

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

CWP No. 28399 of 2013 (O&M)

Date of Decision: 17.09.2018.

Karamjit Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.K. Arora, Advocate,
for the petitioners.

Ms. Sunint Kaur, AAG Punjab.

JITENDRA CHAUHAN.J.

Through the instant civil writ petition filed under Article 226 of the Constitution of India, the petitioners seek setting aside of order dated 31.01.2013 (Annexure P-13) vide which the claim of the petitioners for granting them salary/emoluments in the pay scale of higher posts of Junior Engineer has been declined and further to grant them pay and emoluments of the post of Junior Engineer.

It is contended that the petitioners have been working as employees of Punjab Water Supply & Sanitation Department. They have rendered a considerable length of service as officiating Junior Engineers and performed duties attached to the higher post apart from their own duties of Pump Operators as reflected in the chart given in para No.3 of the petition. Learned counsel refers to Annexures P-1 and P-2 to show that the petitioners had been given charge of Junior

Engineers vide different orders. However, the petitioners have not been paid due salary/pay scale of the higher post. In this regard, reliance has been placed on Rule 4.4(a) of the Punjab Civil Services Rules, Vol.-I, Part-I and the authorities (i) **“Selvaraj vs. Lt. Governor of Island, Port Blair and others”, 1998(4) SCC 291;** (ii) **CWP No. 4552 of 2003 titled as “Darshan Singh and another vs. State of Punjab and others” decided on 01.07.2010;** (iii) **LPA No. 1539 of 2010 titled as “State of Punjab and others vs. Darshan Singh and another” decided on 15.11.2010;** (iv) **CWP No. 6010 of 1992 titled as “S.S. Sharma vs. State of Punjab and others” decided on 20.10.1992.**

On the other hand, the respondents have fairly admitted that the petitioners were given additional charge of Junior Engineers in addition to their own work of Pump Operators. However, it has been pleaded that the petitioners never demanded the scale of Junior Engineers during the currency of additional charge. It was clearly mentioned in office orders that the additional charge was purely on temporary basis to run the government works properly and no extra allowance/pay will be given to Pump Operators. No benefit of seniority/promotion will be given to them for discharging their duties as Junior Engineers in addition to work of Pump Operators.

Heard.

In **Selvaraj vs. Lt. Governor of Island, Port Blair**

and others 1998(4) RSJ 22 Hon'ble the Supreme Court in para Nos. 3

& 4 has observed as under:-

“3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. The decision of the Central Administrative Tribunal rejecting iliac claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640- 2900 during the period from 29-1-1992 to 19-9-1995 during which time the

appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs."

Further, in **Subhash Chander Vs. State of Haryana,**

2012 (1) SCT, 603, the Full Bench of this Court has held as under:-

"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."

In **Darshan Singh's case (supra)**, this Court had

observed as under:-

"Learned DAG has argued that even though he is not in a position to cite any judgment contrary to this, yet the distinguishing factors are that in the order relating to the petitioners it was specifically mentioned that they would not be entitled to any such pay while there was no such stipulation in the case of Selvaraj (supra).

In my opinion this would not be determinative. What the Hon'ble Supreme Court has decided in the case of Selvaraj (supra) is the entitlement of an employee to get the emoluments of the post against which he actually worked."

Taking into consideration the fact that the

respondents have admitted in their reply that the petitioners were given

additional charge of Junior Engineers in addition to their work of Pump

Operators, the present petition deserves to be allowed. In view of the decision rendered in *Darshan Singh's case(supra)*, the plea of the respondents that it was clearly mentioned in office orders that the additional charge will carry no extra allowance/pay pales into insignificance and there can be no waiver of such a vested right to draw the pay and emoluments admissible to a post against which an employee had been called upon to discharge the duties and responsibilities.

In view of above, the present petition is allowed. The respondents are directed to pay the higher pay scale to the petitioners for the period, they have performed the work on higher post, within one month from the date of receipt of certified copy of this order.

17.09.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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