

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

CWP No.14971 of 2001 (O&M)

Date of Order: 11.09.2017

Jai Pal Singh

....Petitioners

Versus

State of Haryana and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

AMOL RATTAN SINGH, J (ORAL)

By this petition, the petitioner has actually challenged the order (Annexure P/1), dated 10.10.2000, by which respondent nos.3,4,6 & 7 were given current duty charge on posts of Superintendents, in their own pay scale. The petitioner is seeking promotion as a Statistical Assistant/Junior Auditor, from the date of the aforesaid order.

Learned senior counsel appearing for the petitioner submits that the said persons were actually ineligible for being given such current duty charge, with the petitioner being fully eligible and therefore, even if no 'regular promotion' was to be made for any reason, (though the petitioner's prayer was that regular promotions to the posts of Superintendents be made), it should have been the petitioner who should have been given current duty charge.

In clause (i) of paragraph 8 of the petition, the petitioner has specifically stated that the private respondents did not have 12 years experience to their credit and that respondent No.7, Inder Singh, who was a Junior Auditor, had no right of consideration, as only Statistical Assistants and Assistants were eligible for being promoted as Superintendents, even as per the statutory rules relied upon by the respondents in their written statement.

The said contention though has been denied generally by way of a two line answer in the written statement, qua the entire paragraph 8, the sub clauses having not been specifically refuted.

Sh. Doon, learned State counsel, has pointed to paragraph 2 of the preliminary submission in the written statement, in which it is stated that vide a Notification dated 23.6.2010, the rules of 1992 were amended, adding the post of Junior Auditor as a feeder cadre post for promotion to the post of a Superintendent.

The amendment having been made in the year 2010, with the petitioner's cause of action arising in the year 2000, obviously, the said contention made in the written statement is wholly misleading.

Sh. Malik, learned senior counsel for the petitioner, submits that the petitioner having eventually been given current duty charge on the post of a Superintendent on 12.9.2002 and he having retired on 28.2.2007, he now restricts his prayer in the petition to the grant of the benefit of the pay scale that would have been admissible to him as a Superintendent had he been promoted to the post, towards his retiral benefits.

With regard to the pay scale of a higher post being admissible to a person holding current duty charge on the said post, he relies upon judgment of a Full Bench of this Court, reported as **Subhash Chander Vs. State of Haryana and Others 2012 (1) SCT 603**, wherein the question framed by their Lordships reads as follows:

“Whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale without being substantively appointed to such post.”

The said question was answered as follows:

“In view of the above, the question posed in para No.1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale pay from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

Though, Sh. Doon, learned State counsel, has stated that the prayer now being made is not a prayer in the petition, and

therefore the said relief cannot be granted, however, in the opinion of this Court, the petitioner having retired while holding current duty charge on the post of a Superintendent, which is not otherwise denied, and he not being shown to be ineligible to hold that post, his case would be covered by the ratio of the aforesaid judgment.

Obviously, if the petitioner had been promoted on a regular basis to the post, as prayed for in the petition, he would have been entitled to the pay scale of the post also and therefore, if he is now restricting his prayer to that extent only, I see no reason not to allow the petition as regards the limited relief claimed, it being in terms of the ratio of the judgment of the Full Bench, supra.

Consequently, this petition is allowed to the extent that the petitioner would be entitled to the pay scale of a Superintendent with effect from the date that he was given current duty charge of the said post, till the date of his retirement, and his pension would also be fixed accordingly, thereafter.

The aforesaid direction be carried out within three months from the date of receipt of a certified copy of this order.

He would also be entitled to Rs.2000/- as costs.

September 11, 2017
manoj

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No