

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

CWP-16025-1995

Date of decision: - 12.11.2018

Rohtash Singh Kharb

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.S. Kharb, Advocate,
for the petitioner.

None for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

Present writ petition has been filed challenging the order dated 14.07.1993 (Annexure P-7) by which the petitioner has been denied the difference of arrears of salary for the period from 31.01.1986 till 22.03.1990 (actual date of joining) after he was granted deemed date of appointment retrospectively in the Haryana Civil Services (Executive Branch) w.e.f. 31.01.1986.

Petitioner in the present writ petition has set out the facts that nine posts for H.C.S. (Executive Branch) were advertised in 1984. There were six vacancies for 'A' Class Tehsildars which were also advertised in the same advertisement. After competing, the petitioner got selected and

was placed at Serial No.11 in the merit list. As the petitioner could not make up within nine vacancies which were advertised in the HCS (Executive Branch), therefore, he was appointed as 'A' Class Tehsildar. The said appointment was made on 25.07.1986. It is a matter of record that two candidates, who were selected against the nine vacancies of HCS (Executive Branch), did not join and ultimately, on 20.03.1990, said two posts of HCS (Executive Branch) was offered to one Ramesh Chand Verma who was at merit position 10 and the petitioner joined the said post on 22.03.1990.

There is no pleading as to how the petitioner was offered the post of HCS (Executive Branch) but counsel for the petitioner has informed the Court that the petitioner was offered the appointment as HCS (Executive Branch) as per the order passed by this Court. The said appointment was made with prospective effect i.e. w.e.f. 20.03.1990. Thereafter, the petitioner once again approached this Court by filing CWP No.802 of 1993 seeking appointment in HCS (Executive Branch) with effect from the date on which the other candidates were appointed i.e. 31.01.1986.

In order to ascertain the correct facts the record of CWP No.802 of 1993 was called for. From the said record it transpires that in order to seek appointment to the HCS (Executive Branch), the petitioner filed a Civil Writ Petition No.8330 of 1987, which came to be decided on 18.09.1989. By this order, this Court directed that the petitioner be appointed to the HCS (Executive Branch) against one of the two vacancies, which could not be filled up due to the non-joining of the

candidates. The relevant portion of the said judgment is reproduced hereunder: -

“Admittedly nine top persons were to be selected for Haryana Civil Service (Executive Branch) and the next six candidates for the posts of 'A' Class Tehsildars. The remaining persons were to be appointed as Assistant Employment Officers. With the non-joining of two persons, the petitioner's ranking is amongst the first nine. So, non-preparation of waiting list by the Commission will not work to the disadvantage of the petitioner as the competitive examination was for Haryana Civil Service (Executive Branch) and Allied Services and the merit list was prepared according to the position in the examination. In that merit list, the petitioner was at serial No.11. By non-joining of two persons in the Haryana Civil Service (Executive Branch) and one in 'A' Class Tehsildars, who was higher in the merit list, the petitioner goes up by three steps and is entitled to be appointed in the Haryana Civil Service (Executive Branch) being amongst the first nine. The government instructions of the Public Service Commission Rules do not envisage such a situation where a competitive examination is conducted for a number of services and recruitment are to be made in the order of combined merit, as in the present case. In such a situation, even if there is no waiting list, the order of merit is quite apparent because the purpose of preparing list is only to show what is the order of merit of the candidates. In this case, the order of merit is obvious because first nine candidates were to be appointed to the Haryana Civil Service (Executive Branch), the next six candidates to the posts of 'A' Class Tehsildars and the remaining candidates to the posts of Assistant Employment Officers. So, the preparation of a waiting list would have been only a formality.

In view of above discussion, as the petitioner is amongst the first nine candidates in order of merit and nine persons were to be appointed to the Haryana Civil Service (Executive Branch), he is entitled to be appointed in the Haryana Civil Service (Executive Branch). Consequently, a writ of mandamus is issued directing the

respondent to offer to the petitioner appointment for the post of Haryana Civil Service (Executive Branch) as he is amongst the first nine candidates declared successful as a result of the competitive examination held by the Commission in the year 1984. There shall be no order as to costs.”

A bare perusal of the above-said order shows that there is no order by this Court for grant of appointment with retrospective effect or any consequential benefits on appointment to the Haryana Civil Services (Executive Branch).

Petitioner again filed second Civil Writ Petition No.802 of 1993 claiming appointment in Haryana Civil Services (Executive Branch) with retrospective effect. In the said writ petition, the Government accepted the claim of the petitioner of appointing him with effect from 31.01.1986 when the other selected candidates in the Haryana Civil Service (Executive Branch) joined. Along with the writ petition, the petitioner attached the order passed by the State of Haryana in respect of one Shri Ramesh Chand Verma, who was at merit position No.10 and had been granted the notional fixation in the Haryana Civil Service (Executive Branch) cadre with effect from 31.01.1986 (Annexure P-8 with CWP No.802 of 1993).

During the pendency of CWP No.802 of 1993, the Government re-considered and decided to grant the petitioner the same benefit as was being granted to Sh. Ramesh Chand Verma, who was senior to the petitioner in the merit i.e. at merit No.10. In the petition, the petitioner was claiming the said benefit as was extended to Sh. Ramesh

Chand Verma on the ground that he was similarly situated. Keeping in view the fact that the Government had acceded to the claim of the petitioner, CWP No.802 of 1993 was decided vide order dated 20.05.1993 (Annexure P-6) rendering the petition as infructuous.

In pursuance to the decision taken by the Government, vide letter dated 14.07.1993 (Annexure P-7) an order was passed by which the petitioner's salary was fixed in the HCS (Executive Branch) in the pay-scale of 2200-4000 w.e.f. 31.01.1986 by giving him deemed date of appointment. As per the paragraph 3 of the said order, the petitioner was declined the arrears from 31.01.1986 (deemed date) till 22.03.1990 (actual date) when the petitioner had actually joined HCS in the Executive Branch. The said order dated 14.07.1993 (Annexure P-7) is under challenge in the present writ petition.

The contention raised by counsel for the petitioner is that once the petitioner was appointed retrospectively in the HCS Branch w.e.f. 31.01.1986, he is entitled for salary of the said post and therefore denying him the arrears on the said post even after giving the deemed date of appointment and fixing his salary in the HCS (Executive Branch) w.e.f. 31.01.1986, is bad in the eyes of law.

Respondents in their reply have defended their order of not granting the arrears to the petitioner on the ground that the petitioner kept on working as a Tehsildar Class 'A' till 22.03.1990, for which he was being paid salary. The petitioner started working as HCS (Executive Branch) only from 22.03.1990 and therefore, as the petitioner have not performed/discharged the duties on the post of HCS (Executive Branch)

from 31.01.1986 till 22.03.1990, therefore, even though the pay of the petitioner is fixed in the cadre of HCS (Executive Branch) w.e.f. 31.01.1986, but he is not entitled for the arrears of the same as the petitioner never discharged the actual duties of the said post till 22.03.1990.

In reply the State mentioned that the petitioner has been given the same benefit as being given to a candidate, who was senior in the merit and was similarly situated, who was also given the retrospective appointment in HCS (Executive Branch) without any arrears.

I have given a thoughtful consideration on the plea raised by learned counsel for the petitioner.

It is an admitted fact that the petitioner had actually worked as Tehsildar Class 'A' upto 22.03.1990 for which he has been duly paid salary. By granting retrospective promotion to the HCS Branch w.e.f. 31.01.1986, the petitioner has been given the notional fixation of his pay from the said date, vide letter/order dated 14.07.1993 (Annexure P-7). The denial of the arrears on the ground that the petitioner had not actually worked on the said post is a good reason to deny the difference of pay which the petitioner is claiming from 31.01.1986 till 22.03.1990. Therefore, the claim made by the petitioner has rightly been rejected by the State.

Counsel for the petitioner has raised the contention that as the petitioner was kept away from the post of HCS (Executive Branch) despite being legally entitled to, he should not be penalized for not working on the said post. In this regard, the petitioner had filed a writ

petition claiming appointment to the post of HCS (Executive Branch). It is admitted by the counsel for the petitioner that the petitioner was granted appointment to the HCS (Executive Branch) after the said benefit was allowed by this Court.

Once this Court while deciding CWP No.8330 of 1987 did not give any consequential benefits, the petitioner could not have claimed the same by present writ petition. Furthermore, when the benefit of retrospective appointment without arrears was allowed in favour of Sh.Ramesh Chand Verma, the petitioner approached this Court claiming the same benefit, which was also extended to him. At the time when the said writ petition was rendered infructuous, the petitioner could have claimed the arrears. Now the petitioner is estopped from claiming the said arrears in the present writ petition. Further, the petitioner has also been extended the benefit which a candidate higher in the merit was extended to remove the discrimination.

Petitioner relied upon a judgment of the Hon'ble Supreme Court in case **Prof. C.D. Tase Vs. University of Bombay and others**, **1989(1) RSJ, 366 (SC)** to claim the benefit of arrears.

Said judgment will not help the petitioner as the Hon'ble Apex Court had only granted the higher pay-scale with retrospective effect and not the arrears accruing out of the same.

In the present case vide order dated 14.07.1993 (Annexure P-7) the benefit of higher pay-scale 2200-4000 has already been granted to the petitioner w.e.f. 31.01.1986. It is only the difference of pay, which has been denied by the State on the ground that the petitioner did not

discharge the duties of the HCS (Executive Branch) in actual from 31.01.1986 till 22.03.1990.

Counsel for the petitioner has also relied upon a judgment of this Court passed in case titled 'Neeraj Kumar Gaur Vs. The State of Haryana and others', 1999 (5) SLR 606. In the said case, the claim was that a person, who was lower in merit, was appointed, whereas the petitioner therein despite having a better claim was not appointed. Ultimately, an order of appointment was made by granting appointment to the petitioner therein with effect from the date the person lower in merit was appointed. Under those circumstances, this Court directed that whatever the benefits have accrued to respondent No.5, who was lower in merit, should also be given to the petitioner therein to restore the parity between the two. In the present case, there is no one lower in merit who was appointed prior to the petitioner in HCS (Executive Branch). Further it is not the case of the petitioner that the candidate who was at merit position No.10 i.e. above the petitioner, was extended the benefit of appointment in HCS (Executive Branch) with retrospective effect along with arrears.

It is a well settled law that mere retrospective promotion from back date does not *ipso facto* require the consequential benefits to be given and there may be a varying situation where the arrears may be given or may not be given. It all depends on the facts of each case.

The Hon'ble Supreme Court of India in Union of India Vs. B.M. Jha, 2007(11) SCC 632 after considering the law on this aspect held that the arrears of salary cannot be granted in view of the principle of

no pay no work on retrospective promotion. The relevant paragraph of the said judgment is as under: -

“We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent normally he is entitled to all benefits flowing therefrom. However, this Court in the case of *State of Haryana and others v. D.P. Gupta and others, (1996) 7 SCC 533* and followed in the case of *A.K. Soumini v. State Bank of Travancore, 2003(8) JT (SC) 35* has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of no work no pay. The learned Division Bench in the impugned judgment has placed reliance on the case of *State of Andhra Pradesh v. K.V.L. Narasimha Rao and Ors., 1999 (3) JT (SC) 205*. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of no work no pay in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17.5.2000 passed by the Division Bench of the High Court as also the order dated 11.1.2000 passed by the Central Administrative Tribunal, Principle Bench.”

In **Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others, 1990 (3) SCC 472**, the Hon'ble Supreme Court held that there is neither equity nor justice in favour of employees to award them emoluments of higher posts with retrospective effect when the employees did not work on the

said post. Hon'ble Supreme Court further held that no work no pay principle is attracted where the employees have not worked on a higher post, but have only been granted retrospective promotion/appointment.

The Hon'ble Supreme Court in **State of Haryana Vs. O.P. Gupta etc., 1996(7) SCC 533**, has followed the same principle and held that the arrears of salary cannot be granted from the deemed date of promotion.

Even the Division Bench of this Court in **Prem Kumar Chauhan Vs. Punjab State Electricity Board and others, 2008 (4) SLR 635**, after considering the law on the grant of arrears of retrospective promotion, has held that consequential benefits cannot be claimed as a matter of right on getting retrospective promotion/appointment. The relevant part of the said judgment is as under: -

“In ***Union of India v. K.V. Janakiranam (1991) 4 SCC 109***, it was held that where an employee is completely exonerated and gets promotion under a sealed cover procedure, he was entitled to consequential benefits of promotion. However, in ***Telecommunication Engineering Services Association and (India) another v. Union of India and another 1994 Supp. (2) SCC 222***, the said judgment was distinguished and it was held that where due date of promotion on revision of seniority was given as a result of decision of Court and notional promotion was given with retrospective effect, consequential benefits did not automatically follow. In ***Varinder Kumar & ors. v. Avinash Chandra Chadha & ors. AIR 1991 SC 958***, it was held that where promotion is given on the basis of quota and rota rule and a date of deemed appointment is given with retrospective effect, consequential benefits did not follow. In ***Paluru Ramkrishnaiah and others v. Union of India and another AIR 1990 SC 166***, it was held that where an employee

did not work on promotional basis, he could not claim consequential benefits on getting retrospective date of promotion.

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4. In *State of Kerala and others v. E.K. Bhaskaran Pillai (2007) 6 SCC 524*, it was observed that no hard and fast rule could be laid down about denying consequential benefits on the principle of no work no pay. There are exceptions when the Courts have granted monetary benefits also. Where a person is wrongly denied his due, full benefits may be given.”

In view of above, the present writ petition is dismissed without any order as to costs.

November 12, 2018
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes