

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No.632 of 2014 (O&M)

Date of Decision: **August 03, 2015**

S.K.Sangwan

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Nitin Rathee, Advocate
for the appellant.

Ms.Kirti Singh, DAG, Haryana.

HARINDER SINGH SIDHU, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 31.1.2014 passed by the Learned Single Judge, whereby the writ petition (CWP No.12634 of 2011) filed by the appellant seeking a direction to the respondent-State to grant him arrears of salary with effect from the date of his retrospective promotion, was dismissed.

On 2.7.1984, the appellant was appointed as Senior Scientific Officer in Serology with the respondent – State. On 15.3.1995, one Mr.M.K.Goyal, junior to the appellant, was promoted as Assistant Director (Biology). The promotion of Mr.M.K.Goyal was challenged by the appellant by way of CWP No.4493 of 1995, which

was allowed on 19.5.2009 (Annexure P-2) with the following directions:

“The respondents are directed to consider the case of the petitioner for promotion to the post of Assistant Director (Biology) from the date the respondent No.3 was promoted on the basis that he has qualified for the same as mandated in Appendix ‘B’ to Rule 7 of the rules. Let the necessary exercise be completed within two month from the date of receipt of certified copy of this order.”

The Letters Patent Appeal (LPA-648-2009) against the above decision was dismissed on 7.4.2010 (Annexure P-5).

In pursuance of the above directions, the appellant was promoted vide order dated 2.6.2010 (Annexure P-6) as Assistant Director (Biology) w.e.f. 21.3.1995; as Deputy Director w.e.f. 6.1.2006 and as Director, FSL, Madhuban w.e.f. 31.3.2009. It was stated that he shall be entitled to the notional benefits i.e., fixation of pay etc. only, but shall not be entitled to arrears of pay for the period he had not actually worked on the promotional posts.

Aggrieved at not being granted the arrears of salary, the appellant filed the writ petition, which has been dismissed vide the impugned judgment. The Learned Single Judge observed that though a specific prayer was made by the appellant in the earlier CWP No. 4493 of 1995 for granting him the salary and all other ancillary benefits, but the same had not been granted. The only direction that was given was that the case of the appellant be considered for promotion to the post of Assistant Director (Biology) from the date Sh.M.K. Goyal was promoted. It was observed that a prayer made but

not granted by the Court will be deemed to have been rejected by the Court and would be hit by the principle of res-judicata. Accordingly, it was held that the promotion order has been passed in consonance with the directions dated 19.5.2009 in CWP No.4493 of 1995 as affirmed in the LPA No.648 of 2009.

We do not find any ground to interfere with the aforesaid order of the Ld. Single Judge.

The appellant had accepted the earlier decisions and did not challenge them further. He cannot raise the same issue in a subsequent petition.

Even otherwise the claim of the appellant for the arrears of pay cannot be sustained in view of the principle of 'no work no pay'. In **Union of India vs. B.M.Jha**, (2007)11 SCC 632, the Hon'ble Supreme Court held as under:-

"5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom. However, this Court in State of Haryana v. O.P.Gupta and followed in A.K.Soumini vs. State of Travancore has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of 'no work no pay'. The learned Division Bench in the impugned judgment has placed reliance on State of A.P. v. K.V.L. Narasimha Rao. In our view, the High Court did not examine that in case in detail. In fact, in the said judgment, the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the above mentioned cases, arrears of salary cannot be granted to the respondent in view of the

principle of 'no work no pay' in case of retrospective promotion."

Thus, there is no merit in the appeal and the same is dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 03, 2015
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