

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11118 of 2016

Date of decision: 30.5.2016

Jasvir Singh

... Petitioner

Versus

State of Punjab & ors.

... Respondents

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

Present: Mr. Om Pal Sharma, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was promoted as Head of the Department (Electrical Engineering) vide order dated April 22, 2015 (Annex. P-1) consequent upon promotion of Varinder Paul Singh as Principal, but the promotion was made ante dated from June 3, 2014 and therefore, the petitioner has to be treated as promoted from June 3, 2014 with entitlement to all consequential benefits. Thereafter, the case of the petitioner was represented for re-fixation of his salary in terms of the promotion order (Annex. P-1). The impugned office note was put in the shape of bullets and the first two of which are as follows:-

- “There are no such instruction with the department vide which the benefits of promoted post can be given from its back date. Therefore, the promotion of these candidates/employees could not be made from back date.
- Benefit of promoted post can be given from the date of joining by the concerned, after promotion.”

These erroneously reasoned bullets have cascaded in scuttling the case of the petitioner for proper re-fixation of pay and therefore the petition for directions to correct the path to relief and free it from illegal encumbrances. If the competent authority is of the view that there are no instructions which grant benefits of promotion from back date or the benefits can accrue only from the date of joining, he is sadly mistaken. It is *a priori* that once the Government has already granted the promotion substantively w.e.f June 3, 2014 then the pay of the petitioner in the regular pay scale of the post of Head of the Department has to be fixed from June 3, 2014 and not from the actual date of the promotion order. Therefore, the first two bullets in the letter dated May 27, 2015 suffer from patent errors in reasoning and deserve to be set aside and the path restored to justice.

Notice of motion.

Mr. Harkesh Manuja, Addl. A.G., Punjab accepts notice on behalf of the respondents and waives service on them. Learned counsel for the petitioner has handed over one set of the paper-book to Mr. Manuja.

Despite his best efforts, Mr. Manuja is not in a position to support the perverse stand in the bullets which is unsupportable in law. The same requires correction right away to conform to reason and common sense. The impugned reasoning in search for instruction to meet what is obvious has derailed the claim at the hands of the Assistant Controller (Finance and Accounts) signing up the impugned for the Director Technical Education and Industrial Training Department,

Punjab, Chandigarh. The name of the petitioner finds mention at Sr. No.3 of the aforesaid order in which there are three other names of employees whose cases have also been returned with the same remarks contained in the two bullets.

Heard learned counsel and perused the papers placed on the court file.

This court has no hesitation, in the first hearing on fresh matter to quash the first two bullets qua the petitioner being illegal and arbitrary without calling upon the State to reply to the petition as it would be an empty formality which would only delay the matter and postpone the prima facie rights of the petitioner which require no forensic debate much less elaborate.

As a result, the petition is allowed in limine as it deserves to be. The impugned bullets are quashed being illegal, perverse and irrational. A direction is issued to the respondents to refix the pay and allowances of the petitioner w.e.f June 3, 2014 in terms of the promotion order with all consequential benefits. Fresh orders be passed within one month from date of supply of this order and the monetary benefits be calculated and paid within the next one month.

The petitioner would also be entitled to difference of arrears of salary for the post of Head of the Department retrospectively from June 3, 2014 in view of the law in Smt. P. Grover v. State of Haryana, AIR 1983 SC 1060 : 1983 SCR (3) 654.

(RAJIV NARAIN RAINA)
JUDGE

30.5.2016

monika