

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 27048 of 2016

Date of decision : 14.12.2018

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Arvind Hooda

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

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RITU BAHRI, J.

The petitioner is seeking the directions to the respondent to grant the benefit of pay scale of Rs.10,000-13,900 of the post of Assistant Director (Technical Wing) w.e.f 01.09.2005 i.e the date from which the petitioner was assigned the duties as Assistant Director (Technical Wing) and to release the culminating benefits thereunder.

The petitioner was initially appointed as Scientific Assistant in the Forensic Science Laboratory (FSL) in the year 1998 and promoted as Senior Scientific Assistant in the year 2001. Thereafter the petitioner was promoted as Senior Scientific Officer. He was sent on deputation in the

year 2005. On 4.3.2005, one post of Assistant Director (Technical Wing) CID was to be filled up by Technical Senior Scientific Officer of Ballistics Division on deputation basis. Order dated 4.3.2005 (Annexure P-1) seeking willingness/unwillingness for the said post was forwarded to the three eligible Senior Scientific Officers, namely, Sh. R.K Koshal, Senior Scientific Officer (Ballistics), Sh. L.S Yadav, Senior Scientific Officer (Ballistics) and Sh. Arvind Hooda, Senior Scientific Officer (Ballistics), who is the petitioner in the present case. The petitioner gave his willingness vide letter dated 7.3.2005 (Annexure P-2). Vide letter dated 6.4.2005 (Annexure P-4) from the Director, Forensic Science Laboratory, Madhuban, Karnal, petitioner was attached with Assistant Director, Technical Wing, CID (H) Madhuban and was relieved from his Laboratory w.e.f 6.4.2005 (F.N) with the direction to report to Sh. Har Bhagwan, Assistant Director, Technical Wing, CID (H), Madhuban. Thereafter, vide letter dated 31.8.2005 (Annexure P-6), the petitioner was directed to take over the charge from Sh. Har Bhagwaan, Assistant Director, Technical Wing, CID, Haryana as Incharge of Technical Wing, CID, Haryana Madhuban on 31.8.2005 as the re-employment period of Sh. Har Bhagwan was to expire on 31.8.2005.

Counsel for the petitioner contends that from 6.4.2005 till 31.8.2005, petitioner remained attached to Technical Wing for practical training with the Assistant Director, Technical Wing, CID (H), Madhuban. Thereafter, he had taken over the charge from Sh. Har Bhagwan, Assistant Director Technical Wing CID Haryana, whose reemployment period was to

expire on 31.8.2005. From this date onwards, he had been discharging the duties of the Additional Director, Technical Wing, CID Haryana. Petitioner, thereafter, submitted a representation dated 24.8.2005 (Annexure P-7) requesting therein that the formal order of posting of the petitioner may kindly be issued. Accordingly on 18.4.2006, the formal order (Annexure P-8) was issued and services of the petitioner were put at the disposal of Additional Director General of Police, CID, Haryana for appointment as Incharge Technical Wing CID(H) Madhuban. Thereafter, the petitioner made another representation dated 25.4.2006 (Annexure P-9) requesting therein that the petitioner be posted as Assistant Director instead of Incharge. In the representation, petitioner requested that since the petitioner is discharging the duties of Assistant Director as such the petitioner be given the pay scale of Assistant Director/Incharge Technical Wing CID (Haryana). Thereafter, the petitioner submitted representation dated 24.7.2007 (Annexure P-12). During the pendency of this representation, vide order dated 22.2.2008 (Annexure P-13), the petitioner was given the substantive promotion as Assistant Director (Technical Wing) and services of the petitioner were placed at the disposal of CID, Haryana in the pay scale of Rs.10000-13900. However the claim of the petitioner with respect to grant of Pay scale of Rs.10,000-13,900 from 01.09.2005 was rejected vide the letter dated 5.5.2009 (Annexure P-14). Against that petitioner again submitted representation dated 11.8.2009 (Annexure P-15) regarding granting of pay scale of Rs.10,000-325-13900 w.e.f 1.9.2005. Hence the present writ petition.

On notice, the writ petition has been filed by respondents no. 1 to 3 taking the stand that the petition is liable to be dismissed on account of delay. The petitioner was granted higher pay scale vide order dated 22.2.2008 (Annexure P-13). The representation for grant of higher pay scale was rejected vide letter dated 05.05.2009 (Annexure P-14). The petitioner kept mum for more than 6 years and filed the representation dated 10.10.2016 (Annexure P-17) only to cover the delay. On merits, the stand taken is that the State Government vide order dated 18.4.2006 (Annexure P-8) placed the services of petitioner at the disposal of ADGP, CID for his appointment as In-charge, Technical Wing, CID on deputation basis in his own pay scale. It was only a temporary arrangement made by the Police authority for day to day working and no orders of assigning current duty charge were issued by the competent authority i.e the State Government due to consideration of the matter in view of claim of Sh. L.S Yadav senior to the petitioner. The representation of the petitioner (Annexure P-9) claiming grant of pay scale of Rs.10,000–13,900 w.e.f 1.9.2005 was considered by the Government and it was observed that there was senior most officer Sh. L.S Yadav and the petitioner could not be allowed higher pay scale over and above his senior in his parent department. Hence, the Government had not agreed to accept the claim of the petitioner vide letter dated 17.11.2006 (Annexure P-10). It was also made clear that if the petitioner does not want to work on the post of Assistant Director, Technical in his own pay scale, he may go back to his parent organization. Further the assignment of work to petitioner at the post of Assistant Director, Technical Wing by the

competent authority w.e.f 18.4.2006 was only optional and it was made clear to the petitioner that he may go to his parent department, if he was not interested to work in his own pay scale. Therefore, once the petitioner had accepted the terms and conditions, he has no right to be granted the pay scale of Rs.10,000-13,900 w.e.f 1.9.2005 and his case has been rightly rejected by the Government vide letter dated 20.12.2007 (Annexure R-3). They have further placed on record the letter dated 31.1.2008 by the Director General of Police, Haryana intimating that Sh. L.S Yadav Senior officer to petitioner in his parent department expressed his unwillingness to join the post of Assistant Director, Technical and requested that the repatriation order of Sh. Arvind Hooda may be cancelled and his case for deputation to CID as Assistant Director, Technical in the pay scale of Rs.10,000-13900/- may be considered. In view of the fact that the senior officer to petitioner was not willing to join as Assistant Director, Technical and in view of the request of Director General of Police, Haryana, the State Government reviewed the matter and vide order dated 22.2.2008 (Annexure P-13) accepted the request of petitioner to the extent that he was placed in the pay scale of Rs.10,000-13,900/- with immediate effect. The State Government did not accept his claim for grant of said higher scale w.e.f 1.9.2005. The charge of post of Assistant Director Technical Wing w.e.f 1.9.2005 up to 18.4.2006 was only a temporary arrangement made by the Police authority and no such order of giving current duty charge or posting on deputation of petitioner was issued by the competent authority.

Counsel for the petitioner has referred to a judgment passed by

this Court in the case of **Hans Raj and others vs. State of Haryana and another 2014 (3) SCT 416**, whereby pay scale of the post of current duty charge has been given to the petitioners who were junior engineers and were doing the current duty charge on the post of sub division engineers. They were appointed in their own pay scale and while appointing then a condition was imposed in the order that they will work in their own pay scale and will not claim any seniority. The writ petition was allowed while referring to a Division Bench judgment of this court in the case of **Pritam Singh Dhaliwal vs. State of Punjab and another 2004 (4) SCT 403**, wherein it was held after noticing earlier precedents that a Government servant put on officiating current duty of a higher post carrying higher responsibilities is entitled to the higher emoluments applicable to any one of the posts till such time duties subsist. The benefit cannot be denied merely for want of regular promotion or finalization of seniority etc.

At the outset, the order dated 22.2.2008 (Annexure P-13) is not in dispute. A perusal of this order shows that services of the petitioner Mr. Arvind Hooda, Senior Scientific Officer/ Blastics, FSL, Madhuban were placed at the disposal of CID Haryana as Assistant Director (Technical Wing) on deputation against a vacant post in the pay scale of Rs.10,000-13900 on ad hoc basis with immediate effect. The respondents have rejected the claim of the petitioner for grant of pay scale of 10,000-13,900 w.e.f 1.9.2005 by passing the orders dated 17.11.2006 (Annexure P-10) and 5.5.2009 (Annexure P-14). The other ground taken by the respondent is that he had an option of going back to his parent Department but the petitioner

continued to work. However, he was granted the pay scale of Rs.10,000-13,900 vide order dated 22.2.2008 (Annexure P-13) on the ground that a senior officer Sh. L.S Yadav expressed his unwillingness to join Assistant Director, Technical Wing. The short question for consideration in the present writ petition is once the department vide order dated 22.2.2008 (Annexure P-13) have granted the pay scale while posting the petitioner on deputation as Assistant Director (Technical Wing), can they deny the same pay scale in the period prior to this date? It is not the case of the respondents that the petitioner has not worked on the post Assistant Director (Technical Wing) or he does not fulfill the essential qualifications. The ratio of the judgment in the case of **Hans Raj and others (supra)** will be applicable in favour of the petitioner. In paragraph 7 & 9 of this judgment, it has been observed as under:

7. The Division Bench of this Court in Pritam Singh Dhaliwal v. State of Punjab and another; 2004 (4) SCT 403 : 2004 (6) SLR 758 have held after noticing earlier precedents that a Government servant put on officiating current duty of a higher post carrying higher responsibilities is entitled to the higher emoluments applicable to any one of the posts till such time duties subsist. The benefit cannot be denied merely for want of regular promotion or finalization of seniority etc. The court applied the principle of quantum meruit to justify

the result favourable to public servant. The court applied the law laid down in [Smt. P. Grover v. State of Haryana](#), AIR 1983 SC 1060 and [Selvaraj v. Lt. Governor of Island, Port Blair](#), 1999 (2) SCT 286 (SC) which accepted and applied the principle of quantum meruit and State's obligation to pay emoluments in the higher pay scale for actually work performed on the superior post though in officiating capacity.

9. In [Chandigarh Administration v. Vipin Gupta and another](#); 2011 (2) SCT 560, M.M.Kumar, J. as His Lordship then was while speaking for the Bench, held that the period spent on current duty charge can be treated as experience in determining eligibility for promotion whether a person works on a post in his capacity as ad hoc/current duty charge/temporarily etc. as his nature of duties continues to be the same which any regularly promoted person would require to discharge. Therefore, it was held that a person is entitled to count his experience on current duty charge in determining eligibility for promotion where rule prescribes experience as essential for holding higher post. The expression "working experience" used in [Punjab Service of Engineering \(Civil Wing\)](#),

Department of Public Works (B & R Branch) Group 'A' Service Rules, 2005 more specifically in rule 6(3) thereof cannot be construed to mean that it must have been gained while working on a permanent substantive post without regular promotion. The above view of the Division Bench of this Court has been applied and followed in a subsequent Division Bench judgment in the case of **Chief Engineer, Union Territory, Chandigarh v. Ram Sarup Walia and others; 2012 (3) SCT 157 : 2012 (3) SLR 357.**

In the case of Hans Raj, the writ petition was allowed, as the petitioners were holding the post of Sub Divisional Engineers as current duty charge. In the facts of the present case, the petitioner was initially sent on training vide letter dated 6.4.2005 (Annexure P-4) with Sh. Har Bhagwan, Assistant Director (Technical Wing). Thereafter vide order dated 31.8.2005 (Annexure P-6), the petitioner was directed to take over the charge from Har Bhagwan as his term was to expire on 31.8.2005. From 31.8.2005, the petitioner has been discharging the duties of Additional Director (Technical Wing) continuously without a break till 22.2.2008 (Annexure P-13) when he was again put on deputation in the scale of Rs.10,000-13,900 on ad hoc basis with immediate effect. His claim cannot be rejected on the ground of delay as the respondents themselves have put him in the aforesaid pay scale in the year 2008. The writ petition is allowed,

the respondents are directed to grant the benefit of the pay scale of Rs.10,000-13,900 to the petitioner w.e.f 1.9.2005 along with 6% w.e.f 31.8.2005 till 22.8.2008 within a period of two months and report be sent to this Court.

14.12.2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes