

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

245

**CWP-5847-2016
Decided on 24.01.2017**

AJIT SINGH KUNDU

....PETITIONER

VS

STATE OF HARYANA & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. C.R.Dahiya, Advocate
for the petitioner.

Mr. R.K.Doon, AAG, Haryana.

Mr. Anil Chawla, Advocate
for respondent No.3.

AJAY TEWARI, J.(Oral)

By this petition, the petitioner is praying for quashing of the order dated 05.02.2016 passed by respondent No.1 to the extent that he will not be entitled to arrears of pay and allowances on account of fixation of pay, till he actually joins.

Brief facts of the case are that the petitioner was working as Town Planner and his junior was promoted as Chief town planner by order dated 22.12.2011. The primarily ground taken for ignoring the petitioner was that there were some adverse remarks. He challenged that Annual Confidential Report by filing Civil writ petition No. 26267-2014. During the pendency of that writ petition the respondents promoted the petitioner with effect from 22.12.2011 but declined pay and allowances for the said period and limited the actual benefits from

the date he joined the promoted post. By this petition, the petitioner has challenged the denial of the pay and allowances with effect from 22.12.2011.

Learned counsel for the petitioner has argued that by granting him promotion with effect from 22.12.2011 the respondents have in fact, unilaterally eroded the effect of the Annual Confidential Report and it has now been held as if the adverse remarks were expunged because otherwise the petitioner could not have been promoted. Learned counsel for the petitioner states that he seeks no relief against respondent No. 3 and 4. He has placed reliance upon “**Sardar Singh vs. State of Haryana 2015(2)RSJ**” wherein this Court held as follows:

“In the present case, it is not a situation where there was dispute regarding seniority and promotion could not have been given because of uncertainty on the issue of seniority as per the law laid down by Hon'ble the Supreme Court in the case of State of Haryana v. O.P.Gupta, 1996 (2) SCT 294: (1996) 7 SC 533. However, Hon'ble the Supreme Court in the case of State of Kerala v. E.K.Bhaskaran Pillai, 2007(2) SCT 757: (2007)6 SCC 524, has held that the principle of 'no work no pay' cannot be regarded as a rule of thumb and grant of full back wages in certain eventualities is inoperative particularly when promotion is wrongly denied. In Para 4, their Lordships have made reference to various judgments rendered by the Supreme Court in the cases of Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541; Virender Kumar v. Avinash Chandra Chadha, (1990)3 SCC 472; A.K.Soumini v. State Bank of Travancore, 2004(2) SCT 315; (2003) 7 SCC 233;

*Union of India v. Tarsem Lal, 2006(4) SCT 355 (2006)
10 SCC 145; Union of India v. K.V.Jankiraman, 1991 (3)
SCT 317: (1991(4) SCC 109; State of A.P. v. K.V.L.
Narasimha Rao, 1999(2) SCT 684: (1999)4 SCC 181;
Vasant Rao Roman v. Union of India, 1993 Supp. (2)
SCC 324; State of U.P. Vinod Kumar Srivastava, (2006)
9 SCC 621; and O.P.Gupta's case (supra) and held as
under:*

*“.....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.”(emphasis*

supplied)

Learned AAG has argued that once the petitioner did not work on the post he could be denied for the benefit on the principle of no work no pay.

I find that the facts of the present case would be covered by the exposition of law highlighted above, the petition is allowed and petitioner is granted monetary benefit which are due by granting him actual benefits with effect from 22.12.2011 and pay the same to him within the period of 03 months. It is made clear that if any due relief is not granted within the aforesaid period the petitioner would be entitled to claim interest @ 12 % per annum on the amount/s from the date/s it fell due.

24.01.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No