

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

RSA No. 3703 of 2008

Date of decision: 09.01.2015.

State of Haryana & others.

...Appellants.

Versus

Shamsher Singh Sihag.

...Respondent

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Ms.Tanisha Peshawaria, Deputy Advocate General, Haryana.

Mr. Ravi Sharma, Advocate for the respondent.

B.S. Walia, J.(Oral)

The defendant-State is in appeal against the concurrent findings recorded by the Courts below decreeing the suit for declaration to the effect that the plaintiff is entitled to the pay scale of A-Group Principal (Class-I), i.e. Rs. 2200-4000, from 20.01.1995 to 31.12.1995 and pay scale of Rs.8000-13500 from 01.01.1996 to 19.12.1999, i.e. the period during which the plaintiff performed the duties and functions of A-Group Principal independently and exclusively at I.T.I., Ambala City along with consequential relief of mandatory injunction directing the defendants to pay the pay scale of grade 'A' Principal from 20.01.1995 to 19.12.1999 as also arrears of salary and allowances, increment and other admissible benefits within a period of three months failing which the plaintiff would be entitled to interest @ 6% per annum from the date of institution of the suit till realization.

On December 4, 2009 the Hon'ble Single Bench passed an order as under:

" Learned counsel for the respondent states that his client has not been paid the difference of wages for the period from 20.01.1995 to 31.12.1995 and 01.01.1996 to 19.12.1999 regarding which his claim for being considered as Principal Grade A has been granted by the learned Courts below and this Court has not granted any indulgence to the defendants in that respect.

Learned State Counsel prays for a short adjournment so as to verify the said fact.

Adjourned to 02.02.2010..... "

Thereafter vide order dated February 2, 2010 the Hon'ble Single Bench passed an order as under :-

" State Counsel states that benefit for which there is no interference has not been released to the respondent plaintiff. Let the remaining benefit other than increment be released by the adjourned date"

On March 11, 2010 the Hon'ble Single Bench noticed that the benefits as directed had been released to the respondent. In other words the pay scale of the post of Principal Grade 'A' for the period the respondent officiated on the post of Principal Grade 'A' was released.

However, on March 18, 2010, the Hon'ble Single Bench while noticing Note 3 to Rule 4.7 of the Punjab Civil Services Rules Volume 1 Part 1 Chapter 4, as applicable to Haryana observed that the matter would require consideration as to whether the increment would be for a post

held in a substantive capacity or which was given to an employee in an officiating capacity and admitted the case while staying the operation of the judgment qua grant of increment alone.

Thus the only point which requires consideration is whether increment would be admissible for a post held in a substantive capacity or even qua a post held in an officiating capacity.

Brief facts of the case as per plaint are that the plaintiff was selected as Principal, Industrial Training Institute-Group 'B' and was posted as Principal, I.T.I., Adampur, vide order dated 13.06.1989, where he joined as such. He was transferred as Principal Group 'B', I.T.I., Sirsa, and was further transferred to Panipat as Principal Group 'B' and drew salary accordingly. Thereafter, when the plaintiff was working as Principal Group 'B' at Panipat, he was transferred to ITI, Ambala City, vide order dated 12.01.1995, where he worked continuously and independently from 20.01.1995 to 19.12.1999. Thereafter, he was promoted as Principal Group 'A' Class-I vide order dated 20.12.1999 in the pay scale of Rs. 8000-13500 at I.T.I., Ambala, the place where he was serving.

The plaintiff performed the duties of Principal 'A' Grade independently at Ambala from 20.01.1995 to 19.12.1999 but was paid salary and allowances in the lower pay scale of Grade 'B' Principal. Despite repeated requests to the higher authorities, the plaintiff was not granted the scale of Grade 'A' Principal, and this inaction of the defendants forced the plaintiff to file the suit.

Written statement was filed admitting that the plaintiff had initially joined as Principal, I.T.I. Group 'B', and subsequently remained posted at ITI, Ambala City, from 20.01.1995 to 19.12.1999, the date he was

promoted as Principal Group 'A' Class-I vide order dated 20.12.1999. Further, it was stated that the plaintiff was transferred from I.T.I., Panipat to I.T.I., Ambala City, as Principal against the vacant post of Group 'B' Principal and he joined there as such on 20.01.1995 vide his joining report dated 20.01.1995 and, accordingly, he worked as Group 'B' Principal at I.T.I., Ambala City, till he was promoted as Principal Group-A on 20.12.1999. The post of Class-I Principal, Group-A was vacant at I.T.I., Ambala, when the plaintiff was transferred from Panipat to Ambala, however, the pay of the plaintiff was drawn against the post of Group-B Principal. Further, plaintiff was neither given additional duty in addition to his duties as Group 'B' Principal nor was he asked to work as Group 'A' Principal prior to 19.12.1999. Thus, the plaintiff had never worked as Principal Group 'A' at I.T.I., Ambala, from 20.1.1995 to 19.12.1999 and, therefore, he was not entitled to the pay scale of Principal Grade-A with consequential benefits as prayed for.

Upon filing of re-joinder by the plaintiff, following issues were framed by the Subordinate Court :-

- 1. Whether plaintiff is entitled to decree for declaration as prayed for?*
- 2. Whether plaintiff is entitled to decree for mandatory injunction as prayed for? OPP.*
- 3. Whether if issue stated above proved in favour of plaintiff, whether plaintiff is entitled to interest if so at what rate? OPP.*
- 4. Whether plaintiff has no cause of action to file the present suit? OPD.*
- 5. Whether plaintiff is estopped from filing the present suit by*

his own act and conduct? OPD.

6. Whether suit is not maintainable? OPD.

7. Relief.

On analyzing the pleadings of the parties as well as the evidence on record, the Subordinate Court decreed the suit in favour of the plaintiff and against the defendants. Aggrieved against the said decision, the defendant-appellants filed an appeal which was dismissed by the Lower Appellate Court vide judgment and decree dated 01.09.2008. It is in these circumstances that the defendants have filed the instant regular second appeal.

Learned counsel for the appellant has framed substantial questions of law Nos. (i) & (ii). However, in view in view of the order of the Hon'ble Single Bench dated March 18, 2010 as also decision of the Hon'ble Full Bench in CWP No. 21358/2008 titled as Subhash Chander vs State of Haryana & others, two other substantial question of law i.e. Nos. (iii) & (iv) also arise for consideration. The substantial questions of law are as under :-

i) Whether the finding of the Courts below holding that the plaintiff had been working as Principal Group-A Class-I prior to his regular promotion as such on 20.12.1999 was contrary to the record and, therefore, dis-entitled the plaintiff from claiming the pay scale of the post of Principal Group-A Class-I?.

ii) Whether an employee who is given an independent charge and responsibility of a higher post is entitled to regular pay scale without being substantively appointed to such post ?

iii) Whether in the context of Note 3 under Rule 4.7 of the Punjab Civil Services Rules Volume 1 Part 1 Chapter 4, as applicable to Haryana, increment is admissible for a post held in a substantive capacity or even qua a post held in an officiating capacity ?

iv) Whether the controversy in issue stands settled by the decision of the Hon'ble Full Bench in CWP No. 21358/2008 titled as Subhash Chander vs State of Haryana & others?

Learned counsel for the respondent-plaintiff, contends that the first question of law framed by learned counsel for the appellant is not a question of law but is a question of fact and in exercise of its powers while hearing second appeal, the High Court would not go into a question of fact. However, irrespective of the afore-mentioned plea, learned counsel for the respondent-plaintiff states that a perusal of the record even otherwise establishes beyond an iota of doubt that the plaintiff, who was working as Principal Group 'B' at Panipat was transferred as Principal to I.T.I., Ambala City, vide order dated 12.01.1995 against a vacant post and perusal of the second column of the said order reveals that the plaintiff was working as Principal and was posted/transferred from I.T.I., Panipat to I.T.I., Ambala City where he worked and discharged duties on the said post. Learned counsel for the plaintiff-respondent states that obviously posting/transfer of the respondent as Principal was against the vacancy in I.T.I., Ambala City i.e. Principal Group-A and that there was no post of Principal Group 'B' available at I.T.I. Ambala City.

Learned counsel for the respondent-plaintiff further submits that had the posting/transfer been against the post other than the post of

Principal Group - A, then the same would have been categorically mentioned in the order and in the absence of the same having been mentioned, it was clear that the plaintiff had been posted/transferred against the post of Principal, Grade 'A', I.T.I., Ambala City. Learned counsel for the respondent also submits that the fact that the respondent was posted / transferred against the post of Principal Grade 'A' is also evident from the joining report (Annexure D-III), the document produced by the defendant-appellants themselves showing the designation of the plaintiff on his submitting joining report as Principal of the Industrial Training Institute, Ambala City.

It is the admitted case of the parties that there was only one post of Principal Group-A at Industrial Training Institute, Ambala City. The joining report was submitted by the respondent-plaintiff to the Commissioner and Secretary to Govt. of Haryana, Industrial Training and Vocational Education, Department on 20.01.1995. On the basis of the same, it is submitted that the plaintiff was posted at ITI, Ambala, against the post of Principal Group 'A' and thereby performed duties and discharged responsibilities of a higher post than the duties of the post which he occupied prior to his posting/transfer i.e. Principal Group 'B', which he was occupying at I.T.I., Panipat. Learned counsel for the respondent-plaintiff further submits that order dated 20.12.1999 merely gives formal recognition of the confirmation. of status of the Principal/Assistant Director (Technical) Group 'A' to the plaintiff on his promotion on regular basis and that the plaintiff was already discharging the duties and responsibilities on the said post w.e.f. 20.01.1995 and it was in these circumstances that the plaintiff had claimed payment of the scale of the post of Principal Group 'A' in I.T.I.,

Ambala City for the period from 20.01.1995 to 19.12.1999.

Learned counsel for the appellants has not been able to make out a case otherwise than as has been submitted by the learned counsel for the respondent and has also not been able to show that the order of posting/transfer dated 12.01.1995 was an order posting/ transferring the plaintiff to the post other than that of Principal at I.T.I., Ambala City, or that there was post of Principal other than of Group 'A' at ITI, Ambala. In the aforementioned circumstances, learned counsel for the appellants has not been able to controvert the submissions made by the learned counsel for the respondent-plaintiff that the plaintiff had been posted/transferred against the post of Principal Group 'A' at I.T.I., Ambala.

Learned counsel for the respondent-plaintiff submits that the first substantial question of law stands rendered redundant in view of grant of relief of pay scale of the post of Principal Grade 'A' already having been granted to the respondent as evident from the orders of this Court dated December 4, 2009 and March 11, 2010. Thus, learned counsel for the appellant has failed to make out a case to prove that the respondent was not working on the post other than of Principal Grade 'A'. Accordingly, the first substantial question of law is answered against the appellant and in favour of the respondent. As regards the remaining substantial questions of law, needless to mention that the same stand settled in favour of the respondent in view of the decision of the Hon'ble Full Bench of this Court in CWP No. 21358 of 2008, in case titled as Subhash Chander Vs. State of Haryana and others, decided on 20.12.2011. In Subhash Chander's case (Supra) the following question had been framed :-

“Whether an employee who is given independent charge and responsibility of a higher post alone is

entitled to regular pay scale without being substantively appointed to such post".

The said question was answered in favour of the employee.

Relevant extract of the aforesaid judgment is reproduced herein :-

"17. In view of the above, the question posed in para No. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy or his order with all consequential benefits."

Once the pay scale of the post of Principal Grade 'A' has been granted to the respondent, then in terms of Rule 4.7 read with Note 3 thereunder of the Punjab Civil Services Rules Volume 1 Part 1 Chapter 4, as applicable to Haryana, the respondent is entitled to the grant of increments and the same can be withheld by the competent authority only if the work and conduct of the respondent has not been good or his work has not been satisfactory. The same is not the position for admittedly vide order dated 20.12.1999 the respondent was promoted. Moreover, the Hon'ble Full Bench while holding the employee officiating on a higher post entitled to the pay scale of the officiating post also held the employee entitled to

promotion as well as all consequential benefits.

In the circumstances of the case, the substantial questions of law having been answered against the appellants, the regular second appeal is dismissed. The judgment and decree of both the Courts below are upheld. However, in the circumstances of the case, the parties are left to bear their own costs.

January 09, 2015.

(B.S. WALIA)

kanchan

JUDGE