

CWP No. 30 of 2015 (O&M)

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

CWP No. 30 of 2015 (O&M)

Date of decision : February 08, 2017

Sheelawanti

..... Petitioner

v.

HVPNL and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. DR Bansal, Advocate
for the petitioner.

Mr. Suvir Sehgal, Advocate and
Mr. Daman Dhir, Advocate
for the respondents.

Ajay Tewari, J (Oral)

Grievance of the petitioner in this writ petition is that no actual benefits were granted for back dated promotion but only notional benefits were granted to her husband.

Brief facts are that husband of the petitioner joined the

services of the erstwhile Haryana State Electricity Board on 7.3.1980. His services were terminated on 16.10.1992. He challenged the same by filing a civil suit which was decreed on 21.4.1997 and his termination order was set aside and the respondents were directed to give all consequential benefits to him. Ultimately, that decree was maintained upto the Supreme Court. However, on the same charges, he was again charge sheeted and he challenged the same by way of CWP No.15771 of 2002 which was allowed on 25.8.2003 and that charge sheet was quashed. During this interregnum, services of number of employees junior to the husband of the petitioner were regularized. Ultimately, husband of the petitioner filed a civil suit claiming regularization from the date services of his juniors were regularized. That civil suit was dismissed on 5.2.2009. He filed first appeal but died during the pendency thereof. Ultimately that claim was allowed by the respondents during the pendency of RSA No.1315 of 2011 and in judgment dated 3.2.2014, it was held as follows :-

“ Faced with the above, learned counsel for the appellant-plaintiff also fairly states that in view of the above said order passed by the competent authority, he does not intend to press this appeal any further and the same may be disposed of as having been rendered infructuous. However, he submits that liberty may be granted to the plaintiff-appellant to pursue her other remedies, in accordance with law. This request has not been opposed by the learned counsel for the respondents.

In view of the above said statements made by learned counsel for the parties, liberty sought by the appellant is granted. Appeal stands disposed of accordingly.”

Subsequent to this, the husband of the petitioner moved a representation dated 3.2.2014 claiming that, among other reliefs, he was also entitled to be promoted from the date his junior was promoted. By the impugned order, as mentioned above, all other prayers were accepted and as regards the date of promotion that was also given to him but only notional benefits thereof were given. By the present writ petition, the petitioner claims that the actual benefits of the posts of Assistant Forman and Junior Engineer had also to be granted to her husband, in view of the above facts.

The only justification given for the refusal, by learned AAG Haryana, is that the husband of the petitioner had not actually worked on that post. It cannot be lost sight of the fact that as a result of the fault of the respondents, a person junior has been granted extra pay while a senior person has been declined the same benefit on the ground that she has not worked on the said 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. Consequently, I allow this writ petition. The respondents are directed to pay the entire arrears within three months from the date of receipt of a certified copy of this order. In case the amount is not paid within the stipulated period, the respondents would be liable to pay the amount with interest @ 12% pa from the date/s the amount/s fell due.

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Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

February 08, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No