

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

CWP No.22582 of 2014 (O&M)
Date of decision: March 3, 2017

Dr. Kanwarjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Armaan Midha, Advocate,
for respondent No.3.

Mr. HC Arora, Advocate,
for respondent No.4.

JAISHREE THAKUR, J.

1. The petitioner has filed this instant writ petition seeking a writ in the nature of Mandamus directing the respondents to grant arrears of salary and allowances on account of having worked on the higher post of Principal of Gurmat College, Patiala, in the pay scale of Rs. 37400– 67000 + AGP 10,000 along with interest.

2. While working in the College, the petitioner was appointed as officiating Principal and worked and discharged his duties from 23.01.2006 to 14.10.2007. Thereafter, order dated 5.6.2009 was issued appointing him as officiating Principal and he has continued to discharge his duties

accordingly.

3. Mr. Sanjay Majithia, learned Senior Counsel appearing on behalf of the petitioner, contends that the petitioner having worked as officiating Principal for a period of almost 2 years is entitled to be paid remuneration for discharging duties on the post of Principal from 23.01.2006 to 14.10.2007, as also half salary of that of Assistant Professor as per University Rules. Further more, he is entitled to be paid a higher salary on the basis of discharging duties of a officiating Principal after issuance of order dated 5.06.2009. It is argued that that law is settled that any person performing duties of the higher post, are to be paid the difference of pay for temporarily discharging duties under office orders.

4. Per contra, learned counsel appearing on behalf of the respondents submit that the petitioner herein is not entitled to the benefit claimed on account of the fact that his appointment to the post of officiating Principal was in his own pay scale with only an additional benefit of Rs 2000/- as extra remuneration, and also his very appointment on the post of Lecturer it is under question and is pending consideration in this Court. It is also argued that there is a considerable delay in raising the claim and the writ should be dismissed on grounds of delay and laches.

5. I have heard the learned counsel for the parties and have also perused the record of case.

6. Admittedly, the petitioner was given the charge of officiating Principal by an order dated 5.6.2009 and on the strength of that order he discharged his duties. The judgment rendered in **P Grover versus State of**

Haryana reported in 1983 AIR (SC) 1060 clearly lays down the principle

that an officer promoted to a higher post on acting basis is entitled to salary of such higher post. Even in that case there was a condition that appellant would continue to draw her salary on her own pay scale, while discharging duties as an Acting District Education Officer. The Supreme Court held that in absence of any rule justifying such refusal to pay an officer promoted to a higher post, the salary of such higher post, she would be entitled to the same. The doctrine of *quantum meruit* guarantees equal pay for performing duties of a higher post in a temporary arrangement so that higher post is not left unmanned.

7. The petitioner's claim in the writ petition is to arrears for officiating as Principal during the period 23.01.2006 to 14.10.2007 and for the period he has been officiating as Principal after 5.6.2009. The first claim is clearly barred by the law of limitation. The petitioner herein is claiming in a writ petition filed in the year 2014 for arrears being the difference in pay scale on account of having worked on a higher post for the period 23.01.2006 to 14.10.2007. The period of limitation for filing a suit for recovery is 3 years and the same would be time-barred in the year 2014. Therefore, this writ petition qua seeking arrears for the aforesaid period i.e. 23.01.2006 to 14.10.2007 is dismissed on ground of delay and laches.

8. A prayer has also been made for grant of arrears for discharging duties on the higher post after office order dated 05.06.2009 was issued. It is argued by the respondents that the very appointment of the petitioner as a Lecturer in the Department is under challenge in separate writ proceedings and, therefore, he would not be entitled to receive the pay of an officiating Principal. The respondents herein have argued that the petitioner is

discharging duties of Principal on the strength of an interim order issued by this court in CWP No. 15208 of 2013. In this regard, this Court is of the opinion that as on date the petitioner is working and discharging duties of an officiating Principal on the basis of an order that came to be issued on 05.06.2009. Till such time as the petitioner discharges his duties on a higher post he would be entitled to be paid the difference in salary. Even if there is a challenge to his appointment on the said post, the selection of the petitioner as on date has not been set aside.

9. An additional argument has been raised that the judgment rendered in **Smt. P.Grover's case (Supra)** is not applicable and the same has been considered in the judgment rendered by the Supreme Court in **State of Haryana versus R.K. Aggarwal reported in 1997 (4) RSJ page 49**. The judgment as relied upon is distinguishable and does not overrule the ratio as laid down in the case of **Smt. P Grover (Supra)**. In **Jagdish Lal Bhutani v. State of Haryana 1996 (1) SCT 730**, a Single Bench of this Court observed that when the petitioner is actually discharging the duties of particular post, then he acquires a legal as well as constitutional right to get the salary for that post.

10. Therefore, in view of the law laid down that on discharge of duties of a higher post, an employee would be entitled to the pay commensurate to the said post, the petitioner is entitled to the same and any contrary clause thereto would be unjustifiable. It is held that the petitioner would be entitled to the arrears as flow from the direction of this court but limited to a period of 38 months as of the date of filing the writ petition. 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.

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

March 3, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No