

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No.15821 of 2004  
Date of decision: 28.05.2019

Naveen Kumar, Hindi Teacher, Govt. Sr. Sec. School,  
Faridabad, Haryana .... Petitioner

Versus

State of Haryana and others ... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Bhupinder Malik, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

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**B.S. Walia, J. (Oral).**

[1] Prayer in the writ petition is for quashing orders, Annexures P-2 and P-3 dated 25.03.2004 to the extent the same deny payment of salary w.e.f. 16.10.2000 to 13.11.2001 to the petitioner.

[2] Learned counsel contends that the stand of the respondents in applying the principle of "No Work No Pay" for denying salary to the petitioner for the aforementioned period is not attracted in the facts and circumstances of the case as the petitioner was always ready and willing to perform duty and it was only due to lapse of the respondents that the petitioner was deprived of appointment in time. Learned counsel further contends that, despite numerous opportunities having been granted to the respondents to file a specific affidavit to explain the basis for denying relief as prayed for by the petitioner, no affidavit has been filed despite even issuance of bailable warrants against respondent No.3.

[3] Learned Sr. DAG on the other hand prays for the case to be considered and decided on the basis of material already on record.

[4] I have heard learned counsel for the parties.

[5] Brief facts of the case leading to the filing of the writ petition are that the petitioner who belongs to the Scheduled Caste 'B' Category applied for appointment to one of the 64 posts reserved for the SC - B Category out of the 860 posts of Hindi Teachers advertised by the respondents vide advertisement dated 15.11.1999. The petitioner was interviewed by the respondents in the office of the District Education Officer, Rewari on 11.12.1999 and was declared successful as per result dated 16.10.2004. However, despite 15 persons lower than the petitioner in the merit list of SC-B Category having been appointed w.e.f. November to December 2000 with the 1<sup>st</sup> person immediately below him in the merit list having been appointed on 16.10.2000, the respondents for reasons best known to them did not issue appointment letter to the petitioner despite numerous representations. Aggrieved, against aforementioned inaction of the respondents, the petitioner filed CWP No.15403 of 2001.

During the pendency of CWP No.15403 of 2001, the respondents appointed the petitioner as Hindi Teacher on 13.11.2001. Subsequently, the petitioner filed Misc. application No.15166 of 2002. The said application was disposed of vide order dated 25.07.2002 with liberty to the petitioner to make a representation for seeking appointment from the date persons lower in merit than him had been appointed and for grant of salary and other consequential relief from the said date with the liberty that in case the representation was decided against him, then he would be at liberty to seek his remedy in accordance with law. The petitioner submitted a number of representations for grant of deemed date of appointment with effect from the

date of appointment of persons lower than him in the merit list but to no avail. Thereupon, the petitioner filed CWP No.15059 of 2003 claiming deemed date of appointment as Hindi Teacher w.e.f. October 2000 along with all consequential benefits. The aforementioned writ petition was disposed of vide order dated 22.09.2003 with directions to the respondents to decide the representation of the petitioner within one month from the date of receipt of certified copy of the order. However, no order was passed on the representation of the petitioner. Consequentially, the petitioner filed COCP No.309 of 2004. During the pendency of the aforementioned contempt petition, the respondents passed orders, Annexure's P-2 and P-3 dated 25.03.2004 granting seniority, increments and all other benefits w.e.f. November 2000 except salary.

[6] It is in the aforementioned circumstances, that the petitioner has invoked the jurisdiction of this Court claiming payment of salary for the period 16.10.2000 to 13.11.2001 on the ground that it was only on account of the fault of the respondents that the petitioner was not appointed in time as a result of which he could not perform duty.

[7] There is no denial to the position as noted above in the written statement filed by the respondents.

[8] Sole argument of learned Sr. DAG is that in view of other benefits like seniority, increments and other benefits having been granted w.e.f. November 2000 besides the petitioner not having worked for the aforementioned period, the petitioner is not entitled to the payment of salary for the period in question especially since there is no challenge to the grant of benefits of seniority, increments and all other benefits w.e.f. November 2000.

[9] I have considered the submissions of learned counsel for the parties and am of the considered view that the claim of the petitioner merits acceptance though for the period November 2000 to 13.11.2001.

[10] It is not the stand of the respondents that it was on account of some fault of the petitioner that appointment could not be given to the petitioner in time although persons lower than him in the merit list had been appointed from November to December 2000 with one of the persons immediately lower in merit than the petitioner in the selection list claimed to have been appointed on 16.10.2000. The petitioner for no fault of his had to repeatedly invoke the jurisdiction of this Court. Initially, the petitioner filed CWP No.15403 of 2001. During the said writ petition, the petitioner was appointed as Hindi Teacher on 13.11.2001. Subsequently, the petitioner filed Misc. application No.15166 of 2002. The said application was disposed of with liberty to the petitioner to make a representation for seeking appointment from the date persons lower in merit than him had been appointed and for grant of salary and other consequential relief from the said date. Thereafter, the petitioner filed CWP No.15059 of 2003 claiming deemed date of appointment as Hindi Teacher w.e.f. October 2000 along with all consequential benefits. The aforementioned writ petition was disposed of on 22.09.2003 with a direction to the respondents to decide the representation of the petitioner within one month from the date of receipt of certified copy of the order. However, no order was passed on the representation of the petitioner whereupon the petitioner filed COCP No. 309 of 2004 and it was during the pendency of the said contempt petition that the respondents passed orders, Annexures P-2 and P-3 dated 25.03.2004 granting seniority, increments and all other benefits w.e.f.

[10] Thus, it is clear beyond an iota of doubt that the petitioner was not offered appointment by the respondents for reasons best known to them and was offered appointment only after the petitioner invoked the jurisdiction of this Court and that too only w.e.f. 13.11.2001. Thereafter, while all other benefits like seniority, increments etc. were given to the petitioner w.e.f. November 2000 vide office orders Annexures P-2 and P-3 dated 25.03.2004, benefit of salary was not given for the period w.e.f. deemed date of appointment till actual date of appointment. No explanation has been given for denial of salary for the aforementioned period except mentioning that the petitioner is not entitled to salary on the principle of “No Work No Pay”.

[11] Hon’ble Co-ordinate Bench of this Court in **Dr. Sadhan Thukral vs State of Haryana and others, 2011 (4) SCT 26** by referring to the following judgments i.e. **1991 (3) SCT 317 SC- Union of India etc. vs Jankiraman etc., Bir Singh Kadian vs State of Haryana, 1994 (3) SCT 423, Vidya Parkash Harnal vs State of Haryana, 1995 (3) SCT 785, Krishan Kumar vs Haryana State Fed. Of Consumers’ Coop. Wholesale Stores Ltd. 1997 (1) SCT 686 and Kanwaljeet Singh vs State of Haryana, 2008 (4) SCT 326** held that where an employee is deprived from performing duty for no fault of his/her, then the principle of “No Work No Pay” would not be applicable. In so holding, Hon’ble the Co-ordinate Bench placed reliance on the decision of Hon’ble the Supreme Court in case titled as **Union of India etc. vs Jankiraman etc (supra)**. Relevant extract of the decision of Hon’ble the Supreme Court in Jankiraman’s case (Supra) is reproduced as under:-

*“The normal rule of “No Work No Pay” is not applicable to cases such as the present one where the employee although he*

*is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17 (1) will also be inapplicable to such cases.”*

[12] Likewise, relevant extract of the decision of Hon’ble the Co-ordinate Bench of this Court in case titled as **Dr. Sadhan Thukral vs State of Haryana and others, 2011 (4) SCT 26**, is reproduced as under:-

*“10. In my humble opinion, the judgments relied upon by the respondents are not attracted in the facts and circumstances of the present case. In the present case, ‘petitioner had a right work on the post of Principal having been duly and properly selected and appointed to the post. It was only on account of Court’s intervention that she was unable to perform her duties. Thus, her readiness and willingness was undoubtedly there. From the analysis of the judgments, referred to above, it seems that where an employee is deprived from performing duties for no fault of his/her, principle of ‘no work, no pay’ would not be applicable. The case of the petitioner is on much stronger footing than the cases of the employees against whom criminal/disciplinary proceedings are initiated and exonerated/acquitted.*

*11. This petition is accordingly allowed. Impugned orders dated 31.3.2009 (Annexure P.10) and 11.12.2009 (Annexure P12) are hereby set aside. Consequently, the respondents are directed to pay salary to the petitioner for the period 19.03.2004 to 13.05.2007. Let the arrears be calculated and paid within a period of three months from the date of receipt of certified copy of this order.”*

[13] A perusal of the representation, Annexure P-1 reveals that the delay in the appointment of the petitioner occurred on account of the office

petitioner belonging to the General Category whereas he had applied and been selected under the SC-B Category. In the circumstances, although the petitioner was informed by the District Education Officer, Bhiwani of his selection and was called for verification of original documents on 24.04.2001 and the same were verified and found to be correct, yet the petitioner was not issued appointment letter with the District Education Officer, Bhiwani informing the Director, Secondary Education vide letter dated 24.07.2001 that although the petitioner belonged to the Reserved Category, the list sent by the office of the Director, Secondary Education wrongly mentioned the petitioners name in the General Category. In the meantime, candidates with roll numbers (i.e. 20209, 31108, 31107, 1005, 4061, 2148, 31109, 29106, 31101, 29103, 11604, 9009, 36072, 36083, 13702, 14057) who were lower in merit than the petitioner in the selection list, were appointed on the post of Hindi Teacher from November, 2000 onwards. Thus, it is apparent that the petitioner was denied appointment for no fault of his while persons lower in merit than him in the selection list were issued appointment and it was only on the petitioner invoking the jurisdiction of this Court that during the pendency of the writ petition, the petitioner was offered appointment and that too w.e.f. 13.11.2001 i.e. a date other than the date i.e. November 2000 from which the petitioner was subsequently held entitled to benefits of seniority, increments, other consequential benefits except arrears.

[14] In the circumstances, it is crystal clear that the failure to issue appointment letter to the petitioner at the time persons lower in merit than the petitioner in the selection list were appointed as Hindi Teacher was on account of fault exclusively attributable to the respondents and not the petitioner in any way. Despite numerous opportunities having been given,

no affidavit has been filed by the respondents explaining the basis on which the petitioner has been denied appointment and arrears except taking up the plea of non-entitlement to salary on the basis of principle of “No Work No Pay”. In the light of the position noted above, I am of the considered view that the principle of “No Work No Pay” is not applicable in the facts and circumstances of the present case.

[15] In the circumstances, impugned orders Annexure’s P-2 and P-3 to the extent the same deny arrears to the petitioner with effect from November 2000 i.e. the date with effect from which the petitioner was granted benefits of seniority, increments and all other benefits except arrears on the Principle of “No Work No pay” is quashed as the petitioner was ready and willing to serve but was not allowed to serve due to fault exclusively attributable to the respondents which they rectified later vide orders Annexures P-2 & P-3 dated 25.03.2004 but despite giving all benefits w.e.f. November 2000 denied arrears w.e.f. said date till date of actual appointment. In the circumstances, the respondents are directed to pay arrears to the petitioner for the period November 2000 till 13.11.2001 i.e. the date on which he was actually appointed as benefits like seniority, increments have already been given to the petitioner w.e.f. November 2000 vide order No.E-II/04/2598-2600 dated 25.03 2004. Payment of salary w.e.f. 16.10.2000 cannot be granted in the absence of a prayer for quashing of Annexure P-2 and P-3 to the extent the same grant benefit of seniority, increments and all other benefits w.e.f. November 2000 by holding the petitioner entitled to said benefits w.e.f. 16.10.2000. Had the prayer not been restricted to challenge Annexure P-2 and P-3 only to the extent of denial of salary w.e.f. 16.10.2000 on the principle of “No Work No Pay” the position would have been otherwise. Accordingly, petitioner is held entitled to

arrears w.e.f. November 2000. Arrears be released w.e.f. November 2000 till 13.11.2001 within a period of three months from the date of receipt of certified copy of this order failing which the same shall be payable along with interest @ 7.5% per annum.

[16]           Writ petition disposed of in the aforementioned terms.

28.05.2019  
amit

(B.S. WALIA)  
JUDGE

1.   Whether speaking/reasoned

:

Yes/No.
2.   Whether reportable

:

Yes/ No.