

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

**CWP-14919-2015 (O&M)
Date of decision:03.11.2017**

Ramesh Khurana

... Petitioner

Vs.

Punjab Mandi Board & another

... Respondents

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

Present: Mr. J.S. Maanipur, Advocate for the petitioner.

Mr. Nitin Kaushal, Advocate for the respondents.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Vide order dated 02.12.2006 (Annexure P-3), petitioner was promoted to the post of Junior Draftsman under the Punjab Mandi Board. Subsequently, vide order dated 08.04.2010 (Annexure P-4), petitioner was promoted as Junior Draftsman notionally w.e.f. 15.06.1995.

Challenge in the instant petition is to the order dated 26.05.2015 (Annexure P-7) confined to the extent that the petitioner has been denied financial benefits admissible to the post of Junior Draftsman w.e.f. 15.06.1995.

Facts which are not in dispute are that the petitioner was appointed as Supervisor on work charge basis on 11.08.1987 under the Punjab Mandi Board. He qualified the Draftsman Civil Diploma on 15.06.1995. Petitioner was promoted as Junior Draftsman vide order dated 02.12.2006. Prior thereto, petitioner had been assigned the work of the higher post of Draftsman vide order dated 15.06.1995 passed by the

Executive Engineer (C) at Annexure P-2. Representation having been preferred by the petitioner that he was eligible to be promoted to the post of Junior Draftsman under the Punjab State Agricultural Marketing Board (Class III) Service Rules, 1989 on acquiring the Draftsman Diploma as also possessing the requisite experience in the year 1995 itself, such representation found favour with the respondent/Board and the petitioner was promoted as Junior Draftsman notionally w.e.f. 15.06.1995. Petitioner preferred CWP-21771-2014, wherein, apart from seeking other reliefs, he had raised a claim to be granted salary w.e.f. the retrospective date of promotion i.e. 15.06.1995 as Junior Draftsman. The writ petition came to be disposed of on 28.10.2014 with a direction to the respondent/Board to consider and decide the claim of the petitioner as incorporated in a legal notice dated 26.08.2013 that had already been served. It is by way of passing the impugned order dated 26.05.2015 by the Chairman of the Punjab Mandi Board that the financial benefits admissible to the post of Junior Draftsman from 15.06.1995 to 02.12.2006 have been denied.

The claim of the petitioner is resisted by counsel appearing for the respondent/Board by submitting that in the order dated 15.06.1995 (Annexure P-2) when the petitioner had been assigned the work of the post of Draftsman, it had been clearly stipulated in the order itself that he would not be paid any extra remuneration and he would continue to work in the earlier scale. Counsel has also adverted to the order dated 08.04.2010 (Annexure P-4) in terms of which the petitioner had been granted ante dated promotion to the post of Junior Draftsman i.e. w.e.f. 15.06.1995 and wherein also it had been recited that such promotion would be counted only for

seniority and experience. Counsel would argue that the petitioner having enjoyed the benefits flowing from the order dated 08.04.2010 (Annexure P-4), he would be bound by the conditions mentioned therein. It is urged that the order dated 08.04.2010 (Annexure P-4) has to be read in toto and a certain clause which may not be beneficial for the petitioner cannot be read in isolation as the petitioner had accepted such order granting him promotion to the post of Junior Draftsman on notional basis w.e.f. 15.06.1995 and he cannot be permitted now to turn around to raise a challenge to the same.

Counsel for the parties have been heard.

The relevant extract of Appendix 'B' of the Punjab State Agricultural Marketing Board (Class III) Service Rules, 1989 in relation to the post of Junior Draftsman reads as follows:

Sr. No.	Designation of the post	Method of Recruitment	Qualification for recruitment	
			By direct appointment	By promotion
1.	2.	3.	4.	5.
62	Junior Draftsman (Civil), PH, Electrical, D.T.P.	(i) Eighty percent by Direct appointment or (ii) Twenty percent by promotion	(Should have pass Matriculation examination and should possess Two year Industrial Training Institute Certificate in respective trade of Draftsman for the which the post of the Junior Draftsman falls vacant).	(From amongst the employees working on class IV posts in the Board who possess two year Industrial Training Institute Certificate in respective certificate in respect of the trade of Draftsman for which the post of Junior Draftsman falls vacant.

The eligibility of the petitioner in terms of possessing the requisite qualifications as also having the requisite experience to hold the promotional post of Junior Draftsman w.e.f. 15.06.1995 is not in dispute.

The reliance placed by counsel appearing for the respondent/Board upon a stipulation contained in the order assigning the duties and responsibilities of a higher post as also upon the condition contained in the order granting to the petitioner notional promotion to the post of Junior Draftsman w.e.f. 15.06.1995 that he would not be entitled to any extra remuneration is wholly misconceived. The State Government or any instrumentality of the State in its capacity as a model employer cannot be permitted to raise such an argument and to enforce such a condition, whereby, on the one hand, an official is admittedly assigned the duties and responsibilities of a higher post with greater responsibility and on the other hand, seeking to deny him the salary admissible to such post.

The question as regards entitlement to the pay and emoluments in relation to a higher post against which the employee has discharged duties, be it on an officiating basis, is no longer *res integra*. The Courts over a period of time have even held that an employee would be entitled to the pay and wages for such higher post against which he has discharged the functions, howsoever, fortuitous such appointment/promotion may have been. A reference in this regard may be made to the judgment of the Hon'ble Supreme Court in **Smt. P. Grover Vs. State of Haryana & another, AIR 1983 SC 1060.**

A similar issue came up for consideration before the Apex Court in **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om**

Sharma, 1998(3) SCT 90, wherein the respondent had been promoted as Junior Engineer-I in the year 1990 and had been continuing on that post without being paid salary for the post and the State had chosen to deny emoluments of such post on account of an undertaking having been given by him that on account of such promotion given purely on stop-gap arrangement, he would not claim promotion as a right nor would he claim any benefit pertaining to that post. Holding Hari Om Sharma/respondent to be entitled to the pay and emoluments of the higher post against which he had been called to officiate as a stop-gap arrangement, it was observed in the following terms:

“.....An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy.”

As such, the stipulation on which reliance has been placed on behalf of the respondent/Board to deny to the petitioner the pay and emoluments of the post of Junior Draftsman for the period in question inspite of the petitioner having discharged the duties and responsibilities of the higher post would be of no consequence.

For the reasons recorded above, the writ petition is allowed. The impugned order dated 26.05.2015 (Annexure P-7) to the extent of denial to the petitioner the financial benefits admissible to the post of Junior Draftsman from 15.06.1995 to 02.12.2006 is quashed.

Respondent/Board is directed to calculate and to release to the petitioner the financial benefits admissible on the post of Junior Draftsman for the period in question within a period of two months from the date of

receipt of a certified copy of this order.

Petition allowed in the aforesaid terms.

03.11.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | Yes |