

In the High Court of Punjab & Haryana at Chandigarh.

CWP-20000 of 2016

Date of decision: 11.12.2017.

Jaswinder Pal Singh and others

..... Petitioners.

VS.

Punjab State Agricultural Marketing Board and anr.

..... Respondents.

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Devanshu Sobti, Advocate for
Mr. Dhiraj Chawla, Advocate
for the petitioners.

Mr. Sachin Luthra, Advocate for
Mr. I.S.Sidhu, Advocate
for the respondents.

TEJINDER SINGH DHINDSA,J.(ORAL)

Pleadings on record indicate that the petitioners were appointed as Supervisors under the Punjab Mandi Board on different dates between the years 1984 to 1989.

Vide order dated 23.05.2001, the petitioners were vested with the Current Duty Charge of the post of Junior Engineer. Subsequently, vide order dated 28.12.2006 (Annexure P4), the petitioners were granted regular promotion to the post of Junior Engineer.

The petitioners earlier filed CWP-4323-2015 claiming salary for the post of Junior Engineer for the period they held Current Duty Charge pertaining to such post. The writ petition was disposed of with a direction to the respondent-Punjab Mandi Board to take a decision on the representation that had been submitted. The claim of the petitioners seeking salary against the post for the period they were vested with the Current Duty Charge, has been rejected vide Memo dated 15.06.2015 (Annexure P-8)

Challenge in the instant petition is to the memo dated

15.06.2015 (Annexure P8).

Upon notice of motion having been issued, written statement has been filed and placed on record.

Passing of the impugned order is sought to be justified on the basis that while assigning the Current Duty Charge vide order dated 23.05.2001 (Annexure P2), there was a specific condition that the employees would undertake the work of Junior Engineer but they would continue to draw emoluments in their existing pay scale and would not be given any additional financial benefits.

Learned counsel representing the respondent-Punjab Mandi Board would contend that the petitioners have joined as Junior Engineer (Current Duty Charge) only upon acceptance of such specific condition and now they cannot be permitted to turn around to claim salary of the post of Junior Engineer.

The factual premise as regard the petitioners having been vested the Current Duty Charge of the higher post of Junior Engineer vide order dated 23.05.2001 (Annexure P2) is not disputed.

Subsequently, vide order dated 28.12.2006, the petitioners have been regularly promoted as Junior Engineer.

It is also not in dispute that for the period 23.05.2001 till 28.12.2006, the petitioners had discharged the work and responsibility of the higher post of Junior Engineer be that of Current Duty Charge basis.

The question as regards the entitlement to the pay and emoluments in relation to a higher post against which the employee has discharged his duties, be it on an officiating basis/Current Duty Charge, is no longer res-integra. It is by now well settled that an employee who has

been called upon by the State Government to work against the higher post would be entitled to the pay and emoluments of such post. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in **Smt. P.Grover Vs. State of Haryana and another, AIR 1983 SC 1060.**

As such, there would be no justifiable basis with the respondent-Mandi Board to deny to the petitioners the pay and emoluments of the post of Junior Engineer for the period 23.05.2001 upto 28.12.2006 as they had admittedly discharged the duties of such post during such period.

Reliance placed by learned counsel representing the respondent-Mandi Board upon the stipulation contained in the order vesting the Current Duty Charge of the post of Junior Engineer to the effect that the petitioners would not be entitled to any extra remuneration/emoluments, is wholly misconceived. The Government in its capacity as a model employer cannot be permitted to raise such an argument and to enforce such condition whereby, on the one hand, it is putting an official to discharge the duties on higher post with greater responsibility and, on the other hand, seeking to deny to such an employee his entitlement to the salary admissible to such post.

A similar issue came up for consideration before the Hon'ble Apex Court in **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma, 1998 (3) SCT 90**, wherein, the respondents 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 the respondent to be entitled to the pay and emoluments of the higher post against which he had been called upon 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 the 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, stipulation on which the reliance has been placed on behalf of the Punjab Mandi Board to deny the petitioners the pay and emoluments of the post of Junior Engineer for the period in question is of no consequence.

Even the objection raised in the written statement as regards the delay is not well founded.

The petitioners had discharged the duties of the higher post of Junior Engineer for the period 23.05.2001 till 28.12.2006. They having not been paid salary for such period, it was a recurring cause of action. Representations were filed by the petitioners. Having not evoked any response, the petitioners were constrained to approach this Court by filing CWP-4323 of 2015 and which came to be disposed of vide order dated 12.03.2015. It is only in compliance of the directions issued by this Court that the Punjab Mandi Board has passed the impugned order dated 15.06.2015 (Annexure P8) declining the claim of the petitioners.

Under such peculiar facts and circumstances of the case, the claim of the petitioners cannot be defeated on the ground of delay.

For the reasons recorded above, the petition is allowed. The petitioners are held entitled to the pay and emoluments for the post of Junior

Engineer for the period they had worked on such post on Current Duty Charge basis i.e. from 23.05.2001 till 28.12.2006.

The necessary amount be calculated and be released to the petitioners within a period of eight weeks from the date of receipt of certified copy of this order.

Petition stands allowed in aforesaid terms.

11.12.2017
smriti

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No