

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22238-2016

Date of decision: 01.08.2018

Ami Chand Saini

...Petitioner

V/s.

State of Haryana

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ajay Shekhawat, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J. (Oral).

The short point involved in the present case is that vide order dated 24.05.2016 (Annexure P-6) the claim of the petitioner for granting monetary benefits/promotion to the post of District Revenue Officer has been rejected.

The petitioner has been given current duty charge to the post of District Revenue Officer, Bhiwani vide order dated 24.05.2011 (Annexure P-1). The petitioner has made various representations (Annexure P-5 collectively) for grant of promotion to the post of District Revenue Officer w.e.f. 24.05.2011. Thereafter vide order dated 24.05.2016 (Annexure P-6), regular promotion has not been allowed to the petitioner as the petitioner was facing disciplinary proceedings under Rule-7 on 24.05.2011 which was decided on 04.12.2012 wherein it has been ordered to stop two increments with cumulative effect and no regular promotion can be given during the currency of punishment of stoppage of grade increments as per instructions dated 31.05.2006 issued by the Chief Secretary to Govt. of Haryana. The

petitioner is seeking only the minimum pay scale of the promoted post while doing the current duty charge.

The stand taken by the respondents is that on account of the fact that he was charge-sheeted and punished with stoppage of two increments with cumulative effect on 04.12.2012, he is not entitled for salary to the post of District Revenue Officer during the current duty charge period.

At this stage, learned counsel for the petitioner has informed that in CWP No. 3071 of 2013 dated 10.05.2017 filed by the petitioner, the order imposing punishment of stoppage of two increments with cumulative effect has been set aside. However, as per Division Bench passed by this Court in the case of ***Subhash Chander V/s. State of Haryana and others, 2012 (1) SCT 603*** and single Bench judgement in ***Des Raj and others V/s. State of Punjab and others, decided on 23.12.2014***, it has been held that whenever an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance then he would be entitled to the salary of his officiating post in higher grade. It has been observed in para 9 as under:-

9. Having heard learned counsel for the parties at a considerable length, we feel the necessity of first referring to the Rules which govern the conditions of service of the petitioner, namely, Haryana Municipal Service (Integration, Recruitment and Conditions of Service) Rules, 1982 (for brevity '1982 Rules'). These Rules regulate the conditions of service of the post of Accountant Secretary. A perusal of 1982 Rules would show that the subject of payment of salary to an employee who has been given the charge of a higher post, has not been dealt with by 1982 Rules. However, Rule 2.2 of 1982 Rules indicates that if words and expressions used but are not

defined in those Rules, then such words and expressions would have the meaning assigned to them in the Punjab Civil Service Rules, Vol. I and II (as applicable to Haryana). Taking clue from the aforesaid Rule 2.2 of the 1982 Rules, it may not be possible for us to conclude that CSR would ipso facto apply yet its broad principles would be attracted as it is basic legislation governing the conditions of service of government employees. Therefore, we proceed to consider the provisions of Rule 4.13 of the Rules and the relevant parts of the rules for deciding the controversy read as under:

“4.13 (1) Subject to the provisions of rules 4.22 and 4.23, a Government employee who is appointed to officiate in a post shall not draw pay higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which he is appointed to officiate is one of those enumerated in the schedule to this rule or unless the officiating appointment involves the assumption of duties and responsibility of greater importance than those attaching to the post, other than a tenure post on which he holds a lien or would hold a lien had his lien not been suspended.

xx xx xx xx

xx xx xx xx

(2) For the purpose of this rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibility of greater importance if the post to which it is made is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien or would hold a lien had his lien not been suspended, or on a scale of pay identical therewith.

xx xx xx xx

xx xx xx xx

xx xx xx xx

Note 4. (i) Punjab Government have sanctioned the adoption of the following guiding principles for purpose of clarifying the

position and for the working of the convention usually known as the “next below rule”:-

xx xx xx xx

(2) the fortuitous officiating promotion of some one junior to a Government employee who is out of the regular line does not in itself give rise to a claim under the next below rule.

xx xx xx xx

xx xx xx xx

xx xx xx xx

xx xx xx xx

xx xx xx xx

(iv) In cases where the period for which officiating promotion is lost exceeds three months the officer concerned may be granted the pay of the higher paid post for the excess period but arrangements should be made wherever possible to avoid depriving officers of lengthy period of officiating promotions.”

Hence, this petition is being allowed with a direction to the respondents to pay the petitioner salary of the promoted post from the date he assumed charge with 8% interest.

01.08.2018

Divyanshi

**(RITU BAHRI)
JUDGE**

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