

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

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**CWP-1429-2016
Decided on 02.02.2017**

NIRMALA DEVI

....PETITIONER

VS

STATE OF HARYANA & ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana

AJAY TEWARI, J.(Oral)

By this petition the petitioner has challenged the order granting her promotion from the date junior were promoted with the rider that she would not be granted pay and arrears for the same.

Brief facts of the case are that Haryana Staff Seletion Commission had declared the result of 5373 posts of Clerks. The petitioner was selected at merit No. 544. Smt. Sukanya Devi who was selected at merit No. 1142 was offered appointment on 25.02.1991. Some candidate including petitioner who were higher in merit were left and this controversy was settled by the Supreme Court in the case of Roshni Devi vs. State of Haryana and others and direction was issued to appoint the candidates who were higher in merit and ignored for appointment. Pursuant to the said decision the petitioner was offered appointment on 07.10.1999. The tentative seniority list was issued but the petitioner was not assigned seniority as per merit in accordance with

the Rules. The petitioner filed a representation, as a result of which she was declared senior to Smt. Sukanya Devi. The petitioner filed representations that since her junior Smt. Sukanya Devi had already been promoted as Assistant she should be promoted from the date her junior was promoted but the case of the petitioner was not considered. The representation of the petitioner was rejected only on the ground that said Sukanya Devi had filed CWP No.-20868-2011 and petitioner was directed to submit the representation after the decision of the said case. The petitioner filed writ petition No. 18399-2012. The writ petition filed by Sukanya Devi was dismissed while the writ petition filed by the petitioner was allowed with the directions to the respondent-Commission to pass an appropriate order promoting the petitioner with effect from the date when Smt. Sukanya was promoted as Assistant with all consequential benefits in case all other conditions of eligibility under Rules and Government Instructions of 70% good ACR are met. The petitioner was promoted as Assistant w.e.f. 15.12.2008 but with a condition that the pay of the petitioner shall be notionally fixed w.e.f. 15.12.2008 and the petitioner would not be entitled to arrears. It may be pointed out here that the State has not challenged the decision granting relief to the petitioner alongwith all consequential benefits. Resultantly the order of this Court granting consequential benefits has become final. Then the petitioner filed COCP in the month of March 2015 in which notice of motion was issued and ultimately the said COCP was disposed of with a liberty to the petitioner to avail the remedies under the law. Hence, the present petition claiming that she is entitled to actual arrears.

In reply, it has been stated that since the petitioner did not

work on the higher post she would not be entitled to the arrears of pay and allowances.

Learned Senior counsel for the petitioner has argued that this is a clear case where respondents illegally prevented the petitioner from getting the benefits of higher post. The premise on which reliance is sought to be placed by the State is extremely one sided and self serving. In Ramesh Kumar v. Union of India and others, AIR 2015 SC 2904, the Supreme Court held as follows :-

“ 11. The respondents have advanced the argument that the denial of pay and allowances is on the principle of “no work no pay” and no injustice has been done to the appellant since he has not actually worked in the promotional post of Naib Subedar during the aforesaid period. It was submitted that the benefit of pay and allowances was rightly awarded w.e.f. 13.11.2000, the date on which the appellant actually assumed the rank of Naib Subedar but his seniority was maintained so as to protect his interest in his further promotions.

12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala & Ors. vs. E.K. Bhaskaran Pillai, (2007) 6 SCC 524, this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

‘... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the

incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.'

13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

In my opinion, facts of the present case are covered by the aforesaid decision. It cannot be lost sight of that as a result of the fault of the respondents an undeserving person has been granted extra pay and deserving person has been declined to that benefit on the ground that she has not worked on the said post. The premise on which reliance is sought to be placed is extremely one sided and self-serving. In view

of the categorical direction of this Court in CWP-18399-2012, I find no

justification for the absurd stand taken by the respondents.

Consequently, I allow the petition. The respondents are directed now to pay entire arrears within three months from the date of receipt of certified copy of this order. In case the amount is not paid within the aforesaid period, the respondent would be liable to pay sum with interest @ 12% per annum from the date/s amount/s it fell due. The petitioner would also be entitled to get Rs. 25,000/- as costs in view of the obdurate refusal of the respondents in giving her the due benefits.

02.02.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No