

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

CWP No.5402 of 2014 (O&M)

Date of decision : November 03, 2016

Gurdeep Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gurcharan Singh, Advocate for the petitioner.

Mr. Parupkar Singh Ghuman, Addl. A.G., Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Petitioner, who initially joined the service as Flyboy/Inkman in the Printing and Stationery Department, Punjab, was working as Senior Technician Grade-I (General Foreman) since 07.09.2001. The promotional post of Assistant Controller fell vacant and vide office order dated 31.03.2006 (Annexure R-1/T), circulated on 04.04.2006, the petitioner was given the additional charge of the post of Assistant Controller, in addition to his own duties of General Foreman till further orders. It was further stipulated in the said office order that the petitioner would not be granted any financial/seniority benefits in lieu of the aforesaid additional work. The petitioner, accordingly, also performed the duties of Assistant Controller, in addition to his own duties as Senior Technician Grade-I (General Foreman), from which he retired on 30.06.2011. The prayer of the petitioner is that he

should be paid salary of Assistant Controller from 05.04.2006 to 30.06.2011 for which he worked on the said post.

The stand of the respondents is that the post of the Assistant Controller was to be filled in as per Punjab Printing and Stationery Department Service (State Service Class I and II) Rules 1962. As per Rules, the said post could be filled up by promotion from amongst the General Foreman serving in the department with five years service as General Foreman or by direct recruitment. It was also stated that vide order 31.03.2006 (Annexure R-1/T), the petitioner was given the current duty charge of Assistant Controller. He was not officiating as Assistant Controller. The State has also relied upon the Rule 4.24 of the Punjab Civil Services Rules, Volume-I, Part-I, amended vide Notification No.7/5/99-3 F.PII-7345, dated 14.12.2006, which reads as under:

“4.24 When a Government employee holds current duty charge of another post, in additions to that of his own substantive post, he does not officiate in the former post and as such is not entitled to any additional remuneration.”

It is claimed that if the employee holds current duty charge of another post, in additions to that of his own substantive post, then he does not officiate in the former post and as such is not entitled to any additional remuneration.

The plea was also taken that after the retirement of the petitioner, one Rajinder Singh, who was senior to the petitioner was promoted to the post of Assistant Controller vide order dated 28.11.2011 (Annexure R-4/T) circulated on 29.11.2011.

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

A perusal of the pleadings shows that the post of Assistant Controller could be filled up by way of promotion from the General Foreman along with five years service as General Foreman. The petitioner was already performing the duties of a Senior Technician Grade-I (General Foreman). In this way, the post of Assistant Controller could be filled up by promotion. In fact, it was filled up by promotion after the retirement of the petitioner on 30.06.2011. Such promotion was done on 28.11.2011. The petitioner worked on the said promotional post w.e.f. 05.04.2006 to 30.06.2011. During the said period, the said promotional post of Assistant Controller was not filled up in any manner.

The State has relied upon Rule 4.24 of the Punjab Civil Services Rules, Volume-I, Part-I, amended vide Notification No.7/5/99-3 F.PII-7345, dated 14.12.2006, which talks of a Government employee, holding the current duty charge of another post. The said Rule does not talk about holding the charge of higher post or a promotional post. Therefore, the said Rule is not attracted in the present case.

The State has also relied upon the office order dated 31.03.2006 (Annexure R-1/T), which stipulates that no financial benefit/seniority in lieu of the additional work will be granted. It is also contended that the petitioner accepted the said terms and conditions. Therefore, now he cannot claim the salary of higher post of Assistant Controller.

The State has also taken the stand that the petitioner along with 23 persons approached the Industrial Tribunal, U.T., Chandigarh, for

claiming the wages of extra work done on the Saturdays. In the said application, the salary of the post of Assistant Controller was not claimed.

I am of the view that for one or the other reason, if an employee is made to work on higher post, the employer is bound to pay salary for the said higher post. The use of word 'additional charge' in addition to his own duties will not make any difference. There is no estoppel against law. If an employee has worked on a promotional post, in addition to his own duties and that work is not for few days but for more than five years as in present case, then the State is bound to pay the salary of higher post, on which he actually worked, whatever may be the reason.

The plea that Rajinder Singh one of the seniors to the petitioner was promoted after his retirement, does not mean that the petitioner is to be debarred from claiming the salary for the higher post, on which he worked. Rajinder Singh was not given the officiating charge of the Assistant Controller, when he was senior. Rajinder Singh never approached any authority that he is senior and he should be given the charge of Assistant Controller.

In view of the matter, I am of the view that the petitioner actually worked on the post of Assistant Controller from 05.04.2006 to 30.06.2011. Therefore, he is entitled to salary for the said post during the said period. If the State has failed to promote anybody on the said post during the said period, the State has to blame itself. The State cannot be allowed to deny promotion of anybody for years together and by order the junior officer to officiate on the promotional post, paying the salary of said junior post to the said employee.

In view of the said matter, the present petition is allowed. A writ of mandamus is issued directing the respondents to pay the salary of Assistant Controller to the petitioner from 05.04.2006 to 30.06.2011, on which he actually worked along with all the consequential benefits.

Since, the petitioner did not raise any objection or make any claim for higher post during the period of his service, therefore, he is not entitled to any interest thereon.

The arrears of the salary be released to the petitioner within two months from the date of receipt of copy of this order.

The present petition is partly allowed.

(KULDIP SINGH)
JUDGE

November 03, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes