

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

**CWP No.15057 of 2016
Date of decision: 20.11.2018**

Dalbir Singh Malik

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. B.S. Rana, Senior Advocate,
with Mr. Harshit Singla, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking direction to the respondents to grant him pay equivalent to Rakesh Kumar, who is junior to him, on the post of Assistant and grant him arrears of salary for the period from 29.02.2008 to 31.10.2012 after granting him promotion to the post of Assistant w.e.f. 29.02.2008.

In the year 1992, Haryana Staff Selection Commission advertised 662 posts of Clerks. Pursuant to the said advertisement, petitioner participated in the selection process. His name was recommended for appointment in the Social Welfare Department. But, he could not be appointed due to non-availability of posts in the said department. However, candidates lower in merit than the petitioner joined in various departments. Benefit of appointment was denied to number of candidates, who were higher in merit and this issue was finally decided by Hon'ble the Supreme Court vide judgment dated 18.08.1998, whereby directions were given that the posts, which were available upto 15.10.1989, be filled in accordance

with the order of merit assigned to various candidates by Haryana Staff Selection Commission.

Thereafter, petitioner joined as Clerk in the Department of Treasuries and Accounts on 22.01.2000. Learned counsel for the petitioner has referred to the case of one Satyavir Singh, who approached this Court by filing CWP No.7061 of 2009 claiming the benefit of seniority as assigned by the Commission as per Rule 12 of the Haryana Finance Department Treasury (Group C) Service Rules, 1980. The said petition was allowed and the department was given direction to re-fix the seniority on the basis of merit assigned to him by the Commission. Consequently, Satyavir Singh (petitioner in CWP No.7061 of 2009) was promoted to the post of Assistant w.e.f. 01.03.2008 after assigning the correct seniority vide order dated 21.04.2010 i.e. from the date his junior had been promoted, but his pay was fixed notionally w.e.f. 01.03.2008 and arrears for the period from 01.03.2008 to 21.04.2010 were denied. Thereafter, he (Satyavir Singh) challenged the said order by filing CWP No.20151 of 2010, which was allowed vide judgment dated 04.07.2013 (Annexure P-1) directing that the arrears of difference of salary etc. be calculated and paid to him.

Learned counsel for the petitioner has argued that though the petitioner was promoted as Assistant vide order dated 19.10.2012 (Annexure P-2) w.e.f. 29.02.2008 i.e. the date when persons junior to him were promoted, but his pay was notionally fixed and no arrears were paid to him for the period from **29.02.2008 to 19.10.2012**. He further argued that the petitioner should be given arrears of salary keeping in view the judgment dated 04.07.2013 passed by this Court in **Satyavir Singh vs. State of Haryana and others**, CWP No. 20151 of 2010 (Annexure P-1). Learned

counsel has referred to the information dated 10.04.2013 (Annexure P-3) received under the Right to Information Act, 2005, whereby it was informed that even Rakesh Kumar has been promoted as Assistant w.e.f. 29.02.2008. He has further referred to the information dated 02.07.2015 (Annexure P-5), whereby it has been informed that Satyavir Singh, Assistant, was granted notional deemed promotion benefit from 01.03.2008 to 01.05.2010 and was paid arrears of Rs.1,28,360/-. Petitioner is claiming that he should be paid arrears of salary instead of notional fixation of salary at par with Satyavir Singh as per information dated 02.07.2015 (Annexure P-5).

Upon notice, written statement on behalf of respondent Nos. 1 to 3 has been filed, wherein it has been reiterated that the petitioner has been rightly granted the benefit of notional promotion. However, the information supplied under the Right to Information Act, 2005 has not been denied. It has been further stated that case of the petitioner at par with his junior is under consideration. It is admitted that arrears of salary have been paid to Satyavir Singh, Assistant, in compliance with the order passed by this Court. However, along with the additional reply, respondents have placed on record copy of order dated 18.10.2017 (Annexure R-1), whereby pay of the petitioner has been notionally fixed w.e.f. 29.02.2008 and actual benefit has been granted from 24.10.2012.

After hearing learned counsel for the parties, this petition deserves to be allowed. In compliance with the judgment dated 04.07.2013 passed by this Court in **Satyavir Singh's** case (supra), the respondents have given the benefit of arrears of salary to Satyavir Singh w.e.f. 29.02.2008 as is evident from the information dated 02.07.2015 (Annexure P-5) received by the petitioner under the Right to Information Act, 2005. Stand taken by

the respondents, in their written statement, is that this benefit has been given in compliance with the orders passed by this Court. Even then, the petitioner has a right to be given the same benefit in view of the judgment passed in Satyavir Singh's case (supra) (Annexure P-1). While allowing the aforesaid petition, this Court has observed as under:-

“.....Where the Government rectifies a mistake or its omission to act in accordance with law, then the monetary benefits would automatically follow. It is not a case where the seniority list has remained in the melting pot or is mired in litigation which is finally resolved that the seniority can be fixed notionally depriving Government servants of arrears of difference of salary. Mr. Malik relies on the judgments in the case of *Mewa Ram vs. State of Haryana*, AIR 1995 (5) 248, *Avtar Singh vs. State of Haryana and another*, 1998 (1) RSJ 317, *Sukhvarsha vs. State of Punjab*, 1997 (1) SCT 404, *Krishan Kumar vs. Haryana State Fed. of Consumer's Coop. Wholesale Stores Ltd.*, 1997 (3) SLR 803, to contend that where a person is promoted from the date his junior was promoted, there is no justification in denying the benefit of promotion and if there is no justification to deny the benefit of promotion and promotion is so granted, then there is no further justification to deny the benefit of back wages. It would fall in place *a priori*.”

In view of the law laid down in the aforesaid judgment, this Court is of the view that there is no justification to deny the benefit of promotion to the petitioner from the date his juniors were promoted.

Resultantly, this petition is allowed and the respondents are directed to make payment of arrears of salary to the petitioner on the post of Assistant w.e.f. 29.02.2008 to 31.10.2012 along with interest at the rate of 6% per annum within a period of four months from the date of receipt of certified copy of this order.

20.11.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No