. Another claim was that when he was promoted as Investigator he was placed in the pay scale of Rs.1640-2900. Subsequently, the Government reduced his pay and further refused to grant him the benefits of ACP Grade, seniority and consideration for further promotion.

In reply, as regards the first order of 'reversion', it has been stated that the description of the petitioner as Assistant Project Officer was not as a result of promotion but only because he was given the responsibilities of that post for the time being. With regard to the second challenge, it is asserted that by letter Annexure R-1 it was decided by the Government to regulate the pay scales of all employees of the DRDAs which were all different and after that regulation of pay scale the pay of the petitioner had to be reduced. With regard to the claim for ACP and further consideration for promotion, it was averred that the petitioner was not regularly promoted as Investigator at any stage and therefore these claims could not be considered.

Having gone through the record of the case and the averments made in the additional affidavit filed today, there is substance in the arguments of learned Addl. Advocate General that the petitioner was never regularly promoted as Assistant Project Officer but was merely given the duties under one scheme or the other. It can not be lost sight of that the District Rural Development Agency undertakes various projects and a person who is handling more than one project can be given different designations for different projects but that would not impact his substantive post. Consequently, the first petition bearing CWP No.11751 of 1994 has to be dismissed.

As regards the second claim, learned Senior Counsel for the petitioner has pointed out that another similarly situated person Hardeep Chopra was also promoted as Investigator like the petitioner and was placed in the similar pay scale of Rs.1600-2660 w.e.f. 01/05/1990 and his pay scale was also sought to be reduced to Rs.1400-2600. He challenged the same by filing CWP No.3117 of 2004 and that writ petition was disposed of on 29.03.2005 and the pay scale of Rs.5450-8000 (and its subsequent revisions) were granted to that petitioner with effect from the date the 2001 Rules became applicable. As per learned Senior Counsel, the petitioner would be satisfied if he is given the same treatment as given to aforesaid Hardeep Chopra and would not insist on that is being placed in the pay scale of Rs.1600-2660 and its further revision.

Learned Additional Advocate General is not in a position to distinguish the case of aforesaid Hardeep Chopra. In the circumstances,

it is directed that the petitioner would be placed in the pay scale of Rs.1640-2600 and its subsequent revisions. Further in view of the judgment of the Hon'ble Supreme Court in "*State of Punjab Vs. Rafiq Masih, 2015 (1) (R.A.J.) 104*" it is specified that no recovery can be made from him.

As regards, the second limb of the claim, learned Senior Counsel has pointed out that in the written statement filed to the other writ petition i.e. CWP No.11751 of 1994 the respondents have categorically stated that the petitioner was promoted as Investigator on regular basis w.e.f. 15.11.1989. As per him, having said this in their written statement 20 years ago, the respondents cannot now turn around and state that the petitioner has never been regularized. I find considerable weight in this argument. In any case, if the argument of the State is to be accepted then even today after quarter of a century it will have to be held that the petitioner is not even a regular incumbent of the post of Investigator. He has been working since then. The respondents can not now wish away the unequivocal statement which was made in the written statement to writ petition bearing CWP No.11751 of 1994. In these circumstances, it is held that the petitioner has to be considered as a regular Investigator from the date of his promotion i.e. 15.11.1989 and would be entitled to be considered for ACP/Promotion/other benefits on that basis.

No other argument has been raised.

Let the consequential benefits which have accrued to the petitioner in terms of ACPS/Promotion etc. be considered and finalized and the benefits be released to the petitioner within a period of 8 months from the date of receipt of a certified copy of this order.

Petition bearing CWP No.11751 of 1994 is dismissed and petition bearing CWP No.20400 of 2009 is disposed of in the above terms.

Since the man case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

July 22, 2015
Pooja Sharma-I