

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

Civil Revision No.5399 of 2014 (O&M)
Date of Decision: February 09, 2018

Kirpal Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.R.S.Bajaj, Advocate,
for the petitioner.

Ms.Devki Anand Sullar, AAG, Punjab,
for the State.

AMIT RAWAL, J. (Oral)

The present revision is directed against the order, whereby in an earlier decision the petitioner-plaintiff was denied payment of arrears despite having given retrospective promotion w.e.f. 1.12.1999 on pro rata basis as an ASI.

Mr.R.S.Bajaj, learned counsel for the petitioner submits that this case had a chequered history as in the year 1991, petitioner was dismissed from service on account of absence, but due to the intervention of the Court was reinstated w.e.f. 30.3.1999, yet was not given any retrospective promotion. In this regard, he instituted a suit. During the pendency of the suit, the respondents again started enquiry, which was challenged in the writ petition. The aforementioned writ petition was admitted with a direction that that the enquiry proceedings may go on, but final order may not be passed. In the meantime, the suit was decreed on

3.11.2007 with directions to the department to pass a speaking order. The department on 3.4.2014 passed the speaking order, but was kept in a sealed cover owing to the pendency of the writ petition. The petitioner withdrew the writ petition and the outcome of the decision, kept in the sealed cover, came in his favour, whereby he was given retrospective promotion, but denied back wages.

It is further contended that the entire episode, aforementioned, was not on account of the fault of the petitioner, whereas he was claiming his statutory right of promotion with retrospective effect. Even the enquiry proceedings were initiated without any rhyme or reason, therefore, it is not a case where the petitioner though wanted to work was prevented from performing his duties. In support of his contention, Mr.Bajaj has relied upon the ratio decidendi culled by the Three Judges Bench of Hon'ble Supreme Court in **Union of India Versus K.V.Jankiraman, 1991 (3) JT 527.**

Ms.Devki Anand Sullar, learned Assistant Advocate General, Punjab representing the State did not dispute the filing of the suit for declaration and withdrawal of the writ petition, but submitted that the principle of 'no work no pay' would apply for not discharging the duties and, therefore, rightly so, the petitioner was denied the wages for the period he remained out of service, but the other benefit, i.e., promotion has been granted. In support of her submission, relied upon the ratio decidendi culled out in an unreported judgment of this Court in **Civil Writ Petition No.18632 of 2015 (Joga Singh Versus State of Punjab & others)**, decided on 9.5.2017 and **Paluru Ramkrishnaniah Versus Union of India, 1989(2) SCC 541 (para 19)**, which reads thus:-

“19. Since, however, the judgment of this Court dated 2nd

February, 1981 in Civil Appeal No.441 of 1981 (reported in AIR 1981 SC 1775 (1) has not been challenged and has become final, the next question which falls for consideration is as to what further relief, if any, are the appellants in Civil Appeal No.441 of 1981 entitled in pursuance of the Civil Miscellaneous petitions referred to above filed by them. The reliefs which they have claimed have already been indicated above. It is now not disputed that the appellants of this appeal have in pursuance of the order of this Court dated 2nd February, 1981 been given a back date promotion to the posts of Chargemen II synchronising with the dates of competition of their 2 years of service as Supervisor 'A'. The grievance of the petitioners, however, is that this promotion tantamounts to implementation of the order of this Court dated 2nd February, 1981 only on paper in as much as they have not been granted the difference of back wages and promotion to higher posts on the basis of their back date promotion as Chargemen II. As already noticed earlier certain writ petitions filed in Madhya Pradesh High Court were allowed by that Court on 4th April, 1983 relying on the judgment of this Court dated 2nd February, 1981 in Civil Appeal No.441 of 1981. Against the aforesaid judgment of the Madhya Pradesh High Court dated 4th April, 1983 Special Leave Petitions (Civil) Nos.5987-92 of 1986 were filed in this Court by the Union of India and were dismissed on 28th July, 1986. The findings of the Madhya Pradesh High Court in its judgment dated 4th April, 1983 thus stand approved by this Court. In this view of the matter to put them at par it would be appropriate that the appellants in Civil Appeal No.441 of 1981 may also be granted the same relief which was granted to the petitioners in the writ petitions before the Madhya Pradesh High Court. As regards back wages the Madhya Pradesh High Court held:-

“It is the settled service rule that there has to be no pay for no work i.e., a person will not be entitled to any pay and allowance during the period for which he did not

perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them.”

I have heard the learned counsel for the parties and appraised the paper book.

The facts aforementioned have not been controverted, much less promotion given to the petitioner with retrospective effect from 1.12.1999, whereby he was appointed as Assistant Sub Inspector, but whether in such circumstances, petitioner would be entitled to the salary or not, is the only question which is to be considered.

In paragraphs 24 and 25 of the judgment cited by Mr.Bajaj, i.e., **K.V.Jankiraman (supra)**, the Court though applied the principle of “No work no pay”, but in that case a person was prevented to discharge the duties for no fault of his, it was held that back wages, in such circumstances, could not be denied, whereas in paragraph 19 of **Paluru Ramkrishnaniah (supra)**, extracted above, it was found that since the workman did not discharge the duties, therefore, principle of “No work no pay” would apply.

In the instant case, the petitioner not once but thrice compelled to approach the Court by filing the civil suit, writ petition and now civil revision against denial of the benefits of back wages. During all this period, he was claiming reinstatement. He was liable to be granted retrospective

promotion, which was denied to him compelling him to file the civil suit. During the pendency of the civil suit, enquiry proceedings were initiated, but final order was kept in abeyance. On withdrawal of the writ petition, the enquiry proceedings culminated in his favour and ultimately, was granted the benefit. In my view, the petitioner was not intentionally prevented from discharging the duties and, therefore, cannot be denied the back wages by applying the principle of 'No work no pay'. However, once both the parties at one point or other were pursuing the case diligently, in peculiar facts and circumstances of the case, I deem it appropriate to confine the back wages to 50%.

The order of the Executing Court is modified to the aforementioned extent. Revision petition stands allowed.

February 09, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No