

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

CWP-539-2014 (O&M)
Date of decision : 27.08.2018

Yashpaul Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Madhav Pokhrel, Advocate,
for Mr. M.L. Sachdeva, Advocate,
for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

JITENDRA CHAUHAN, J.

The grouse of the petitioner is that he being Assistant District Sainik Welfare Officer, was given the charge of District Sainik Welfare Officer and therefore, he is entitled to get the difference of pay for performing duties of higher responsibility.

Learned State counsel, on the other hand, has vehemently opposed the prayer made. It is contended that Instructions dated 20.07.2011 (Annexure P-9) stipulate the exercise of option within a period of three months, therefore, his case could not be considered.

I have heard learned counsel for the parties and perused the case file.

It is not in dispute that the petitioner being an Assistant District Sainik Welfare Officer performed duties against the post of District Sainik

Welfare Officer involving the assumption of duties and responsibilities of greater importance.

By now, it is a settled principle of law that if any employee is appointed to officiate on a post involving higher responsibilities and/or duties of greater importance, then he/she is entitled to the pay/allowances commensurate with the higher post. A Full Bench of this Court in ***Subhash Chander Vs. State of Haryana and others, CWP-21358-2008, decided on 20.12.2011***, while deciding the question “Whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale without being substantively appointed to such post.”, has held as under:-

“12. A close examination of Rule 4.13 of the Rules would show that once a person like the petitioner has been given independent charge of a post, which involves assumption of duties and responsibilities of greater importance than the one attaching to the post held by such an employee on which he holds a lien or would have held his lien had it not been suspended, then he is entitled to pay of the higher post. A post is regarded to involve assumption of duties and responsibilities of greater importance if it carried higher pay scale than the one on which he holds the lien. In the present case, the pay scale of the post of Accountant is lower than that of the post of the Secretary.

13. xxxx

14. xxxx

15. xxxx

16. xxxx

17. In view of the above, the question

posed in para no.1 is answered in affirmative and it is held that if any 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....”

The objection of the State to the effect that the petitioner is not entitled to the benefit claimed as he failed to exercise option within three months is misconstrued and a result of misreading of the provision. Clause 3 of the Instructions (Annexure P-9) reads thus:-

“3. It has been further decided that in the case of a Government employee who stands appointed to a post involving the assumption of duties and responsibilities of greater importance, during the period, from the first day of January, 2006 to the date preceding the date of issue of these instructions, the option prescribed in Clause (ii) of the Rule 11, of the Punjab Civil Services (Revised Pay) Rules, 2009, may be exercised within a period of three months from the date of issue of these orders.”

A plain reading of the above provision makes it amply clear that the requirement of exercising option is directory and not mandatory. Mere non-exercise of option by the petitioner would not render him ineligible for the relief claimed.

In view of the above, the petitioner is held entitled to the higher pay and emoluments attached to the post of District Sainik Welfare Officer scale for the period he worked as such. His pay may be re-fixed accordingly

and the arrears thereof shall be paid within three months from the date of receipt of a certified copy of this judgment.

Allowed in the above terms.

27.08.2018
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No