

CWP No.12352 of 2013 (O&M)

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

Sr. No.293

**Civil Writ Petition No.12352 of 2013 (O&M)
DECIDED ON: December 04, 2017**

BABU RAM GOEL

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. A.K. Walia, Advocate,
for the petitioner.

Mr. Daldeep S. Sukarchakia, Deputy Advocate General,
Punjab.

JASPAL SINGH, J.

Through the instant civil writ petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought issuance of a writ especially in the nature of Certiorari for quashing the impugned letter dated 10.04.2013 (P-12/T) issued by respondent No.3- Deputy Commissioner, Patiala, whereby he has declined the relief/benefit of the judgments dated 29.04.1999 (P-1) passed in Civil Appeal No.255-T captioned as ***Raj Kumar & anr. vs. The State of Punjab & ors.*** and

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23.05.2011 (P-3) passed in Civil Revision No.1530 of 2003 captioned as ***The State of Punjab through Collector, Patiala & anr. vs. Raj Kumar & ors.***, on the basis of which he is entitled to promotion from back date as well as consequential benefits and arrears thereon.

2. Undisputably, petitioner joined his service as Clerk on 25.06.1955 and retired on 31.01.1998. Since, seniority among Assistants in the office of respondent No.3 remained unsettled, S./Sh. Raj Kumar and Sham Lal, Senior Assistants, who were junior to the petitioner filed a civil suit claiming their seniority from back date as Senior Assistants and all consequential benefits including further promotions etc. The said civil suit was decreed by the trial Court vide judgment and decree dated 05.03.1997. However, the arrears of salary were restricted to the period of 38 months immediately preceding the date of institution of said suit. Aggrieved against the aforesaid judgment and decree dated 05.03.1997, petitioners preferred an appeal, which was disposed of vide judgment and decree dated 29.04.1999 (P-1) by the learned Additional District Judge, Patiala. The operative part of the aforesaid judgment and decree dated 29.04.1999, it reads as under:-

“As a result of my above discussion, the appeal is accepted partly. The judgment and decree under appeal are set aside and seniority list dated 07.06.1983 (Ex. P-12) qua the plaintiffs and defendants No.3 to 5 & 7 to 12 is hereby quashed and defendants No.1 and 2 are directed to refix the seniority of the plaintiffs qua defendants Nos.3 to 5 and 7 to 12 in accordance with the judgment and decree of this Court within three months. They will also be entitled for consequential benefits like promotion etc. from the date of

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their juniors. In the circumstances of the case, the parties are left to bear their own costs.”

3. In compliance of the aforesaid judgment and decree, S/Sh. Raj Kumar and Sham Lal were granted seniority from back date. Accordingly, they were promoted as Senior Assistants and then to the post of Superintendents from back date(s) vide order dated 26.02.2002 (P-2/T) passed by respondent No.3-Deputy Commissioner, Patiala. Since, S./Sh. Raj Kumar and Sham Lal were only granted notional promotion and benefit of arrears was declined, they filed execution application before Executing Court. They were held entitled consequential benefits including payment of arrears as per judgment and decree dated 29.04.1999 (P-1) passed by the learned Appellate Court and said execution application was allowed vide order dated 16.12.2002. The respondents being aggrieved against the order dated 16.12.2002 passed by the Executing Court, preferred a Civil Revision No.1530 of 2003 before this Court. However, said revision petition was dismissed by this Court vide judgment and decree dated 23.05.2011 (P-3) upholding the order dated 16.12.2002 passed by the Executing Court directing that decree holders are entitled to all the arrears. The operative part of the judgment delivered by this Court, reads as under:-

“It has been clarified by learned first appellate Court that respondents-plaintiffs are entitled for all the benefits of retrospective promotion etc. after fixing their seniority and after granting them promotion from the date their juniors were promoted. There is no such order excluding payment of arrears of salary on the promotional post from the date their juniors were promoted.”

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4. The petitioner being senior to S./Sh. Raj Kumar and Sham Lal, approached the authorities for grant of similar relief particularly for the reason that his juniors have been given promotions as well as arrears from back date(s). Though, petitioner was also granted notional promotion but consequential benefits and arrears etc. were not paid, rather declined vide order dated 26.02.2002 (P-2/T).

5. Aggrieved against the aforesaid order dated 26.02.2002 (P-2/T) for refusal of arrears from back date, petitioner approached the Commissioner, Patiala Division, Patiala by way of an appeal, which was dealt with and disposed of vide order dated 01.06.2005 (P-4/T) clearly observing that since Deputy Commissioner has granted all the benefits to S./Sh. Raj Kumar and Sham Lal including arrears accrued to them, non-grant of similar benefit to the petitioner who is admitted to senior to them is not legally and factually justified and is against the rules. Accordingly, grant of all the benefits which have been granted to the juniors S./Sh. Raj Kumar and Sham Lal, were ordered to be released and disbursed to the petitioner vide aforesaid order dated 01.06.2005 passed by the Commissioner, Patiala Division, Patiala. Even, then the said order was not being complied with by the respondents rather impugned order dated 10.04.2013 (P-12/T), the said relief was declined by the Deputy Commissioner, Patiala observing that S./Sh. Raj Kumar and Sham Lal, who are juniors to the petitioner have been paid arrears and pay on account of notional period, in compliance of the orders passed by the District Court, whereas, petitioner is not entitled to the same as he did not

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approach the District Court. Dishearted with the order dated 10.04.2013 (P-12/T), petitioner approached this Court by way of instant petition.

6. In view of the above discussion, this Court finds it to be very strange that similar benefits have already been accorded by the respondents to S./Sh. Raj Kumar and Sham Lal may be in compliance of orders passed the Civil Court, since petitioner is admittedly senior to them, has been denied similar relief, rather, this Court is of the considered view that denial of similar relief to the petitioner, is not only violative of the Articles 14 and 16 of the Constitution of India but also against the principle of natural justice and doctrine of parity. Only an unnecessary litigation has been created by the respondents by passing the contradictory orders. It would be pertinent to mention here that by passing the order dated 10.04.2013 (P-12/T) which has been impugned through instant petition, Deputy Commissioner, Patiala has reversed the order passed by the Commissioner, Patiala Division, Patiala, which is not only against the law but ethics also. A Sub-ordinate Officer is passing the order to undo the orders passed by the Senior Officer. Had the order passed by the Commissioner, Patiala Division, Patiala dated 01.06.2005 (P-4/T) been complied with by the Deputy Commissioner, Patiala, the unnecessary litigation for the last one decade could have been avoided and at the same time public exchequer would not have been burdened.

7. Thus, without expressing any much, impugned order dated 10.04.2013 (P-12/T) is quashed/set aside. Consequently, respondents are directed to release the arrears of benefit as has been done in the case of S./Sh. Raj Kumar and Sham Lal. Respondents are further directed to

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calculate the arrears and make the payment thereof, within a period of two months from the date of receipt of certified copy of this order, that too, along with interest @ 9% per annum after the expiry of three months from the date of order dated 01.06.2015 (P-4/T) passed by the Commissioner, Patiala Division, Patiala. In case of non compliance of aforesaid direction, petitioner shall be at liberty to have recourse to the other remedies available under law as well as well to approach this Court.

8. No order as to costs.

December 04, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes
Yes/No**