

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

CWP No. 21221 of 2014 (O&M)

Date of decision: February 8, 2017

Navjot Arora

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. PS Khurana, Advocate,
for the petitioner.

Mr. TN Sarup, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner wife of late Shri Sandeep Arora has approached this Court for issuance of a writ in the nature of Certiorari to quash the impugned order dated 13.2.2014, whereby the claim for grant of higher pay scale/emoluments for discharging duties by her husband on a higher post of Principal has been declined.

2. The facts, in brief, are that late Shri Sandeep Arora, husband of the petitioner, while working on the post of Head of Department, was given the officiating charge of Principal Government Polytechnic, Ferozepur with effect from 1.11.2001 and he performed the duties on the officiating post of Principal from 1.11.2001 to 14.5.2004. He unfortunately expired on 15.5.2004. The petitioner herein filed a writ petition before this Court i.e.

CWP No. 21869 of 2013, claiming higher emoluments admissible for the

post of Principal, against which post her husband was officiating for the aforesaid period, which was disposed of by directing the respondent authorities to consider the claim of the petitioner. The respondents rejected the claim of the petitioner primarily on the ground that the husband of the petitioner was working against the higher post but there was a stipulation in the said order itself that no honorarium for performing the duties as acting Principal would be given to him. Aggrieved against the denial of the additional emoluments for discharging the duties against the higher post, the instant writ petition has been preferred.

3. Learned counsel for the petitioner contends that on account of the additional charge that was given to husband of the petitioner, late Shri Sandeep Arora, he would be entitled to the difference of salary for discharging duties and responsibility of a higher post of Principal.

4. Per contra, learned counsel for the respondent—State contends that the husband of the petitioner would not be entitled to any benefit owing to the condition that had been imposed in the order itself that he would not get any additional honorarium for discharging the duties of higher post of Principal.

5. I have heard the counsel for the parties and have perused the record.

6. In **P.Grover Versus State of Haryana 1983 (3) SLR 735**, it has been held by the Hon'ble Apex Court that an employee, who has been called upon to discharge the duties and responsibilities of a higher post would be entitled the emoluments commensurate to that post, any condition imposed contrary thereto is unsustainable. It has been held as under:-

“The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt P. Grover after she was promoted to act as District Education officer. All that was said in the counter-affidavit was that there were no Class-I post available and therefore, she was not entitled to be paid the salary of District Education officer. We are unable to understand the reason given in the counter- affidavit. She was promoted to the post of District Education officer, a Class-I post, on an acting basis. Our attention was not invited to any rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled to be paid the salary of a District Education officer from the date she was promoted to the post, that is, July 19, 1976, until she retired from service on August 31, 1980. The appeal is accordingly allowed with costs.”

7. The argument raised by the learned State counsel that the petitioner had agreed not to accept any honorarium when he was given additional charge, is wholly untenable. It cannot loss sight of the fact that an employee, who has been given the duties and responsibilities of a higher post, is not in a position to turn down such order on account of the fact that

there is such a stipulation that he would not be paid any honorarium thereto.

His refusal to discharge duties might be construed as insubordination.

8. Therefore, in view of the law laid down that discharge of duties of a higher post an employee would be entitled to the pay commensurate to the said post, the husband of the petitioner was entitled to the same. It is held that the husband of the petitioner would be entitled to the arrears as flow from the direction of this court. The same be released to the petitioner with interest @ 6% from the due date till realization within a period of two months from the date of receipt of a certified copy of this order. However, in case the same is not released within the time as specified, the petitioner would be entitled to 9% interest on the amount so calculated and released.

9. The writ petition stands disposed of on the above terms.

February 8, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No