

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

**LPA-531-2018 (O&M)
Date of Decision: August 03, 2018**

State of Haryana and another

...Appellants

Versus

Jai Pal Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

**Present: Mr. Deepak Balyan, Addl. AG, Haryana,
for the appellants.**

**Mr. R.K. Malik, Senior Advocate, with
Mr. Sunil Hooda, Advocate,
for the Caveator/respondent No. 1.**

KRISHNA MURARI, C.J. (ORAL)

This is an intra-court appeal, under Clause X of the Letters Patent, filed by the State of Haryana, challenging the judgment and order, dated 11.09.2017, passed by the learned Single Judge, allowing the petition filed by the respondent-petitioner in part, to the extent that he was held entitled to the pay scale of a Superintendent with effect from the date he was given current duty charge of the said post, till the date of his retirement.

The facts in brief relevant for the purpose can be capsulized as under:

Respondent No. 1 herein was appointed as a Clerk through Subordinate Service Selection Board on 07.04.1970, in the Transport

Department of the State of Haryana. Subsequently, he was promoted as Assistant on 30.04.1985 but the promotion was made effective from 16.04.1984, i.e. the date on which persons junior to him were promoted on the said post. Instant writ petition was filed challenging an order dated 10.10.2000, whereby certain in-eligible persons were given current duty charge on the post of Superintendent. During pendency of the writ petition, the respondent-petitioner was also given current duty charge on the said post on 12.09.2002. Admittedly, he continued on the said post holding the charge till 13.07.2006, when he retired on attaining the age of superannuation. At the time of hearing of the writ petition, the respondent-petitioner restricted his prayer in the petition to the grant of the benefit of the pay scale that would have been admissible to him working on the post of Superintendent had he been promoted to the said post. The claim being made by the respondent-petitioner was contested by the State on the ground that since he was not eligible for being promoted to the post of Superintendent, as such he would not be entitled for payment of salary admissible to the said post. Learned Single Judge relied upon a Full Bench judgment of this Court in the case of Subhash Chander v. State of Haryana and others, 2012 (1) SCT 603, wherein an identical question was answered as follows:

“In view of the above, the question posed in para No.1 is answered in affirmative and it is held that if an 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. Accordingly, the petitioner is held entitled to the higher pay scale pay from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

Relying upon the aforesaid Full Bench judgment, the learned Single Judge allowed the petition to the extent that the respondent-petitioner would be entitled to the pay scale of a Superintendent with effect from the date he was given current duty charge of the said post, till the date of his retirement, and his pension would also be fixed accordingly, thereafter.

Learned Additional Advocate General appearing for State of Haryana has made the same argument which was advanced before the learned Single Judge that the incumbent since was not eligible for being promoted to the post of Superintendent, he would not be entitled for payment of salary admissible to the said post. The argument has already been repelled by the learned Single Judge on the basis of a Full Bench judgment deciding an identical issue.

A technical objection has also been raised that since no specific prayer for grant of pay scale of the post of Superintendent was made in the writ petition, learned Single Judge erred in law in granting the said prayer. We are of the opinion that the argument being advanced by the learned Additional Advocate General, Haryana, is hyper technical. It is always within the powers of the Court to mould a relief considering the facts and circumstances of a particular case. Thus the grant of relief by the learned Single Judge after moulding the relief can not be faulted with.

In view of the above facts and discussion, we do not find any merit in the appeal requiring interference by us and the same accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

August 03, 2018
Pkapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO