

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 1735 of 2008 (O&M)
Date of Decision:- 31.03.2016

Inderjit Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Pawan Kumar, Senior Advocate,
with Mr. Raman B. Garg, Advocate
for the petitioner.

Mr. Hitesh Pandit, Additional Advocate, General, Haryana

RITU BAHRI, J. (Oral)

Petitioner is seeking directions to the respondents to promote him w.e.f. 28.08.2007 as Secretary, Municipal Council instead of 16.03.2012 with consequential benefits by modifying the order dated 13.03.2012 (Annexure P-7).

Petitioner was working as Secretary, Municipal Committee Ellenabad, Barwala and Tauru from time to time. There are two categories of Secretaries Municipal Council and Municipal Committee i.e. A Class and B/C Class. The Secretaries Municipal Council A-Class are to be filled

up to 50% by way of promotion from and amongst Secretaries B/C Municipal Committees on Seniority-cum-merit basis and remaining 50% by way of direct recruitment. There are about 24 posts of Secretaries A Class, Municipal Council in the State of Haryana and many Secretaries of B/C Class, Municipal Committees in their own pay scales. The pay scale of Secretaries B/C Class Municipal Committee is ₹5500-9000 whereas pay scale of A Class Municipal Council is ₹6500-9900. The pay scale of Secretary, Municipal Council is revised ₹9300-34800 + 4800 (Grade Pay) w.e.f. 01.01.2006. Petitioner was given charge of A Class Municipal Council, Thanesar i.e. A Class in the year 2002 on transfer from Tauru Municipal Committee B Class, vide order dated 11.10.2002 (Annexure P-1). The petitioner thereafter was transferred from Municipal Council Hansi (A-Class) to Secretary B/C Class Municipal Committee Hodel, District Faridabad, vide order dated 24.10.2007 (Annexure P-3). This order was challenged by the petitioner by way of CWP No.17188 of 2007 was withdrawn with liberty to seek promotion from B/C Class Municipal Committee to A-Class Municipal Council on 12.11.2007.

One Bhoop Singh, Secretary, Municipal Committee Kharkhauda working in the B/C Class Municipal Committee, has filed a CWP No.19418 of 1996 for promotion as Secretary A-Class, which was allowed by this Hon'ble Court with costs of ₹5000/- on 20.05.1997.

The petitioner has been promoted as Secretary, Municipal Council, A-Class and vide order dated 05.11.2012 (Annexure P-8) he has been granted the pay-scale on the post of Secretary, Municipal Council w.e.f. 28.08.2007, the date when the regular promotion was granted to the

senior employees. The petitioner is seeking payment of salary of the post of the Secretary A Class, Municipal Council w.e.f. 16.10.2002, the date when he was officiating on the said post on account of the Full Bench decision of this Court in case **Subhash Chander Vs. State of Haryana and others, 2012(1) SLR 207 (Annexure P-9).**

Learned counsel for the petitioner has argued that in the said case the Full Bench has 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. The ratio of the judgment of the Supreme Court in **Smt. P. Grover V. State of Haryana AIR 1983 SC 1060** has been followed wherein she was given promotion as acting District Education Officer about two years before her superannuation. The order giving her promotion as an acting District Education Officer recited a condition that she was to draw salary in her own pay scale. The petitioner in that case was held entitled to be paid the salary of a District Education Officer from the date she was promoted to the post till his retirement.

The stand taken by the respondent(s) in the written statement is that once the petitioner has already been given regular promotion to the post of Secretary, Municipal Council, vide order dated 13.03.2012, he is not entitled to payment of salary of A-Class, Municipal Secretary as he was given current duty charge for the post of Secretary, Municipal Council with a clear condition that he will not eligible for higher pay. The petitioner could opt not to take current duty charge in his pay scale.

The question for consideration before the Full Bench was that the petitioner-Subhash Chander was working as Accountant in the Municipal Committee, Ratia. He was given the charge of post of Secretary of the Municipal Committee, Ratia against a vacant post on 2.11.1996. His seniors had been promoted on the post of Secretary w.e.f. 22.05.1997. The petitioner in that case was given regular promotion for the post of Secretary w.e.f. 01.06.2006 but he was claiming promotion w.e.f. 11.12.1996 when Satish Kumar immediate senior was promoted but he has declined to join on the promoted post. After examining of Rule 4.13 of the Haryana Municipal Service (Integration, Recruitment and Conditions of Service) Rules, 1982, the Full Bench came to a conclusion that once a person had been given independent charge of a post, which involves assumption of duties and responsibilities of greater importance than the one attached to the post held by such an employee on which he holds a lien is entitled to pay of the higher post. Once a petitioner-Subhash Chander was given the charge of the post of Secretary of Municipal Committee, Ratia without requiring him to work as Accountant in addition, then as per Rule 4.13 of the Rules he would be entitled to higher pay scale of the post of Secretary because the post of Secretary has to be considered involving assumption of duties and responsibilities of greater importance than those attaching to the post of Accountant. The benefit of grant of higher pay would be admissible only if promotion is given to a person who is senior enough to stake his claim for regular promotion and not where a fortuitous officiating promotion is given to a junior employee in the lower cadre on account of administrative exigency.

At this stage, reference can be made to another order passed by this Court in **CWP No.5498 of 1998** titled **Sat Pal Singh Vs. State of Haryana and others**, decided on **28.09.2011** (Annexure P-10). Petitioner in that case was appointed as electrician in Municipal Committee, Sonapat on 01.12.1976. Thereafter, he was posted as Street Light Inspector on officiating basis on 13.07.1983. Consequently, the writ petition was allowed and the promotion granted vide order dated 01.04.2008 shall be deemed to be with effect from 13.07.1983 on the date the petitioner was posted as Street Light Inspector on officiating basis on the said post with all consequential benefits.

In the facts of the present case, it is not the case of the respondents that when the petitioner was given the officiating charge of the post of Secretary A-Class, Municipal Committee, the regular vacant post was not existed and ever since 2002 he has been working on the post of Secretary A-Class, Municipal Committee. The respondent in the written statement has specifically denied that anyone senior to the petitioner had been given promotion prior to 28.07.2007 and hence his claim for getting regular pay scale with from the date when he was discharging the duties of Secretary A-Class is made out. It is not the case of the respondents that he was doing additional charge of the lower post. Once he has been given independent charge of Secretary A-Class, Municipal Committee since 11.10.2002, he could not be denied the salary of the higher post simply on the ground that regular promotion has been granted w.e.f. 28.07.2007 at par with his seniors. For all intents and purposes the petitioner is entitled for the payment of salary of Secretary A-class as per ratio in judgment in

Subhash Chander' case (supra). Since the petitioner has already been promoted w.e.f. 28.07.2007 during the pendency of this writ petition, the writ petition is allowed by giving directions to the respondent(s) to pay salary of the higher post of Secretary A-Class w.e.f. 11.10.2002 till the regular promotion has made i.e. 28.07.2007 along with 9% interest as per the judgment of the Supreme Court in case **D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2014 AIR (SC) 2861.**

March 31, 2016
naresh.k

(RITU BAHRI)
JUDGE