

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

**CWP No.12114 of 2017
Date of decision: 13.09.2018**

Smt. Raj Keerti

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Sunil Hooda, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of order dated 10.02.2017/24.03.2017 (Annexure P-1), vide which, while promoting her as District Town Planner w.e.f. 11.08.2014 and fixing her pay notionally, she is not held entitled to arrears of pay and allowances.

Petitioner was promoted as District Town Planner on 11.08.2014. She was facing disciplinary proceedings and finally, punishment of stoppage of one increment without cumulative effect was imposed upon her vide order dated 13.11.2015. Now, she is seeking the benefit of judgment passed by this Court in **Suresh Kumar vs. State of Punjab and another**, CWP No.468 of 2012, decided on 26.09.2012 (Annexure P-3). This was a case, where the petitioner was denied promotion to the post of Junior Engineer. In that case, vide order dated 07.08.2009, petitioner was promoted as Junior Engineer (Electricity Wing) w.e.f. 16.02.2001. However, arrears

therein) was allowed in view of the judgment passed by Hon'ble the Supreme Court in **Union of India vs. K.V. Janakiraman**, AIR 1991 SC 2010, which was subsequently followed by a Division Bench of this Court in CWP No.12037 of 2005, titled as **Sudesh Kumar vs. Haryana Power General Corporation Ltd. and another**, decided on 02.02.2006, holding that if, an employee is not allowed to work by the authorities, he cannot be denied salary on the principle of 'no work no pay' because there was no fault of the employee and he has to be given arrears of salary etc.

The stand taken by respondent-State in the written statement is that the petitioner was facing disciplinary proceedings and charge-sheeted under Rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 by the competent authority vide memo dated 26.11.2013 (Annexure R-1). As per said rule, promotion case of an employee has to be deferred and a post is to be kept reserved. In case, he/she is exonerated of the charges, only then, he/she is entitled for promotion from the date his/her juniors have been promoted. Since the petitioner has been awarded punishment of stoppage of one increment without cumulative effect vide order dated 13.11.2015, her case could not be considered till the currency of punishment of one year. Accordingly, her promotion case was initiated after 13.11.2016, which was approved vide order/letter dated 24.03.2017. Hence, the respondent authority had not intentionally withheld the promotion of the petitioner. It has been further stated that in the present case, principle of 'no work no pay' would be applicable as on account of disciplinary proceedings, the department had to defer the case of petitioner for promotion.

Petitioner has filed her replication on 16.04.2018 stating therein that she being the senior most officer, had been given the current duty

charge of the post of District Town Planner in the month of January, 2012. She performed the duties of District Town Planner from January, 2012 to the date of actual promotion on regular basis as District Town Planner on 24.03.2017. As per settled law, once a person performs the duties of current duty charge of higher post, he is entitled for the salary of such post.

Learned counsel for the petitioner has referred to the decision given by Full Bench of this Court in **Subhash Chander vs. State of Haryana and others**, 2012 (1) SCT 603 to contend that if, a person is discharging higher responsibility while holding current duty charge, he is entitled to higher pay scale from the date he assumes the charge with all consequential benefits, including promotion.

Full Bench of this Court in **Subhash Chander's** case (supra), has observed as under:-

16. The argument of learned State counsel based on the judgment rendered in R.K. Aggarwal's case (supra) would not require any detail consideration because there was serious dispute concerning seniority of the officers in the cases where disputes concerning seniority are involved. The officiating charge may not earn the fixation of higher pay scale for the post on which the officer is officiating. However, in the present case, there is no dispute of such nature. We are also not impressed with the argument that somewhere in 2006, the petitioner was charge-sheeted and, therefore, regular promotion has to be taken into account only from 27.10.2008 (P- 10) and the salary is also required to be fixed in the higher grade from that date alone. The aforesaid argument is liable to be rejected for more than one reason. Firstly, the petitioner has been discharging the duties on a higher post of Secretary w.e.f. 2.11.1996/ 11.12.1996 (P-1). If any, charge-sheet in 2006 was issued then it was at a stage when the petitioner was discharging his duties as Secretary, therefore, the argument would have no effect insofar as the present case is concerned and the judgment in R.K. Aggarwal's case (supra) would have no application.

17. In view of the above, the question posed in para no. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on

a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

Ratio of aforesaid judgment is directly applicable to the facts of the present case. In this case, petitioner has been discharging the duties of District Town Planner w.e.f. January, 2012. This factual aspect is not being disputed by learned counsel for the State. Therefore, she is entitled to the salary of higher post and this benefit cannot be denied to her.

Resultantly, petitioner is held entitled to the higher pay with effect from the date her juniors were promoted i.e. 11.08.2014 with all consequential benefits, including arrears of pay along with interest at the rate of 6% per annum.

Allowed in the above terms.

13.09.2018
ajp

(RITU BAHRI)
JUDGE

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