

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Letters Patent Appeal No. 392 of 2014 (O&M)

Date of Decision: August 10, 2015

Vijay Kumar Kapur son of late Amar Nath Kapur

---Appellant

Versus

State of Haryana and another

---Respondents

CORAM: Hon'ble Mr. Justice Satish Kumar Mittal

Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Sandeep Panwar, Advocate,
for the appellant.

Shri Sandeep Moudgil, Additional Advocate General, Haryana,
for the respondents.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

01. The appellant had joined Public Works Department (Buildings & Roads Branch) as a Sectional Officer (later designated as Junior Engineer) on May 04, 1970 on adhoc basis but was regularised with effect from

24.5.1972 and was again given Adhoc promotion as Sub Divisional Engineer with effect from April 12, 1982. On May 11, 1985, he (appellant) represented to the concerned authority to consider his case for promotion to HSE Class-II (SDE) with effect from the date on which he had passed the AMIE degree, i.e. 1977. The representation having remained undecided, appellant, alongwith J.R.Singla, approached this Court vide Civil Writ Petition No. 2826 of 1990, titled as J.R. Singla and another versus The State of Haryana and another, which was disposed of, alongwith a few other Civil Writ Petitions, vide order dated January 18, 2011 in the following terms:

“ We, therefore, direct the State to find out the year-wise vacancies in each of the years for which selection was not held, i.e. 1977, 1978 and 1979 and thereafter, to consider the case of the petitioner for promotion to the post of Sub Divisional Engineer against the vacancies in the year in which he was eligible provided he would have come within the zone of consideration keeping in mind the number of vacancies available in that year. Thereafter, if the petitioner is found eligible for promotion notional promotion be given to him with effect from the date as he may be found entitled for promotion, however, without any monetary benefit. The notional promotion and scale of pay of the higher post with effect from the date when promotion was due, if the petitioner is found entitled to the same, would be taken into account in computing the retiral benefits of the petitioner. Arrears of pension will be determined and revision of the current pension payable to the petitioner will be made, if required, depending upon the outcome of the exercise to be carried out by the State, which will be completed within a period of three months from the date of receipt of this order or a certified copy thereof.

The case of the petitioner(s) in CWP Nos. 1944 of 1990, 7798 of 1990 and 2826 of 1990 be also considered and decided as per the above directions, taking into consideration their respective claim for promotion to the post of Sub Divisional Engineer against the vacancies in the year in which he/they was/were eligible on passing the AMIE Degree.

Disposed of.”

02. In compliance of the afore-stated directions of this Court, order dated July 26, 2011 (Annexure P10) was passed by the respondents granting notional promotion to the appellant with effect from January 01, 1978, without monetary benefits. It was, however, stated that notional promotion and the scale of pay of the higher post would be taken into account in computing the retiral benefits and arrears of pension would be determined and revision of the current pension payable to the petitioner would be made. Appellant, through his counsel, served upon the respondents a legal notice dated April 09, 2013 asking them to release arrears of the difference of pay drawn by, and due, to him for the period from April 12, 1982 to January 31, 2007, during which period he actually worked on the post of Sub Divisional Engineer. His claim, however, was rejected vide order dated June 20, 2013 (Annexure P18).

03 The appellant has filed CWP No.13987 of 2013 for issuing direction to the respondents to grant him arrears of the difference of pay drawn by him and the pay actually due to him for the period April 12, 1982 to January 31, 1987, during which period he actually worked on the post of Sub Divisional Engineer together with interest @18% per annum. The learned Single Judge has dismissed the writ petition vide order dated January 20, 2014.

04. To challenge order dated January 20, 2014 passed by the learned Single Judge the instant intra court appeal has been brought by the appellant under Clause X of the Letters Patent.

05. We have heard learned counsel for the appellant.

06. It is argued on behalf of the appellant that he is entitled to

arrears accruing to him on account of the pay drawn by him while working as an Adhoc Sub Divisional Engineer and the pay to which he was entitled for the work done by him on the post of Sub Divisional Engineer from April 12, 1982 (the day on which he was given adhoc promotion) till January 31, 2007 (the day on which he retired). It has also been submitted that the appellant is entitled to the pay and allowances on par with his juniors who have been allowed pay much higher to what has been allowed to the appellant.

07. The contention, in our considered view, is fallacious and deserves rejection. The plea that pay of the appellant should be fixed keeping in view the pay his juniors were getting, was available to him when he approached this Court vide Civil Writ Petition No. 2826 of 1990, titled as J.R. Singla and another versus The State of Haryana and another but such a plea was not adverted to by him. Even before the learned Single Judge no such plea is found to be raised at the time of hearing of Civil Writ Petition No. 13987 of 2014. Therefore, the appellant cannot be allowed to raise the plea of parity in this Letters Patent Appeal for the first time.

08. Concededly, while working as an adhoc Sub Divisional Engineer appellant has been drawing the pay and allowances as are available to a regular appointee. Be that as it may, direction of this Court issued vide order dated January 18, 2011 passed in Civil Writ Petition No. 2826 of 1990, titled as J.R. Singla and another versus The State of Haryana and another was to consider grant of notional promotion to the petitioner, sans monetary benefits, with effect from the date he was found entitled to,

for the same. That order has attained finality as it is not shown to have been set aside or reversed in appeal.

09. In view of the above, no fault can be found with the order of learned Single Judge dismissing appellant's writ petition.

10. The appeal, therefore, fails and is dismissed.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

August 10, 2015
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