

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12447 of 2013
Date of Decision:- 17.05.2016

Suresh Bhardwaj

....Petitioner

Versus

State of Haryana and others

....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?

Present: Mr. C.B. Kaushik, Advocate
for the petitioner.

Mr. Ravi Partap Singh, Asstt. A.G., Haryana.

Mr. Raj Kumar Gupta, Advocate
for respondent No.3.

RITU BAHRI, J. (Oral)

Petitioner is seeking directions to the respondents to make the regular pay scale of Secretary A-Class Municipal Council w.e.f. 18.07.1997 instead of 16.08.2002 while he was given current duty charge for the above said post and further prayer for grant of payment of current duty charge on the post of regular pay scale of Executive Officer, Municipal Council w.e.f. 10.01.2005 till the date of his superannuation i.e. 30.11.2008.

Petitioner was appointed as Secretary in the year 1979 and was

given current duty charge as Secretary A-Class, Municipal Council, w.e.f. 18.07.1997. He was promoted to the post of Secretary, Municipal Council in the pay scale of ₹6500-9900 w.e.f. 16.08.2002, vide order dated 29.06.2004 (Annexure P-1). The petitioner thereafter filed CWP No.12090 of 2004 seeking promotion to the post of Executive Officer on the basis of quota fixed. This writ petition was disposed of with a direction to the respondents to decide the representation dated 15.07.2004 by passing a speaking order. Thereafter, the petitioner was given the current duty charge on the post of Executive Officer, Municipal Council and was posted as officiating Executive Officer in his own pay scale, vide order dated 03.12.2004 (Annexure P-3). Thereafter, he worked as Executive Officer at various places from time to time and lastly at Bahadurgarh where he retired on 30.11.2008, vide order dated 20.11.2008 (Annexure P-4). The petitioner was granted regular pension vide order dated 09.11.2010, which was revised w.e.f. 01.04.2010, without giving the benefit of pay scale of Executive Officer.

Learned counsel for the petitioner submits that in view of decision of Full Bench of this Court in the case of **Subhash Chander Vs. State of Haryana and others, 2012(1) SLR 207**, whereby the petitioner was held entitled to the higher pay scale from the date when he assumed the charge of the post of Secretary with all consequential benefits including promotion.

The petitioner made representations dated 26.04.2011 (Annexure P-6) and dated 15.07.2004 (Annexure P-11) seeking benefit of stepping up of pay at par with his juniors in view of the Haryana Government Instructions dated 27.11.2006, 05.03.2009, 29.05.2009 and 23.11.2009.

Upon notice, respondent Nos.1 and 2 had filed the written statement therein taking the stand that the petitioner was given current duty

charge as Secretary A-Class, Municipal Council w.e.f. 18.07.1997 against the post of regular recruitment. He was charge-sheeted under Rule 7 of Haryana Civil Services (Punishment & Appeal) Rules, 1987 and his junior was promoted on 16.08.2002. Subsequently, he was promoted on 29.06.2004 by giving him promotion w.e.f. 16.08.2002 on the post of Municipal Secretary. The petitioner was not entitled to claim the benefit of pay scale of Municipal Secretary w.e.f. 18.07.1997 as he has been given the current duty charge against the post of direct recruitment and not against the promotion quota. As per the Haryana Municipal Council Rules 1982, out of total sanctioned posts, 50% are to be filled by direct recruitment and 50% by way of promotion. After the revision of pay-scale w.e.f. 01.04.2010, they have denied the benefit of arrears of pension on account of pendency of **SLP No.38930 of 2012** titled **State of Haryana Vs. Harbans Lal** before the Hon'ble Supreme Court of India. It has been further stated that the petitioner has no right to claim payment of pay scale of Secretary, Municipal Council w.e.f. 18.07.1997 as he had been promoted against the vacant post of direct recruitment quota. On 12.05.1997 when the Secretary, Municipal Council was promoted, 7 posts of Secretary, Municipal Council were vacant and out of these, 4 posts were filled up by way of regular promotion on the basis of seniority by promoting eligible persons. Out of these 7 posts, 4 posts were of General quota, 1 of B.C. and 2 posts were reserved for SC category. Dalip Singh was to be promoted for SC quota, but three posts were kept reserved as the above said employees were facing charge sheets at that time. These posts were filled, thereafter, on 07.12.2000 and 03.04.2002, according to present total post on 03.03.2006. Partap Singh was given promotion against BC quota and Sh. Brahmanand was promoted against SC quota on 12.05.1997 and the said three employees are

senior to the petitioner. The petitioner was given current duty charge on 03.12.2004 on the post of Executive Officer, Municipal Council, Rohtak against the vacant post meant for direct recruitment and he continued as such till his retirement.

Short reply filed on behalf of respondent No.3, in which, it has been stated that the case of the petitioner was under consideration with the State Government, who was competent authority to take final decision over the matter in controversy.

After hearing the learned counsel for the parties and after perusing the record, the following questions of law were framed: -

- (i) Whether the petitioner is entitled for payment of the salary of Secretary A-Class, Municipal Council w.e.f. 18.07.1997 to 16.08.2002?
- (ii) Whether the petitioner is entitled to arrears of revision pension on the date of his retirement i.e. 30.11.2008 instead of 01.04.2006 in view of judgment in **State of Haryana and another Vs. Harbans Lal and others**?
- (iii) Whether the petitioner's salary last pay drawn by him is to be taken on the post of Executive Officer, Municipal Council, on which he had been given current duty charge w.e.f. 10.01.2005 till the date of his superannuation, vide order dated 03.12.2004 (Annexure P-3).

The Full Bench in **Subhash Chander's case (supra)** was examined a case of petitioner, who was working as Accountant in the Municipal Committee, Ratia. He had been given the charge of post of Secretary of the Municipal Committee, Ratia on 02.11.1996. The aforesaid charge was given against the vacant post without requiring him to work as Accountant in addition. As per Rule 4.13 of the Punjab Civil Services Rules Vol.I, Part I (as applicable to Haryana), once a person has been given charge, which involves the assumption of duties and responsibility of

greater importance than those attaching to the post, other than a tenure post on which he holds a lien or would hold a lien had his lien not been suspended, then he would be entitled to the salary of his officiating post in higher grade. The Full Bench further held that the petitioner had been working on the higher post of Secretary w.e.f. 02.11.1996/11.12.1996 (P-1) and in case any charge-sheet has been issued, then it would not debar him to pay scale with higher post of greater responsibility. The petitioner was held entitled to take higher scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion.

In the facts of the present case, the petitioner was given current duty charge as Secretary A-Class, Municipal Council w.e.f. 18.07.1997. It is not the case of the respondent(s) that when the petitioner was given current duty charge of Secretary A-Class, Municipal Council, he was also discharging the functions of the lower post i.e. Secretary. Hence, for all intents and purposes w.e.f. 18.07.1997 the petitioner was discharging the functions of Secretary A-Class, Municipal Council. The fact that he was charge-sheeted under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 cannot be made a ground to deny the pay scale of Secretary A-Class, Municipal Council as held by the Full Bench in **Subhash Chander** case (supra).

Now the question for consideration would be that whether the petitioner is to be given the arrears of pension from the date of his retirement i.e. 30.11.2008 as per judgment in the case of **State of Haryana** Vs. **Harbans Lal** in LPA No. 1169 of 2012, decided on 08.10.2012. The

Division Bench of this Court while hearing the said LPA has upheld the judgment of the learned Single Judge and has held that the benefit of revision of pay scale, which was enforced from 01.01.2006 was given to the employees of the Municipal Corporation w.e.f. 01.04.2010, which was held to be arbitrary and without any rationale and the benefit was to be extended to all the employees, who are in service as on 01.01.2006. As far as the respondent(s), who have retired after 01.01.2006, it was further held that the arrears of salary will be paid to all the employees who were in service on 01.01.2006 but had retired prior to 01.04.2010. The respondent (s) employees, who had retired prior to 01.01.2006, they could not get the benefit of pay revision w.e.f. 01.01.2006 or payment of arrears on account of pay revision. However, on the recommendation of 6th pay revision their pension were revised w.e.f. 01.04.2010 instead of 01.01.2006. Their writ petition was allowed along with the arrears of pension w.e.f. 01.01.2006. This view of the Single Judge has been upheld by the LPA Bench following the judgment of Supreme Court in **D.S. Nakra and others** Vs. **Union of India**, AIR 1983 Supreme Court 130. Even though SLP is pending in the Supreme Court against the above-said judgment, however, the operation of the judgment has not been stayed. The third question for consideration is whether as per order dated 03.12.2004 (Annexure P-3) when the petitioner was assigned the current duty charge to the post of the Executive Officer, Municipal Council, is entitled of payment of the salary of the post of Executive Officer, Municipal Council. As per order dated 03.12.2004 (Annexure P-3), since 2004 the petitioner had been officiating as an Executive Officer. As per order dated 20.11.2008 (Annexure P-4) he

was to retire on attaining the age of superannuation on 30.11.2008. The regular pay-scale of an Executive Officer is ₹8000-13000/- whereas the petitioner was performing the duty of the current duty charge in the pay scale of ₹6500-9900/-.

In the written statement filed by respondent Nos.1 and 2 it is admitted that on 03.12.2004, the petitioner was given current duty charge on the post of Executive Officer against the vacant post meant for direct recruitment. In a separate written statement filed by respondent No.3 i.e. Municipal Council, Bahadurgarh, it is admitted that he was given current duty charge against a post meant for direct recruitment and not against the promotion quota w.e.f. 12.10.2007 and he remained on this post up to the date of his retirement till 30.11.2008 as per Annexure P-4. The fact that he was promoted against the direct quota post has not been disputed by the petitioner. In the absence of any post meant for promotee quota, the petitioner is held entitled for payment of the regular pay scale of the Executive Officer w.e.f 03.12.2004 (Annexure P-3) till the date of his superannuation. Since, he had appointed current duty charge on the post of Executive Officer of a post of direct quota for the purpose of calculating his pension, the pension has to be calculated on account of the last pay drawn on the post of officiating Secretary, Municipal Council in the scale of ₹6500-9900.

In view of above, the present writ petition is allowed with the directions that the petitioner is entitled to the pay scale of Secretary A-Class, Municipal Council, in view of the judgment of the Full Bench in **Subhash Chander's case (supra)** with all consequential benefits and the

payment of arrears of revised pension w.e.f. 18.07.1997 in view of the judgment in **Harbans Lal and others case (supra)**; further a direction to give a regular pay scale of Executive Officer w.e.f. 03.12.2004 (Annexure P-3) till the date of his retirement. Since, the current duty charge was not given against the post meant for promotion quota, his arrears of pension will be calculated on the basis of last pay drawn as Secretary A-Class, Municipal Council and further direction to give the arrears of pension to the petitioner w.e.f. 30.11.2008, as per the judgment of LPA Bench in **Harbans Lal and others case (supra)**. The respondent(s) shall comply with the directions within a period of three months and thereafter, a compliance report be sent to this Court.

May 17, 2016
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(**RITU BAHRI**)
JUDGE