

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19848 of 1998(O&M)

Date of decision:28.9.2016

HK Gosain

... Petitioner

Versus

Chaudhary Charan Singh Haryana
Agricultural University, Hissar & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. BS Patwalia, Advocate,
for the petitioner.

Mr. Babbar Bhan, Advocate, for
Mr. RS Chahar, Advocate,
for respondent No.1.

Mr. Amrit Paul, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

This petition was filed with two prayers. One was the grievance against the private respondent, who has been given the current duty charge of the post of Executive Engineer, which the petitioner claimed on seniority should have gone to him. The first prayer has become academic in view the motion order, where the petitioner restricted his claim to the grant of second promotional scale w.e.f. May 1, 1985. It is not a fact in dispute that the first promotional scale was granted to the petitioner on completion of 5 years of regular service from the due date. If the University granted the first promotional scale of ₹ 3000-4500 to the petitioner w.e.f. due date on completion of requisite period of service on regular basis vide Annex P-7, dated October 19, 1995 with effect from retrospective date then it follows

sequitur that the second promotional scale deserves to be given to the petitioner on completion of 12 years of regular service of which 5 years constitutes service in the first promotional scale.

The written statement filed by the University bears out that the Committee constituted for looking into grievance of the petitioner met on August 22, 1990 but did not recommend the second promotional scale due to the petitioner's 'poor record of service'. On the representation of the petitioner, the Vice Chancellor made the following orders:-

“It is felt that these should not at-least stand in the way of grant of promotional scale which has so far been denied to Shri Gosain. The screening/selection committee should take into consideration the remarks in his CR keeping in view the other factors enumerated above which otherwise strongly favour expunction of adverse remarks about integrity”.

It has been explained that the Committee in its meeting held on October 5, 1995 recommended the grant of promotional scale of ₹ 3000-4500 w.e.f May 1, 1989 to the petitioner vide Annex. P-7 (supra) stating: “perhaps keeping in mind the above orders of the Vice Chancellor.” However, the petitioner was not allowed selection grade of ₹ 4100-5300 w.e.f. May 1, 1989. The recommendations of the Committee have shifted to the written statement and are accordingly, noticed below:-

“The Committee scrutinized the service record of Sh. HK Gosain and found that he does not fulfill the norms for the grant of promotional scale. The Committee, therefore, did not recommend the grant of promotional scale of ₹ 4100-5300 on the completion of 12 years service i.e. w.e.f. 1.5.89. However, on his another representation, the Vice Chancellor ordered to place his case alongwith some other Engineers before the

Committee for reconsideration. The Committee constituted by the Vice-Chancellor again met on 24.10.98 and 26.10.98. The recommendations of the Committee duly approved by the Vice-Chancellor are reproduced as under:-

“As regards the case of HK Gosain the Committee examined his record w.e.f. 1979-80 to 1991-92. His integrity in the CR for 1981-82 was reported not above mark. These remarks were not expunged at any stage. However, the Vice-Chancellor ordered on 4.5.95 that he did not agree to the expunction of these remarks, but these would not stand in the way of grant of promotional scale to him. His orders are not in tune with the accepted policy of the university. The Committee is not in a position to go by them. The Committee, therefore, feels that the effect of adverse reports about integrity would stand against Sh. Gosain for 10 years as per standing instructions. Accordingly, Sh. Gosain becomes eligible for grant of selection grade of ₹ 4100-5300 w.e.f. 1.4.92. As his CRs for the years after 1981-82 (for 82-83 not written) upto 1991-92 are good, the Committee recommends that grant of selection grade of ₹ 4100-5300 to Sh. Gosain w.e.f. 1.4.92.”

It has been pointed out by Mr. B.S. Patwalia that the Financial Commissioner & Secretary to Government, Haryana, Finance Department, had issued letter date June 2, 1989 (Annex P-5) revising *inter alia* the pay scales of Superintendent Engineers etc. w.e.f. May 1, 1989. The letter contained the decision based on further and careful consideration that the State Government have decided to revise the pay scales of Doctors and Engineers w.e.f. May 1, 1989 as indicated in the tabulation at the foot of the letter. In column 2, Sub-Divisional Officers in the pay scale of ₹ 2200-4000

and ₹ 2000-3500 were entitled to revision of ₹ 2200-4000 and ₹ 3000-4500 after 5 years of regular service. Likewise, they were entitled to higher pay scale of ₹ 4100-5300 after completion of 12 years of regular service.

From this, Mr. Patwalia submits that there can be no doubt that the petitioner has regular service of 5 years and 12 years respectively to his credit and the element of regular satisfactory service is not known to the circular Annex P-5. He submits that whenever Government grants benefits based on length of service i.e. satisfactory service, it does so in writing, for example, in the Assured Career Progression Scheme where “regular satisfactory service” is essential requirement because ACP is in lieu of promotion and the ACP pay scale can only be given if person is eligible for promotion on laid down standards which require 70% good service record.

However, in the present case, the promotional scales are not made dependent on “satisfactory” service but on mere service rendered by efflux of time and therefore, any minor aberration in the service record of the petitioner which was substantially cured by subsequent actions of the University then I think they cannot be used against the petitioner to deny him the benefit of the second promotional scale by reason of grant of the first promotional scale. There is also nothing materially adverse against the petitioner to deny him the second stage of the benefit and the action of the University in passing the impugned order is apparently caused by misreading of the Government instructions which are indisputably applicable to the University, which makes the impugned decision illegal, arbitrary and perverse.

As a result of the above discussion, this petition is allowed. A writ of mandamus is issued to the respondent-University to grant the second

promotional scale to the petitioner w.e.f May 1, 1989 within the scheme introduced w.e.f January 1, 1986 and to calculate the amounts due and the same after determination be paid to the petitioner within 3 months from the date of receipt of a certified copy of this order. As a consequence, the petitioner's last pay drawn is directed to be redetermined and his pension and pensionary benefits and other terminal benefits, if any, be computed and paid to him within the next two months.

No other issue was pressed by the respondents in defence of action or inactions in the University except what is noticed and dealt with above.

(RAJIV NARAIN RAINA)
JUDGE

28.09.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *No*