

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

CWP No. 24359 of 2014 (O&M)
Date of decision: 24.4.2017

Kusamjit Kaur

...Petitioner

Versus

The State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. L.S. Virk, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein claims for higher pay for the duties and responsibilities discharged by him on the post of Superintendent Grade-I.

2. The facts, in brief, are that the petitioner was initially appointed as Steno-Typist in the Department of Cultural Affairs Archive and Museum on 16.9.1976. Eventually, he was promoted as Superintendent Grade-II by order dated 17.11.2008. One Jasbir Singh who was working in the Department as Superintendent Grade-I sought voluntary retirement, as a consequence of which that post fell vacant with effect from 1.11.2008. The petitioner by order dated 16.12.2008 was ordered to discharge duties of Superintendent Grade-I and was eventually promoted to the said post by order dated 7.2.2014. Having discharged the duties of the higher post i.e.

Superintendent Grade-I, the petitioner represented to the Department raising

a claim for the pay of that post, which came to be rejected by the impugned order dated 12.3.2014. Aggrieved the instant writ petition has been filed.

3. Mr. Manu K. Bhandari, learned counsel appearing on behalf of the petitioner, contends that the petitioner herein is entitled to higher salary for the period he performed the duties and responsibilities of Superintendent Grade-I. It is contended that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attached to the substantive post, then he would be entitled to the salary of his officiating post in higher grade. In this regard, reliance has been placed upon the judgments rendered in **Smt. P. Grover V. State of Haryana and another AIR 1983 Supreme Court 1060** and a Division Bench judgment of this Court in **Subhash Chander Versus State of Haryana and others** reported as **2012 (1) SCT 603**.

4. Per contra, Mr. L.S. Virk, learned Additional Advocate General, Punjab, appearing on behalf of the respondents, admits that the petitioner though was ordered to discharge the duties of Superintendent Grade-I after the voluntary retirement taken by Jasbir Singh, but argues that she would not be entitled to benefit for higher grade on account of the fact that the order by which the petitioner was ordered to officiate as Superintendent Grade-I clearly specified that she will not be given any additional allowance for working in the said post and, therefore, the writ petition ought to be dismissed.

5. I have heard learned counsel for the parties and have also perused the record of the case and suffice to say that the present matter is

squarely covered by the judgment of this Court in **CWP No. 13349 of 2014 titled Surinder Singh and others Versus State of Punjab and others** and others similar matters which came up for hearing before this Court in **CWP No. 21221 of 2014 titled Navjot Arora Versus State of Punjab and another** decided on 8.2.2017 and **CWP No. 22582 of 2014 titled Dr. Kanwarjit Singh Versus State of Punjab and another** decided on 3.3.2017. The principle of which judgments have been based on the doctrine of '*quantum meruit*' equal pay for performing duties of the higher post in a temporary arrangement depending on the exigencies of administration so that the higher post is not left unmanned. The judgment rendered in **P. Grover (supra)** also dealt with similar situation where the order appointing a person to higher post in her own pay scale was set aside and it was held as under:-

“3. We mentioned that she was promoted as an acting District Education Officer with effect from July 19, 1976. The order of promotion contained a superadded condition that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order was extending her services recited that she was an acting District Education Officer, but contained a superadded condition that her pay would not be more than the maximum of the principal's grade. Smt. Grover claims that having been promoted as District Education Officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Article 136 of the Constitution. 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 was no Class-I posts 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 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.”

6. In the case of **Subhash Chander** (supra), a Division Bench of this Court, while relying upon the judgment of **P. Grover** (supra), has held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post, then he would be entitled to the salary of his officiating post in higher grade.

7. Similarly, in the instant case, once the petitioner who was working as Superintendent Grade-II and was asked to officiate as Superintendent Grade-I, would necessary be required to pay the higher grade for the duties discharged by him on the said post.

8. Resultantly, the writ petition is allowed. The respondents are directed to calculate the difference in pay scale for the period the petitioner

officiated as Superintendent Grade-I and the same be released to him within a period of two months from the date of receipt of a certified copy of this order.

24.4.2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No