

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Misc. No.771 of 2016 in/and
Letters Patent Appeal No.360 of 2016 (O&M)

Date of Decision: July 05, 2016

State Punjab and another

.....Appellants

versus

Surinder Mohan Kant

.....Respondent

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE DARSHAN SINGH.**

Present: Mr.Narinder Singh, Senior Assistant in the office of
Director, Youth Services, Punjab.

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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?

Surya Kant, J. (Oral)

State of Punjab and its authorities in the Department of Sports and Youth Services have preferred this letters patent appeal against the order dated 02.07.2014 whereby the learned Single Judge accepted the claim of the respondent to the extent that he has been held entitled to all the benefits which were applicable to the higher post of Deputy Director held by him for 23 years on officiating basis till he secured voluntary retirement on 31.07.2005. Learned Single Judge has also awarded cost of Rs.25,000/- to the respondent.

[2] The appeal has been filed alongwith an application (CM

delay of 582 days in filing the appeal. It is averred in the application that the office of Advocate General, Punjab gave its opinion on 03.09.2014 and 10.10.2014. Thereafter, the matter is said to have been forwarded to the State Government on 31.10.2014 followed by a series of reminders till 23.07.2015. The State Government took a decision vide letter dated 12.08.2015 directing the department to file the appeal. It is further claimed that the appeal was drafted “without any delay” and since the matter was quite old that the appeal could be filed in March, 2016.

[3] In our considered view, the explanation for inordinate delay running into more than a year is totally unsatisfactory, vague and evasive. There is no whisper as to why the State Government took more than 10 months' time in deciding whether or not to file the appeal and even after taking such a decision, the department chose to file the appeal after about 7 months, whereas the time limit to file intra-court appeal is 30 days only. We thus decline to condone the delay and dismiss the application.

[4] Even on merits also, the view taken by the learned Single Judge in granting the benefits applicable to the higher post of Deputy Director warrants no interference. The learned Single Judge has referred to Rules 4.22 and 4.13 of the Punjab Civil Services Rules, Volume-1, Part-1 & 2 for accepting the claim of the respondents and has further placed reliance on a Division Bench decision of this Court in Pritam Singh Dhaliwal versus State of Punjab and another, 2004 (4) SCT 403, for accepting the claim of respondent. It will be equally useful to rely upon Rule 4.4 (c) (i) of the CSR Rules also, which reads as follows:-

“...Notwithstanding anything contained in these Rules,
where a Government employee holding a post in a

temporary or officiating capacity is promoted or appointed in his substantive, temporary or officiating capacity to another post carrying duties and responsibility of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above his pay drawn by him in the lower post provided it is certified by the head of the department in which the Government employee was holding the lower post that he would have continued to officiate in the lower post but for his promotion/appointment to the higher post.....”

[5] From the plain reading of the aforesaid Rule, we are satisfied that once the respondent was allowed to officiate higher post of Deputy Director and that too for a considerable long period of 23 years, the learned Single Judge has rightly held him entitled to the pecuniary benefits attendant to that post. It is not the case of appellants that the respondent was ineligible for the post of Deputy Director or that the post could not be filled up by promotion. It necessarily means that the respondent or other eligible persons though were eligible for promotion yet were asked to discharge higher responsibility while drawing the pay of lower post.

[6] However, taking into consideration all the attending circumstances, it appears to us that the learned Single Judge ought not to have imposed the cost of Rs.25,000/- on the appellants. There is no finding or allegation of lack of *bonafide* in resisting the claim of the respondent. We thus dismiss the appeal on merits also but modify para No.5 of the order under appeal deleting the imposition of cost of Rs.25,000/- on the

appellants.

[7] We are not inclined to call upon the respondent for the aforesaid modification as the cost of litigation with which he is likely to be burdened might be more than the cost amount.

[SURYA KANT]
JUDGE

July 05, 2016
mohinder

[DARSHAN SINGH]
JUDGE