

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 12.01.2018****CWP No.5828 of 2015**

R.K.Yadav

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Sunita Singh Chauhan, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Girish Agnihotri, Senior Advocate, with
Mr. Arvind Seth, Advocate, for respondent No.2.**RAJIV NARAIN RAINA, J. (ORAL)**

1. Although the petition has been filed without there being any impugned order in a claim for difference of arrears of salary of the post of Deputy Registrar and that of Controller of Examinations, but the entertaining of this petition has led to the filing of the written statement by respondent No.2 - University in which a defence has been taken based on Rule 4.22 of the Punjab Civil Services Rules, as applicable to Haryana, which provides as follows:

“4.22 A competent authority may appoint a Government employee already holding a post in a substantive or officiating capacity to officiate as a temporary measure, in one or more of other independent posts at one time. In such cases, his pay is regulated as follows:-

- (i) where a Government. employee is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall

be allowed the pay admissible to him, if he is appointed to officiate in the higher post unless the competent authority reduces his officiating pay under Rule 4.16; but no additional pay, shall however, be allowed for performing the duties of a lower post;

- (ii) where a Government employee is formally appointed to hold dual charge of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible regardless of the period of dual charge; provided that if the Government employee is appointed to an additional post, which carries a special pay, he shall be allowed such special pay;
- (iii) Omitted. [vide letter No.2/03/2003-4FR, dated 03.09.2003]

Provided further that if in any particular case, it is considered necessary that the Government employee should hold charge of another post or posts for a period exceeding 3 months, the occurrence of the competent authority shall be obtained for the payment of additional pay beyond the period of 3 months;

- (iv) no additional pay shall be admissible to a Government employee who is appointed to hold current charge of the routine duties of another post or posts regardless of the duration of the additional charge;
- (v) if compensatory or sumptuary allowances are attached to one or more of the posts, the Government employee shall draw such compensatory or sumptuary allowances as the competent authority may fix: Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts.”

2. As a particular defence has been taken, it will be understood as a final view and it would, therefore, serve no useful purpose, as rightly argued by Ms. Sunita Chauhan, to now order the University to take a final

decision on the representation which could never be different from the stand in the reply.

3. The claim of the petitioner, who has retired from service in 2014 is that when he was the senior-most Deputy Registrar, the Vice Chancellor was pleased to order that he would look after the work of Controller of Examinations with immediate effect in addition to his own duties till further orders by order dated 16.11.2010. It is not disputed that the petitioner continued to serve as Controller of Examinations for 3 years and 8 months i.e. from 16.11.2010 to 31.07.2014, when he superannuated.

4. Ms. Sunita Chauhan appearing for the petitioner submits that it has been the practice in the University since 1996 that the senior-most Deputy Registrar has been asked to look after the work of Controller of Examinations. The University argues that the case falls under Rule 4.22 and this is contradicted by Ms. Chauhan contending that the petitioner will be entitled to the arrears of difference of pay of the post of the Deputy Registrar and the higher pay scale of Controller of Examinations, when he has discharged the full duties and responsibilities of the post. This fact is not disputed in the written statement or at the hearing. The University cannot be seen to have taken work free from the petitioner as Controller of Examinations as that would amount to exploitation and getting work done free or pro bono. Moreover, the right to difference of pay flows from the doctrine of *quantum meruit* recognized by the Supreme Court in Mrs. P. Grover Vs. The State of Haryana and another, AIR 1983 SC 1060: 1983 (3) SCR 654 indicating that if an employee is made to officiate on a higher post, he will be entitled to difference of arrears of pay. Therefore, nothing further remains to be examined in this case, when Rule 4.22, as reproduced above,

does not respond to the situation in favour of the University to deprive the petitioner of his earned dues.

5. Accordingly, this petition is allowed. The stand of the University in declining the relief is declared legally bad and the decision is quashed being not sustainable. The petitioner is held entitled to the arrears of difference of pay between the Deputy Registrar and the Controller of Examinations for the period worked. The amount be calculated and paid to the petitioner along with interest at the rate of 6% p.a. within a period of two months from the date of receipt of certified copy of this order. In default of payment of arrears within the time stipulated, the interest will accrue at 9% p.a. till final payment.

12.01.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>