

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

**CWP NO.635 OF 2014(O&M)
DATE OF DECISION:19.08.2016**

Suresh Kumar

... Petitioner

versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.A. Sheoran, Advocate for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

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TEJINDER SINGH DHINDSA, J.

The petitioner, who is serving on the post of Personal Assistant in the Haryana Civil Secretariat has filed the instant petition seeking issuance of a writ of mandamus for directing the respondent/authorities to grant to him two months basic pay as honorarium on account of having performed his duties directly connected with two election processes i.e. the Lok Sabha General Elections, 2009 and the Haryana Vidhan Sabha General Elections, 2009.

The pleaded case of the petitioner is that the Lok Sabha General Elections were held in May, 2009 in the State of Haryana and at that point of time, petitioner was posted as Senior Scale Stenographer with Sh. Puran Mal, Deputy Secretary and who was holding the charge of Election Branch in the Haryana Civil Secretariat. Likewise, the petitioner had also performed his duties with Sh. Som Nath Arora, Under Secretary, the then Incharge of Election Branch upto April, 2010 and the Haryana

Vidhan Sabha General Elections were held in the year 2009. The case of the petitioner is that having performed his duties in relation to election work, his name for two months basic pay as honorarium would be covered under Circular dated 23.06.1998 (Annexure P-4) issued by the Election Commission of India and circulated to the Chief Secretaries/Administrators of all the States and Union Territories in the country and as per which payment of honorarium to all employees directly connected with election work was to be made on an equitable basis and it was directed that such honorarium should not exceed the total pay of one month of the concerned employee.

Even though, there is no specific order passed and conveyed to the petitioner declining his claim, yet the office of the Chief Electoral Officer, Haryana issued letter dated 20.09.2013 (Annexure P-9) and addressed to the counsel for the petitioner in response to a justice demand notice informing that payment of honorarium equal to one month pay cannot be made.

Upon notice of motion having been issued, a joint written statement of the Chief Electoral Officer, Haryana on behalf of respondents No.1 to 3 has been filed and placed on record. Claim of the petitioner has been resisted by taking a stand that he had been posted with Deputy Secretary (Vigilance and Training) and not directly with Deputy Secretary, Election/Under Secretary and as such, his claim has been considered under the category of employees from other departments at the time of Lok Sabha General Election 2009 and by applying a Policy dated 10.10.2013 on the subject of grant of honorarium to the employees deputed on election duty from other departments, he has been found entitled to a sum of Rs.2000/-

for each of the two election processes.

Having heard counsel for the parties at length, this Court is of the considered view that the claim of the petitioner seeking honorarium of two months basic pay having discharged his duties towards election work in the Lok Sabha General Elections, 2009 and Haryana Vidhan Sabha General Elections, 2009 is well founded and deserves to be accepted.

Circular dated 23.06.1998 issued by the Election Commission of India (Annexure P-4) was towards removal of anomalies and to bring about uniformity in the matter of payment of honorarium to the officials directly connected and having discharged their duties in the election work in the States and Union Territories of the country. Perusal of such Circular would make it apparent that the Election Commission of India had taken a decision that payment of honorarium should be made equitable to all employees directly connected with elections in the States and Union Territories and the quantum of such honorarium should not exceed the total pay of one month of the concerned employee. In the Circular dated 23.06.1998, the following decision had also been taken:

“The categories of staff who shall be eligible for payment of honorarium will be decided by the State Government concerned in consultation with the Chief Electoral Officer (C.E.O.) of the State/Union Territory concerned.”

Undisputedly, the petitioner having not been released the honorarium had submitted a representation and respondent No.1 i.e. The Commissioner and Secretary to Government of Haryana, Election Department had sought clarification on two vital aspects i.e. staff posted in Election Branch during the Lok Sabha General Elections 2009 and

sanctioned strength of the Election Branch. The response to such relevant queries was in the following terms:

Staff posted in election Branch during Lok Sabha Elections, 2009:-

1.	<i>Puran Mal, Deputy Secretary Election</i>	<i>Honorarium one month pay has been paid</i>
2.	<i>Suresh Kumar SSS/Dy. Secy Election</i>	<i>-----not paid-----</i>
3.	<i>Dev Raj Peon/Dy.Secy Election</i>	<i>-----not paid-----</i>
4.	<i>Chattar Pal Singh Supdt. Election</i>	<i>Honorarium one month pay has been paid</i>
5.	<i>Ram Kishan Assistant Election Branch</i>	<i>Honorarium one month pay has been paid</i>
6.	<i>Vijay Ahlawat Assistant election branch</i>	<i>Honorarium one month pay has been paid</i>
7.	<i>Sanjeev Kumar Asstt. Election Branch</i>	<i>-----not paid-----</i>
8.	<i>Rambir Singh Clerk Election Branch</i>	<i>Honorarium one month pay has been paid</i>
9.	<i>Sunil Kumar Data Entry Operator</i>	<i>-----not paid-----</i>
10.	<i>Rajiv, Peon Election Branch</i>	<i>-----not paid-----</i>

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Sanctioned strength of the Election Branch:

1.	<i>Under/Deputy Secretary</i>	<i>1</i>
2.	<i>JSS/SSS attached with Under/Deputy Secretary</i>	<i>1</i>
3.	<i>Peon attached with Under/Deputy Secretary</i>	<i>1</i>
4.	<i>Superintendent</i>	<i>1</i>
5.	<i>Assistant</i>	<i>1</i>
6.	<i>Clerk</i>	<i>1</i>
7.	<i>Peon Cabinet/Election Branch</i>	<i>1</i>
8.	<i>One Date Entry Operator is also posted in the Election Branch</i>	

The clarification issued and reproduced hereinabove would make it apparent that the petitioner had remained posted as Senior Scale Stenographer with the Deputy Secretary Elections during the course of Lok Sabha General Elections 2009 and had not been released the honorarium. Furthermore, as regards sanctioned strength of Election Branch was concerned, there was only one post of Senior Scale Stenographer attached with the Under/Deputy Secretary and which admittedly, the petitioner was

holding. The clarification is a clear pointer towards the claim of the petitioner being covered under the Circular dated 23.06.1998 (Annexure P-4) issued by the Election Commission of India for grant of honorarium having discharged his duties strictly in connection with the elections in the State of Haryana.

Acting upon the clarification noticed herein above, respondent No.1 i.e. the Commissioner and Secretary to Government of Haryana, Election Department issued Memo dated 05.01.2012 (Annexure P-2) which contained a decision to grant honorarium to certain officials including the petitioner for the Lok Sabha General Elections. Issuance of such Memo dated 05.01.2012 and the contents thereof are not disputed in the reply filed on behalf of the respondents. It would be apposite to note that as per Circular dated 23.06.1998 (Annexure P-4) issued by the Election Commission of India as regards categories of Staff to be eligible for payment of honorarium decision was to be taken by the State Government in consultation with the Chief Electoral officer of the State/Union Territory concerned. The Memo dated 05.01.2012 (Annexure P-2) would have to be construed as a decision taken by the Competent Authority as defined under Circular dated 23.06.1998 issued by the Election Commission of India and in favour of the petitioner for grant of honorarium. It is not the case made out on behalf of the State that the decision contained in Memo dated 05.01.2012 (Annexure P-2) has since been reviewed or recalled.

The stand taken on behalf of the State as regards the petitioner being entitled to payment of Rs.2000/- on account of two election processes and by applying the Policy dated 10.10.2013 (Annexure R-4) along with the reply is wholly untenable. The rights of the petitioner had crystalized in the

year 2009 itself in the light of Circular dated 23.06.1998 (Annexure P-4) issued by the Election Commission of India. A Policy framed in the year 2013 cannot be applied retrospectively and to the prejudice and detriment of the petitioner as the same would entail adverse civil consequences.

The petitioner has also been able to make out a case of discrimination. It has been pleaded that during the Haryana Vidhan Sabha General Elections held in the year 2005, one Sh. Vipin Kumar remained posted as Senior Scale Stenographer with Sh. Megh Raj Sharma, Under Secretary, Elections and was granted Rs.2500/- as honorarium by treating him in the category of employees *“from other department.”* Upon having represented his claim for grant of honorarium of Rs.10,200/- towards one month basic pay had subsequently been accepted vide order dated 22.01.2007 at Annexure P-1. In the written statement, a distinction is sought to be drawn by stating that Vipin Kumar, Senior Scale Stenographer was directly attached with Under Secretary, Elections and accordingly, his name was considered as directly related to election work and accordingly, had been paid the honorarium. This Court finds such distinction raised on behalf of the State to be farcical. State counsel has not been able to dispute that the present petitioner was the only Senior Scale Stenographer, who worked with Sh. Puran Mal, Deputy Secretary and Sh. Som Nath Arora, Under Secretary during the election processes in question held in the year 2009. It has also gone uncontroverted that the petitioner was posted as Senior Scale Stenographer with Sh. Puran Mal, Deputy Secretary, who was holding the charge of Election Branch in Haryana Civil Secretariat during the Lok Sabha General Elections held in May, 2009. Likewise, the conceded position is that the petitioner had also performed his duties with Sh. Som

Nath Arora, Under Secretary, Incharge of Election Branch upto April, 2010 and the Haryana Vidhan Sabha General Elections were held in the year 2009. The action of the respondents in denying to the petitioner, the honorarium pertaining to these two election processes is, as such, held to be discriminatory and violative of Article 14 of the Constitution of India.

For the reasons recorded above, the writ petition is allowed.

Petitioner is held entitled to honorarium equal to one month basic pay for each of the two election processes i.e. Lok Sabha General Elections and Haryana Vidhan Sabha General Elections held in the year 2009. It is directed that the requisite payment be released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

Disposed of.

19.08.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |