

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

**CWP No.7312 of 2016
Date of decision: 17.11.2018**

Baldev Krishan Sharma

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Saguna Arora, Advocate,
for Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the order dated 18.12.2015 (Annexure P-5), whereby his claim for grant of pay scale/emoluments of the higher post of Section Officer as per his appointment on the said post vide order dated 17.04.2008 (Annexure P-2), has been declined.

Petitioner initially joined as Clerk in the Department of Renewable Energy, Haryana on 21.11.1996. He was promoted as Assistant in July, 2005. Thereafter, he acquired the qualification of State Accounts Service, Part-1 in the year 2006. Result was declared on 31.03.2008 (Annexure P-1).

The Government of Haryana decided to fill up the vacant posts of SAS-Section Officers in SAS Cadre by appointing officials, who have passed SAD Part-1 examination, in order to meet shortage of SAS Officers in the State of Haryana. Vide order dated 17.04.2008 (Annexure P-2), the

petitioner was offered appointment as SAS Officer in his own pay scale

with Rs.100/- special pay as incentive. He was given posting as Section Officer in the office of respondent No.3 vide order dated 22.05.2008 (Annexure P-3), where he joined on 01.08.2008. Grievance of the petitioner is that he has been performing the duties of the higher post of Section Officer and sharing all responsibilities of the said post, but he is not being paid the pay of higher post. He is getting salary in the pay scale of the Assistant i.e. Rs.9300-34800 + 3600 Grade Pay + Rs.100/- as special pay. On the other hand, regular pay scale of the post of Section Officer is Rs.9300-34800 +4600 Grade Pay + Rs.100/- as special pay. With regard to his grievance, petitioner made representation to the department, which has been declined vide letter dated 18.12.2015 (Annexure P-5). Hence, the present petition.

Petitioner has placed on record letter dated 08.08.2013 (Annexure P-8), whereby respondent No.3 has intimated respondent No.2 that the petitioner cannot be relieved from the duties on account of his exceptional performance and non-availability of any other capable/trained officer. Thereafter, four new Section Officers joined in the Department of Food and Supplies, Haryana. Petitioner again made a representation dated 25.07.2014 (Annexure P-9) to relieve him, but he has not been relieved by respondent No.3 keeping in view his satisfactory, effective and better work performance in comparison to the regular Section Officers.

Learned counsel for the petitioner has referred to the judgment passed by Co-ordinate Bench of this Court in **Ramesh Chander vs. State of Haryana and others,** CWP No.11667 of 2010, decided on 19.08.2013 (Annexure P-15), whereby claim of petitioner (therein) was working on the post of Store Purchase Office (SPO) on current duty charge in his own pay

scale w.e.f. 01.12.1998. Finally, he was promoted to the post of Store Purchase Officer on regular vide order dated 21.07.2009. He was seeking the payment of regular pay scale on the post of Store Purchase Officer. The said writ petition was allowed keeping in view the decision given in **Subhash Chander vs. State of Haryana**, 2012 (1) RSJ 442, whereby it has been held that if, an official is doing all the duties of higher post and is being paid salary of the lower post, he will be entitled to the salary of his officiating post in the higher grade. A similar view has been taken by a Co-ordinate Bench of this Court in **Bijender Singh vs. State of Haryana and another**, CWP No. 19452 of 2013, decided on 23.03.2015 (Annexure P-16).

Learned counsel for the respondents, on the other hand, has argued that the petitioner had given his willingness for appointment against the post of Section Officer in his own pay scale. Petitioner does not hold the basic qualification for the post of Section Officer, therefore, he cannot claim payment of salary of the post of Section Officer on the doctrine of 'equal pay for equal work.' He further argued that as per Haryana State Accounts Subordinate (Group C) Service Rules, 2013 (Annexure R-1), a Section Officer can be appointed by promotion/transfer or deputation amongst officials of Haryana Government with three years regular service and who have passed both parts (I & II) of Haryana Subordinate Accounts Service Examination (Ordinary Branch) conducted by the Government. The petitioner has only passed Part-I of Subordinate Accounts Service (SAS) Examination, which was held in the year 2008. He has not passed Part-II of the Examination, though he had appeared in this examination in the years 2009, 2010, 2011 and 2014. Hence, the petitioner is not entitled to the

salary of the post of Section Officer.

In the written statement, the respondents have stated that the petitioner and other similarly situated employees of different departments in the State of Haryana, who passed Part-I, Subordinate Accounts Services (SAS) examination, were offered posting on certain terms and conditions against the vacant posts of Section Officers in the Treasuries & Accounts Department, Haryana as a “stop gap arrangement.” The appointment was given with certain conditions, which were accepted by the petitioner vide letter dated 24.04.2008 (Annexure R-2). Even in the pre-appointment offer dated 17.04.2008 (Annexure P-2), it was categorically mentioned that it is purely a stop gap arrangement and the officials, who were offered appointments, will have no right to the posts of Section Officer (Ordinary Branch). After taking consent of the petitioner vide letter dated 24.04.2008 (Annexure R-2), he was given posting order dated 22.05.2008 (Annexure P-3). In this backdrop, his representation dated 11.08.2015 (Annexure P-4) was declined vide letter dated 18.12.2015 (Annexure P-5).

After hearing learned counsel for the parties and going through the contents of the petition, the only ground for not granting higher pay scale of the post of Section Officer to the petitioner is that he (petitioner) is not duly qualified for promotion to said post. As per Haryana State Accounts Subordinate (Group C) Service Rules, 2013, petitioner is supposed to have qualified two examinations i.e. Part-I and Part-II with minimum 40% marks in each subject and 45% in aggregate. He has only qualified Part-I , Subordinate Accounts Services (SAS) Examination. On this aspect, the petitioner has pleaded that respondent-department did not conduct frequent examinations in terms of the above said rules. A letter was

issued on 12.07.2012 stating that next State S.A.S. Part-I & II (OB/LAD) examination would be held in the month of October-November. In 2013, applications were invited vide letter dated 30.07.2013, but the said examination was conducted in February, 2014. Thereafter, no exam was held till date.

In response to the said pleading, the respondent-State has given reply to the effect that examinations for SAS, Part-I & II could not be conducted after 2014 because of pendency of writ petitions, including CWP No.26672 of 2014.

In the present case, petitioner has performing the duties of higher post since 22.05.2008. He has served on this post for almost 10 years. He has not been reverted back despite making representation dated 25.07.2014 (Annexure P-9) when four new Section Officers had joined the department of Food and Supplies, Haryana. Representation dated 25.07.2014 (Annexure P-9) is not being denied by the respondents in their written statement. Respondents have also not denied the letter dated 08.08.2013 (Annexure P-8), whereby it was stated that the petitioner was not relieved keeping in view his exceptional performance and non availability of any other capable/trained officer. The obvious conclusion is that the petitioner is performing the duties of higher post of Section Officer to the utmost satisfaction of the department. In this backdrop, he cannot be denied the benefit of regular pay scale of the said post keeping in view the judgment passed by Co-ordinate Bench of this Court in **Darshan Singh and another vs. The State of Punjab and others**, CWP No.4552 of 2003, decided on 01.07.2010 (Annexure P-10), which has been upheld by the LPA Bench vide judgment dated 15.11.2010 (Annexure P-11).

In view of the above discussion, this petition is allowed and the respondents are directed to give pay/salary of the post of Section Officer to the petitioner in the scale of Rs.9300-34800 + 4600 Grade Pay + Rs.100/- as special pay along with interest at the rate of 6% per annum with effect from the date of his appointment till the payment is made.

17.11.2018
ajp

(RITU BAHRI)
JUDGE

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