

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

CWP No. 15372 of 2011 (O&M)
Date of decision: 18.4.2017

Sewak Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kapil Kakkar, Advocate,
for the petitioner.

Mr. L.S. Virk, Additional Advocate, General, Punjab.

Mr. T.V.S. Lehal, Advocate,
for respondent No.3.

JAISHREE THAKUR, J.

1. The petitioner herein has filed the instant writ petition seeking a writ in the nature of Certiorari to set aside impugned order dated 04.07.2011 by which his claim for appointment to the post of Fog Machine Operator has been denied, with a prayer for issuance of a writ in the nature of Mandamus directing the respondents to consider the case of the petitioner for appointment as Fog Machine Operator, further for payment of wages of the post of Fog Machine Operator since 1991.

2. The petitioner joined the erstwhile Municipal Council, Bhatinda, as Safai Sewak even in May 1991. Though he had been appointed as a Safai Sewak, he was also working as Fog Machine Operator. Thereafter, he started representing for his promotion to the said post, as the Municipal

Council, Bhatinda, appeared to be inclined to consider the petitioner's claim but in the absence of a regular sanctioned post, no order to this effect was passed. The Executive Officer, Municipal Council, Bhatinda, by the letter dated 18.07.2007, recommended creation of a post of Fog Machine Operator while also recommended appointment of the petitioner against that post. The petitioner approached this court by way of Civil Writ Petition No. 3529 of 2011 seeking appointment against the post of Fog Machine Operator. The writ petition was disposed of with a direction to the Municipal Council to consider creating of a post of Fog Machine Operator within a period of four months. The matter was considered and was declined by the impugned order dated 4.7.2011. Aggrieved the instant writ petition has been filed.

3. Mr Kapil Kakkar, learned counsel appearing on behalf of the petitioner, would contend that the petitioner has been discharging duties of a Fog Machine Operator since the year 1991 and even the Executive Officer had made a recommendation for the creation of a post and for appointment to be offered to the petitioner in the scale of ₹3120-5160. Having discharged the duties diligently against the said post, the petitioner would be entitled to be promoted against the post of Fog Machine Operator as well as to be paid remuneration for having done the extra work. Reliance in this regard has been placed on judgments rendered in **P Grover Versus State of Haryana, reported as 1983 (2) SLR 734** and **Secretary-cum-Chief Engineer Chandigarh Versus Hari Om Sharma and others 1998 (2) RSJ 685** and also Division Bench judgment of this Court in **Union of India and others Versus Central Administrative Tribunal, Chandigarh and another 2012 (1) SLR 695**, wherein it has been held that an employee is entitled to the

salary of the post against which he has worked.

4. Per contra, learned counsels appearing on behalf of the State and the Municipal Council contend that the petitioner could not claim to be promoted against the post of Fog Machine Operator since there was no such sanctioned post. The petitioner who was appointed as Safai Sewak was asked to operate the fog machine for a few hours in a day and that too the work was seasonal. In fact, the exact qualification for the post of Fog Machine Operator is matric plus a Diploma from ITI (Mechanical) which education the petitioner does not possess.

5. I have heard the learned counsel for the parties and with their assistance have gone through the pleadings of the case.

6. During the pendency of the writ petition, the petitioner stood promoted to the post of Pump Operator as on 23.2.2015 and, therefore, the claim for promotion would not survive. The only question that survives is, whether the petitioner, who had been appointed as Safai Sewak in the office of the Municipal Council, Bhatinda, would be entitled to remuneration for the work done on the post of Fog Machine Operator?.

7. Admittedly, the petitioner though appointed on the post of Safai Sewak was also asked to discharge duties of a Fog Machine Operator. As per the reply filed, the exact qualification for the post of Fog Machine Operator is matric plus and ITI diploma in mechanical, which qualification the petitioner did not possess. However, it is not disputed that petitioner did discharge the said work on seasonal basis, that is in summers and monsoons in an effort to eliminate mosquitoes. Even though the petitioner did not possess the necessary qualification and was also not promoted to the said

post, but he did discharge the said duties. In a judgment rendered by the Apex Court in **P Grover** (supra), it was held that refusal to pay to an officer promoted to a higher post, the salary of such higher post was unjustified. An employee working in an organization, if asked to discharge certain duties over and above his normal workload, is not in a position to deny the authorities by stating that the work sought to be allotted to him does not fall within his job description. In the instant case, while relying upon the same principle, it is the opinion of this court that it would be unjustified to deny payment to an employee for discharging certain duties against a higher post merely on account that he had not been promoted to the said post. It cannot be lost sight of that the principle of 'equal work for equal pay' would also be made applicable in the instant case. Equal pay for equal work is the concept of labour rights that individuals in the same workplace be given equal pay.

8. In **State of Punjab versus Jagjit Singh and others (2017) 1 SCC 148**, the Apex court has held that the principle of 'equal pay for equal work' has to be made applicable to all those engaged on contract, daily wagers who perform the same duties as regular employees. Their Lordships of the Apex Court by delivering the judgment came to hold *“In Court's considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at*

the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

9. Similarly, in the instant case, the benefit of a higher pay for the work done is being denied merely on account of the fact that the petitioner was never promoted to the said post. Once respondents themselves asked the petitioner to discharge duties of a higher post, it would not lie in the mouth of the respondents to deny him benefit of higher wages.

10. Resultantly, the above noted writ petition is allowed while holding that the petitioner herein would be entitled to higher wages for the work done, be it seasonal and limited for a couple of hours in a day. However, the claim of the petitioner is limited to a period of 38 months prior to the filing of the writ petition. The respondents herein are directed to calculate the amount due to the petitioner as against the work done within a period of 3 months on receipt of a certified copy of this order and after concluding the exercise release the amount within a period of one month thereafter.

18.4.2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No