

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.21186-2011 (O&M)

Date of decision: 01.12.2016

Sukhbir Singh

.....Petitioners

versus

State of Haryana and others

.....Respondents

CWP No.16620-2012 (O&M)

Attar Singh and others

.....Petitioners

versus

State of Haryana and others

.....Respondents

CWP No.22298 -2012 (O&M)

Dharam Singh and others

.....Petitioners

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Anurag Goyal, Advocate for the petitioners
in all the cases
Mr.Naveen Sheoran, DAG Haryana

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

By this single judgment, I shall dispose of CWP Nos.21186 of 2011, 16620 of 2012 and 22298 of 2012, arising out of the same facts. However, for facility of reference, facts are being extracted from CWP No.21186 of 2011.

Sukhbir Singh is a retired Circle Superintendent from the Department of Irrigation Haryana. He was appointed as Clerk on 27.8.1971

and promoted as Sub Division Clerk on 2.11.1973. According to the petitioner, from the post of Sub Divisional Clerk (for short, 'SDC'), further promotion was to the post of Accounts Clerk as per Rule 10 (1) (c) of the Punjab Public Works Department (Irrigation Branch) Circles Clerical State Services (Class-III) Rules, 1955. The petitioner was not promoted to the post of Accounts Clerk but some of his juniors were promoted to the post of Accounts Clerks. Petitioner filed CWP No.15822 of 1998 for quashing the promotion of respondent Nos.4 to 7 (therein) to the post of Accounts Clerk and Deputy Superintendent on the ground that they were juniors to the petitioner. He further sought the relief that he should be given the deemed date of promotion as Accounts Clerk and Deputy Superintendent from the date his juniors were promoted. During the pendency of the said writ petition, the petitioner who was earlier promoted to the post of Accounts Clerk vide order dated 19.4.1995 much after the promotion of his juniors was given the deemed date of promotion as Accounts Clerk from 1.12.1976 and Deputy Superintendent w.e.f. 31.5.1994 when his junior Smt.Suman Lata was promoted as Deputy Superintendent vide order dated 26.4.2005 (Annexure P1). Similarly, another order was passed on 3.5.2005 (Annexure 2), whereby some other colleagues were also given deemed date of promotion as Accounts Clerk and Deputy Superintendent. One of the colleagues of the petitioner, namely, Om Parkash challenged the orders of promotion Annexures P1 and P2 by filing CWP No.8267 of 2005, in which, a Division Bench of this Court, while issuing notice of motion, stayed operation of the said orders vide order dated 24.5.2005. After obtaining the stay, Om Parkash himself got the promotion to the post of Circle Superintendent on 11.4.2007. Om Parkash got retired on 30.4.2007 and the

writ petition was ultimately dismissed as infructuous on 9.7.2010. Immediately, after the decision of the said writ petition filed by Om Parkash, the respondents passed another order dated 31.7.2010/ 2.8.2010, whereby he was granted deemed date of promotion as Accounts Clerk w.e.f. 1.12.1976 and promotion as Deputy Superintendent w.e.f. 31.5.1994 from the date when his junior Smt.Suman Lata was promoted as Deputy Superintendent. Thereafter, the petitioner moved a representation praying for pay fixation from the date of promotion as Accounts Clerk, Deputy Superintendent and Circle Superintendent w.e.f. 1.12.1976 and 31.5.1994. The pay of the petitioner was accordingly fixed but arrears were not given to the petitioner. Now, the petitioner seeks arrears of pay from the deemed date of promotion, mentioned above.

In CWP No.16620 of 2012, Attar Singh, Som Nath Malhotra and Chunni Lal claimed that on account of the stay granted in the petition filed by Om Parkash, their case for promotion giving deemed date of promotion was kept in abeyance. After the decision of CWP No.17459 of 2005, filed by the petitioners three orders were passed qua the petitioners whereby they were promoted vide orders Annexures P6 to P8, whereby they were given deemed date of promotion as Deputy Superintendent w.e.f. 26.7.1997 and Circle Superintendent w.e.f. 11.4.2007 when their juniors were promoted.

Similarly, in CWP No.22298 of 2012, Dharam Singh, Bhim Singh, Ishwar Singh Rohilla and Kamlesh Kumari claimed that their case was also kept in abeyance on account of stay granted in CWP No.8267 of 2005 filed by Om Parkash and after the decision of the said writ petition, they were given deemed date of promotion as Deputy Superintendent w.e.f.

25/26.7.1997 and Circle Superintendent w.e.f. 11.4.2007 when their junior Gopal Vallabh was promoted. They also seek the release of arrears of pay from the deemed date of promotion.

In the written statement, the respondent Nos.1 to 3 have not denied that the petitioners have been given deemed date of promotion. It was stated that the petitioners were not entitled to benefit of arrears of pay in view of the judgment of the Hon'ble Supreme Court in the case of State of Haryana and others vs. O.P. Gupta 1996 (2) RSJ 194. Respondents also relied upon the instructions of the Finance Department dated 27.11.2006, in which, it was clarified that the payment should be made from the actual date of promotion and not from notional pay fixation made for intervening period, viz. deemed date of promotion to actual date of promotion. Therefore, it was decided that no arrears of salary are payable to the employees. It was admitted that the petitioners were denied promotion due to some inadvertent error or lapse on the part of the department and on coming to know, about the same, immediately, remedial action was taken.

I have heard learned counsel for the parties and have also carefully gone through the file.

The facts are not in dispute. In this case, due to inadvertent error, some juniors of the petitioners in all the three writ petitions were promoted but the petitioners were not promoted. When this error came to the notice of the department, the department, promoted Sukhbir Singh vide order dated 26.4.2005 (Annexure P1) and dated 3.5.2005 (Annexure P2) to the post of Accounts Clerk and Deputy Superintendent from the date his juniors were promoted i.e. w.e.f. 1.12.1976 and 31.5.1994, respectively.

However, in the meanwhile, on account of CWP No.8267 of 2005 filed by

Om Parkash, the said order was remained under stay from 24.5.2005 to 9.7.2010. When said writ petition was dismissed as infructuous, fresh orders were passed giving said deemed date of promotion. Salary of the petitioners had been accordingly refixed considering their deemed date of promotion to the post of Accounts Clerk, Deputy Superintendent and Circle Superintendent. However, the question is whether they are also entitled to arrears of pay from the deemed date of promotion? The petitioners have relied upon the Division Bench judgment of this Court in CWP No.14790 of 2007 titled as Kanwaljeet Singh vs. State of Haryana and others, decided on 14.8.2008, wherein in a case relating to the police department, it was held that the employee is entitled to arrears of salary. The matter was examined by three Judges Bench of the Hon'ble Supreme Court in Food Corporation of India vs. S.N. Nagarkar, 2002 (1) S.C.T. 1049, wherein, the judgment of the State of Haryana vs. O.P. Gupta, 1996(2) SCT 294 (SC) was also considered. In the said case also, due to error of the department, the petitioner was not promoted and subsequently, he was promoted and given deemed date of promotion from the year 1988 but it was decided to pay him salary and allowances only w.e.f. 2.1.1995 when he joined the said promotional post. The Apex Court observed as under:-

“19. Having regard to the facts and circumstances of the case, the Court was satisfied that the respondent was not only to be considered for promotion to the promotional posts, but was also entitled to arrears of pay and allowances since he had been deprived of those benefits not on account of any fault of his but on account of the fault of the authorities concerned. It is well settled that in exercise of writ jurisdiction, the Court may mould the relief having regard to the facts of the case and interest of justice.”

The said authority is directly applicable to the facts of the present case. Here, there was no fault of the employee but the juniors of the petitioners in all the three writ petitions, were promoted and on coming to know about the mistake, the petitioners were also promoted.

In another petition titled as State of Kerala and others vs. E.K. Bhaskaran Pillai, 2007 (2) S.C.T. 757, in a similar case of retrospective promotion, when the petitioner did not approach the Court for back wages in time, he was granted benefit of arrears of pay from the date of filing of the petition.

A Single Bench of this Court in Suresh Kumar vs. State of Punjab and another, 2012 (2) RSJ 168, in similar case, arrears of salary 38 months prior to the date the petitioner was actually promoted is granted from retrospective effect.

When in the light of the said authoritative pronouncements of the Apex Court and this Court the facts of the present case are examined, it comes out that in case of Sukhbir Singh petitioner was entitled to the post of Accounts Clerk from 1.12.1976 and to the post of Deputy Superintendent w.e.f. 31.5.1994. The orders were passed by the department on 26.4.2005 and 3.5.2005 i.e. much later. In the meanwhile, it also comes out that the operation of the said orders remained under stay on account of the orders passed by a Division Bench of this Court from 24.5.2005 to 9.7.2010 in CWP No.8267 of 2005 filed by Om Parkash. There is nothing on file to show that from 1976 onwards, the petitioner ever approached any Court.

In the circumstances, I am of the view that Sukhbir Singh is entitled to arrears of pay not from the deemed date of promotion but 38 months prior to 26.4.2005 and 3.5.2005 when the orders were passed.

Further the period from 24.5.2005 to 9.7.2010, during which period the said promotions orders remained under stay on account of the orders passed by a Division Bench of this Court from 24.5.2005 to 9.7.2010 in CWP No.8267 of 2005 filed by Om Parkash, will be excluded.

So far as CWP No.16620 of 2012, Attar Singh, Som Nath Malhotra and Chunni Lal is concerned, their case was not taken up by the department on account of stay granted by this Court in CWP No.8267 of 2005 filed by Om Parkash and the actual orders were not passed. The petitioners had preferred petition No.17459 of 2005, challenging the orders 6.2.2004 by which their juniors were promoted. However, their petition was tagged with CWP No.8267 of 2005 and after the said petition was dismissed as infructuous, they were granted deemed promotion to the post of Deputy Superintendent w.e.f. 26.7.1997 and Circle Superintendent w.e.f. 11.4.2007 from the date their juniors were promoted. Petitioners approached this Court only in the year 2005 and on account of stay granted in favour of one Om Parkash, their petition was tagged with petition of Om Parkash. As such, the petitioners are entitled to arrears of salary 38 months prior to the date of passing of orders dated 1.12.2010, 16.2.2011 and 1.2.2011 (Annexures P6 to P8).

Regarding, CWP No.22298 of 2012 filed by Dharam Singh, Bhim Singh, Ishwar Singh Rohilla and Kamlesh Kumari, it comes out that the petitioners therein, filed CWP No.11254 of 2005 challenging the orders 16.2.2004, whereby their juniors were promoted and ultimately, after the vacation of stay granted in favour of a co-employee Om Parkash, they were promoted vide orders dated 10.9.2010, 1.12.2010 and 1.12.2010 (Annexures P6 to P8), giving deemed date of promotion. In the circumstances, for the

same reasons they are also entitled to arrears of salary for 38 months prior to the passing of orders dated 10.9.2010, 1.12.2010 and 1.12.2010 (Annexures P6 to P8).

All the petitioners shall also be entitled to interest @ 9% per annum on the arrears till payment.

The writ petitions are accordingly allowed to the above noted extent.

01.12.2016
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
Yes