

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 17719 of 2014 (O&M)
Date of decision : July 02, 2015

Sandeep Kumar and others,

..... Petitioners

v.

State of Haryana and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Atul Mahajan, Advocate
for the petitioners.

Mr. Gaurav Jindal, Addl. A.G Haryana
for the respondents.

1. **Whether Reporters of Local Newspapers 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)

Written statement has been filed. Copy supplied.

On 29.8.2014, the following order was passed :-

“ The present petitioners are the legal heirs of late Sh. Ved Pal Singh.

Grievance raised in the present petition is that even though the claim of deceased-Ved Pal Singh as regards ante dated promotion to the post of Principal w.e.f 13.08.2001 has been accepted, yet the claim as regards pay fixation has been granted only on a notional basis and as such, arrears have been denied.

Learned counsel would argue that once the employer has accepted a mistake of having denied an employee promotion with effect from the date due, the arrears of salary for the period in question could not have been denied.

Notice of motion, returnable for 27.01.2015.”

In the written statement, the facts have not been denied but it has been only pleaded that since Ved Pal did not work on the post, he could not have been granted the pay thereof. Reliance has been placed on a decision of the Hon'ble Supreme Court in Paluru Ramkrishaniah and others vs Union of India, Civil Appeal No.441 of 1981.

Counsel for the petitioners, on the other hand, has placed reliance on Zile Singh v. The Haryana State Agricultural Marketing Board and others, 1997(3) RSJ 114, wherein this Court held as follows :-

“ 14. Now as far as the question of granting consequential benefits to the petitioner on his promotion as Fee Collector w.e.f. 15.11.1972 is concerned, it may be mentioned here that such a question fell for consideration before the apex Court and the said Court in **Paluru Ramakrishnaiah and others v. Union of India and another, Judgment Today 1989(1) S.C. 595** held as a principle that there has to be "no pay for no work", i.e. a person will not be entitled to pay and allowances during the period for which he did not perform the duties of higher post, although he was deemed to be promoted to the higher post with effect from the date his junior was promoted. It was thus observed that such a person will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of salary. The same ratio was reiterated in later judgment in **Virender Kumar v. Avinash Chandra Chadha, Judgment Today 1990(3) S.C. 503**. Still again in a recent judgment in **State of Haryana and others vs. O.P. Gupta etc. Judgment Today 1996(3) 141**, the Supreme Court took the same view and consequently denied the payment of arrears of salary to the aggrieved officials in respect of the period i.e. from the deemed date of promotion to the date of their posting in the promotional posts. Thus, on the strength of the above judgments of Apex Court, learned counsel for respondent No. 2 submitted that in case this Court comes to the conclusion that the impugned order is bad in law and petitioner deserves to be promoted, he cannot be given the arrears of salary from the deemed date of promotion till he is actually posted on the promotional post. With due respect to the learned counsel, this contention has no legal foundation. I have gone through the above-referred

judgments of the Supreme Court and find that none is applicable to the facts and circumstances of the present case. The observations as noticed above in all the above noticed cases came to be made on a quite different set of circumstances which is not the situation here. In O.P. Gupta's case (supra) there was inter se dispute amongst the officials regarding promotion to the higher posts and seniority list on the basis of which promotions were being ordered was held to have not been drawn strictly in accordance with the Rules in force. It was in the situation held :

"Having regard to the above contentions, the question arises: whether the respondents are entitled to the arrears of salary ? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation."

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In these appeals unless the seniority list is prepared and finalised and promotions are made in accordance with the Rules on the basis of the above seniority list, the question of entitlement to work in the promotional posts does not arise.'

The circumstances in the present case however, are different, for the petitioner herein was denied the opportunity to work on the promotional post for no fault of his and he was always willing to work on the promotional post, if promoted. The petitioner was illegally denied the promotion and thus an opportunity to work by making promotion of a person junior to him and thus after the quashment of that illegal order and deeming him to have been promoted w.e.f. 15.11.1972 his entitlement to work on the promotional post cannot be scuttled even though he may not have actually performed the duties as such. The petitioner was denied the opportunity to work only because of the impugned order which has now been found to be invalid. In almost a similar situation, the Supreme Court granted the relief in [Union of India vs. K.V. Jankiraman, Judgment Today 1991\(3\) S.C.527](#). In the above referred case, the incumbent was willing to work but was denied the opportunity to work for no fault of his. The aggrieved in

the matter before the Supreme Court was kept under suspension during departmental enquiry and the authorities adopted the sealed cover procedure because of the pendency of a criminal case against him. The criminal case having ended in his favour, the departmental proceedings were held to be invalid and consequently, the Supreme Court held that he was entitled to the arrears of salary. Similar is the situation in the matter in hand as well. If the authorities had not promoted respondent No. 3 and instead had promoted the petitioner, a person senior to him available for promotion as Fee Collector, there is no denying the fact that petitioner would have certainly got salary in the pay scale attached to the promotional post and all other ancillary benefits.”

Counsel for the respondents is not in a position to cite any contrary judgment.

Consequently, this writ petition is allowed and the respondents are directed to work out arrears and pay the same to the petitioner within three months from the date of receipt of certified copy of this order, failing which the petitioner would be entitled to claim the same with interest @ 8% p.a from the date/s the same fell due till the date of payment.

(AJAY TEWARI)
JUDGE

July 02, 2015
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