

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18228 of 2014

DATE OF DECISION: OCTOBER 5, 2015

URMIL GUPTA

...PETITIONER

VERSUS

THE ADMINISTRATOR, CHD.ADMN. & OTHERS ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. DINESH ARORA, ADVOCATE FOR THE PETITIONER.
MR. VIKRAM VIR SHARDA, ADVOCATE
FOR RESPONDENTS NO.1 TO 3.
MR. I.S.SIDHU, ADVOCATE FOR RESPONDENT NO.4.

M. JEYAPPAUL, J.

1. The writ petitioner sought for a direction to the official respondents to promote her to the post of Registrar Education (Schools) on regular basis w.e.f. 1.2.2011 and grant allowance etc. of the post of Registrar Education (Schools) w.e.f. 1.2.2011, as she had been performing the duties and responsibilities of such higher post. The Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal') chose to dismiss the Original Application filed by the writ petitioner. Contending that the claim of the writ petitioner for wages for the period from 10.3.2011 to 17.11.2013 was not determined by the Tribunal, the writ petitioner filed review application before the Tribunal. Learned Tribunal having adverted to the order originally passed by it in the Original Application dismissed the review application with cost of ₹5000/-.

2. Though the writ petitioner has challenged in the present writ

petition the dismissal of her claim that she be promoted on regular basis w.e.f. 1.2.2011 by the Tribunal, learned counsel appearing for the writ petitioner gives up the challenge made thereto in the writ petition during the course of final hearing.

3. The only issue which remains for determination in the writ petition is whether the writ petitioner is entitled to pay and allowances of the post of Registrar Education (School) for the period from 10.3.2011 to 17.11.2013, as she had been performing the duties and responsibilities of such higher post.

4. Learned counsel appearing for the writ petitioner vehemently contended referring to the order issued by the Education Department on 9.3.2011 that the writ petitioner was officiating as Registrar Education (School) right from 10.3.2011 as per the orders passed by the Education Department. Citing a decision of the Hon'ble Supreme Court in Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma & others, decided on 29.4.1998, and a decision of this Court in Subhash Chander vs. State of Haryana and others, CWP No.21358 of 2008, decided on 20.12.2011, he further submitted that the writ petitioner who performed independently the charge and responsibility of the post of Registrar Education (Schools) is entitled to regular pay scale in the higher post.

5. *Per contra*, learned counsel appearing for the official respondents submitted that the writ petitioner was just ordered to look after the work of Registrar Education (Schools), while functioning as Superintendent of the office. Further, the order passed on 9.3.2011 by the Education Department of Chandigarh Administration would go to show that

she had been asked to look after the work of Registrar Education (Schools) in her own pay and scale. Therefore, the writ petitioner is not entitled to pay and allowances of the post of Registrar Education (Schools) w.e.f. 10.3.2011 to 17.11.2013.

6. Annexure P-4 dated 9.3.2011 issued by the Education Department of Chandigarh Administration reads “*Urmila Gupta Superintendent of this office is hereby ordered to look after the work of Registrar Education (Schools) in her own pay and scale with immediate effect*”. Firstly, we find that the writ petitioner has chosen to look after the work of Registrar Education (Schools) while officiating as Superintendent of office in her own pay and scale. If at all, the writ petitioner had any objection to look after the work of Registrar Education (Schools) in her own pay and scale, she should have raised an objection enabling the Education Department to address effectively the issue arising therefrom. Having accepted such an offer given by the Education Department, the writ petitioner cannot turn around and say that she is entitled to the pay of Registrar Education (Schools) just because she was looking after the work of Registrar Education (Schools) while holding the substantial post of Superintendent of the office.

7. In Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma and others decided on 29.4.1998, the Hon'ble Supreme Court held that even if an employee was promoted as a stop-gap arrangement, he is entitled to higher salary and other attendant benefits during the period when he was so promoted.

8. The above decision would not apply to the facts and

circumstances of this Court where there was no promotion granted to the writ petitioner w.e.f. 10.3.2011 .

9. In Subhash Chander's case, this Court held that an employee who was appointed to officiate a post involving assignment of duties and responsibilities of greater importance than those attached to the substantive post, he would be entitled to the salary of his officiating post in higher grade.

10. Adverting to facts of the above case, we find that the petitioner in the said writ petition was given independent charge of the post of Secretary. Though he served in the post of Accountant, he was required not to perform the work of Accountant in addition to the duties and responsibilities independently given to him for the post of Secretary. But in the instant case, no independent charge or responsibility was given to the writ petitioner. While functioning as Superintendent of the office, she was just asked to look after the work of Registrar Education (Schools). Further, in the above decision, it has also been observed that if a person was asked to officiate a promotion post on account of administrative exigency, such an employee cannot claim pay and allowances of the higher post. In the instant case, the Education Department of Chandigarh Administration has passed the above order on 9.3.2011 directing the writ petitioner to look after the work of Registrar Education (Schools) only on account of the administrative exigency which had arisen due to non-availability of suitable candidate from Scheduled Caste category to fill up the promotion post. Therefore, the above decision of this Court also does not support the plea of the writ petitioner.

11. It was submitted by learned counsel appearing for the writ petitioner that the writ petitioner was fastened with cost of ₹5000/- by learned Tribunal while disposing of the review application filed by her. He pleaded that the cost portion of the order passed in the review application may be set aside.

12. On a perusal of the order passed by the Tribunal in the Original Application as well as in the review application, we find that the writ petitioner had chosen to file the review application as though the Tribunal had not discussed in the order passed in the Original Application as regards the claim for pay and allowances for the period from 10.3.2011 to 17.11.2013, though there was an elaborate discussion entered into by the Tribunal. Therefore, we find that there is no justification for setting aside the cost of ₹5000/- awarded by the Tribunal while dismissing the review application.

13. We are of the considered view that the writ petitioner who has been just asked to look after the work of Registrar Education (Schools) from 10.3.2011 to 17.11.2013 is not entitled to pay and allowances of the above higher post.

14. The writ petition stands dismissed.

(M. JEYAPPAUL)
JUDGE

October 5, 2015
Gulati

(DARSHAN SINGH)
JUDGE