

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5198-2012 (O&M)

Date of Decision:-02.05.2018.

Rich Pal Singh (Ex. Labour-cum-Conciliation Officer)

.....Appellant

Versus

Haryana State through its Secretary, Labour Department, Haryana,  
Chandigarh and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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Present: Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Rohit Arya, AAG, Haryana.

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**P.B. BAJANTHRI, J. (Oral)**

In the instant appeal, appellant has questioned the validity of the Appellate Court judgment dated 6.9.2012.

2.) Appellant while working as a Labour Inspector, he was posted as Labour Officer-cum-Conciliation Officer in his own pay scale. He has attained age of superannuation and retired from service on 31.08.2007. He has filed a suit seeking that he is entitled to salary in the grade of Labour Officer-cum-Conciliation Officer for the period from 22.01.2007 to 31.08.2007 and further revision of pension. Suit was decreed. Consequently, State preferred an appeal against the decree. Appeal was decided in favour of the State. Hence, the present appeal.

3.) Learned counsel for the appellant submitted that appellant has

discharged the duties of the post of Labour Officer-cum-Conciliation Officer during the period from 22.01.2007 to 31.08.2007, consequently, he is entitled to the pay attached to the post and consequential benefits to the extent that his pension is required to be re-fixed with reference to the post of Labour Officer-cum-Conciliation Officer. In support of his contention, learned counsel for the appellant relied on 2 decisions, namely, **Subhash Chander Vs. State of Haryana and others Vol.CLXV (2002-1) PLR 778** (para-17). Further he relied on decision **Vijay Sharma Vs. The Director, Council for Research in Ayur and another Vol. CLXV (2012-1) PLR 427** (para-4). Learned counsel for the appellant further submitted that Appellate Court has failed to appreciate that appellant has worked in the promotional post of Labour-cum-Conciliation Officer and retired in that post, therefore, he is entitled to pay attached to the post as well as re-fixation of his pension in the aforesaid post. It was also contended that appellant is the senior most Labour Inspector and he is entitled to promotion to the post of Labour Officer-cum-Conciliation Officer. Instead of promoting the appellant, he has been only asked to hold the post of Labour Officer-cum-Conciliation Officer. Therefore, one has to draw inference that appellant has been promoted having regard to the fact that he has discharged the duties of the post from 22.01.2007 to 31.08.2007.

4.) *Per contra*, learned counsel for the respondents while resisting the appellant's contention submitted that order of posting him as a Labour Officer-cum-Conciliation Officer is crystal clear that his posting is in his own pay scale. Appellant has not questioned the validity of such posting order to the extent that he is entitled to promotion to the post with reference

as he has not questioned clause imposed in the posting order, he is not entitled to claim benefit against the post of Labour Officer-cum-Conciliation Officer. Method of recruitment to the post of Labour Officer-cum-Conciliation Officer is promotion. In the absence of challenge to the posting order in his own pay scale, appellant is not entitled to claim any service benefit against the post of Labour Officer-cum-Conciliation Officer. Therefore, rightly, the Appellate Court has held that appellant is not entitled to any benefit pursuant to the post of Labour Officer-cum-Conciliation Officer.

5.) Heard the learned counsel for the parties.

6.) Question for consideration in the present appeal is whether the appellant is entitled to salary attached to the post of Labour Officer-cum-Conciliation Officer or not? Further whether is he entitled to pay attached to the post and so also re-fixation of pay and pension against the post of Labour Officer-cum-Conciliation Officer or not? Undisputed facts are that appellant was in the cadre of Labour Inspector. Next promotional cadre is Labour-cum-Conciliation Officer. The respondents have made an *ad hoc* arrangement while posting the appellant as Labour Officer-cum-Conciliation Officer on 17.01.2007. Order reads as under:-

**“ORDER OF THE GOVERNOR OF HARYANA**

*Sh. Baljeet Singh, Labour Inspector, Circle-II, Panchkula is hereby promoted to the post of Labour Officer-cum-Conciliation Officer in the pay scale of Rs.6500-200-8500-EB-200-10500 as a stop gap arrangement against the direct quota post with immediate effect.*

2. *Further, Sh. Richhpal Singh, Labour Inspector, Circle-I, Gurgaon is hereby posted as Labour*

*Officer-cum-Conciliation Officer in his own pay scale with immediate effect.*

3. *The posting of the following Labour Officers-cum-Conciliation Officers are as under:-*

| Sr. No. | Name           | Place of Posting                                     | Remarks                 |
|---------|----------------|------------------------------------------------------|-------------------------|
| S/Shri  |                |                                                      |                         |
| 1       | C.L. Kalia     | Headquarter Chandigarh                               | Awaiting posting orders |
| 2       | Baljeet Singh  | Labour Officer-cum-Conciliation Officer, Gurgaon-III | Against vacancy         |
| 3       | Richhpal Singh | Labour Officer-cum-Conciliation Officer, Sonapat-I   | Against vacancy         |

*Dated Chandigarh,  
the 17<sup>th</sup> January, 2007*

MANIK SONAWANE  
*Financial Commissioner & Principal Secretary to  
Govt. of Haryana, Labour & Employment Deptt.”*

Perusal of the posting order, it is crystal clear that stop-gap arrangement against the direct quota post has been made. Appellant was never promoted to the post of Labour Officer-cum-Conciliation Officer. Unless and until, appellant enters the cadre of Labour-cum-Conciliation Officer in accordance with the rules of recruitment viz; in the promotional quota, he is not entitled to claim any service benefits against the post of Labour Officer-cum-Conciliation Officer. Statutory rule will prevail over the executive order. Merely posting order to the higher post that too when condition has been imposed to the extent that against direct quota and in his own pay scale with immediate effect and the same has also not been questioned, consequently, it is binding on the appellant. Counsel for the appellant relied on 2 decisions cited supra. In the case of **Subhash Chander** cited supra, petitioner was appointed on officiating basis. Therefore, a right

is created in him to claim service benefits against the post where he was

appointed. Whereas, the cited decision of **Subhash Chandra** and **Vijay Kumar** cited supra are distinguishable to the extent that no legal right has been created in the present case. When the source method of recruitment to the post of Labour Officer-cum-Conciliation Officer is by way of direct recruitment and promotion, unless and until appellant is promoted to the promotional post read with promotional quota, he is not entitled to any service benefit attached to the post including fixation of pay and pension in the cadre of Labour Officer-cum-Conciliation Officer. At the best, appellant is entitled to charge allowance, if any having regard to the fact that he has discharged the duties of the higher post during the period of 22.01.2007 to 31.08.2007. Thus, there is no infirmity in the Appellate Court order dated 06.09.2012.

7.) Accordingly, appeal stands dismissed.

**(P.B. BAJANTHRI)**  
**JUDGE**

**May 02, 2018.**  
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.