

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8752 of 2007

Date of decision: 18.11.2019

Kamlesh Ahuja

.... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

Mr. Rajesh Lamba, Advocate
for respondent No.4.

HARSIMRAN SINGH SETHI, J.

The grievance raised by the petitioner in the present writ petition is that she was appointed as JBT teacher with the respondent No.4-School, against a regular sanctioned post, which post was aided by the Government of Haryana. Petitioner continuously worked against the said post till the date of her retirement in the year 2015, but she was not paid salary of the post of JBT teacher starting from 01.04.2006 till her retirement on 31.12.2015 on the ground that approval granted to her appointment, is under reconsideration.

The facts as stated in the writ petition are that respondent No.4.- school is an aided institution receiving 95% grant from Government of Haryana. An advertisement was issued by respondent No.4 on 22.09.1999 for appointment of two lady teachers, one BA/B.Ed and another as JBT. Appointment was to be made on the pay scale as fixed by the Government of

Haryana for the JBT teachers. Petitioner, who was fully eligible, applied for the said post and after undergoing selection process, was selected and appointed on the post of JBT teacher vide appointment letter dated 25.10.1999. Against the second post, one Kumari Darshana was appointed. Vide letter dated 05.01.2001, District Education Officer accorded approval for the appointment of the petitioner as well as that of Ms. Darshana Kumari in the pay scale of Rs.4500-7000/- from the date they joined as JBT teachers with respondent No.4 on the sanctioned post. The said approval was granted subject to the decision of CWP Nos.5857 of 2000, 6049 of 2000 and 6050 of 2000. The conditional approval was granted by the Government of Haryana as the State of Haryana was considering as to whether employee, who is more qualified than qualification required for appointment to the post of JBT teacher, can be appointed on the said post or not.

The petitioner after being granted approval in respect of her appointment, though, conditional, kept on working and was being paid salary of the post of JBT teacher as sanctioned by Government of Haryana in the pay scale of Rs.4500-7000. Petitioner continued getting the pay scale of the post of JBT till 31.03.2006, when without there being any change in circumstances, the respondent stopped pay of the petitioner in the pay scale of Rs.4500-7000/-, which is the pay scale granted to the sanctioned post of JBT against which petitioner was appointed. Respondent-school started giving consolidated salary of Rs.3000/- per month to the petitioner, which was being given to the other teachers, who were working on non-sanctioned post by the respondent No.4 as the same was to be paid out of their own resources.

Petitioner approached the respondent/School seeking regular pay scale as she was working against regular sanctioned post and her appointment

had already been approved, which approval has not been withdrawn at any given point of time. As the claim of the petitioner was not being decided by the respondents, the petitioner was forced to approach this Court by filing present writ petition seeking permanent approval of her appointment as JBT teacher and release of her pay, in the pay scale in which she was appointed and being paid to the other JBT teacher by the Government of Haryana.

Upon notice of motion, respondents have filed reply and in the reply, it has been stated that the petitioner was more qualified than the qualification prescribed for the post of JBT teacher. It is further stated by the respondents in the reply that though, approval was granted in respect of the appointment of the petitioner but, the same was conditional, subject to the decision of the writ petitions, which were pending before this Court and, as the petitioner was not having the specific qualification, required for appointment as JBT teacher, approval has not been extended on permanent basis. Respondents further submitted that writ petitions, which were pending before this Court, were disposed off by the Division Bench of this Court vide order dated 30.01.2001, keeping in view the settlement between the employees and management and as no decision was rendered by this Court with regard to the controversy raised therein, the approval of appointment of the petitioner was not finalised.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

One fact which needs to be noticed at this stage is that the petitioner, on attaining the age of superannuation, has already retired on 31.12.2015 and it is not disputed by the respondents that there was no break in the service of the petitioner starting from date when she was appointed i.e. 25.10.1999 till she retired on attaining the age of superannuation i.e. 31.12.2015.

The question which is to be decided is as to whether the conditional approval, which was granted by the respondents for the appointment of the petitioner against sanctioned post of JBT teacher, which was an aided post, will continue to hold good till her retirement or not and whether, once the petitioner has discharged the duties of the JBT teacher and that too against a regular sanctioned post, whether she is entitled for benefit of pay scale, which was extended to the said post by the Government of Haryana.

It is the settled principle of law that an employee is entitled for the salary of the post of which he/she discharging the duties. It is not disputed by the respondents that the petitioner discharged the duties of the post of JBT teacher and that too against a regular sanctioned post, which was an aided post, for which respondent No.4/School was received grant-in-aid from Government of Haryana. Further, it is not disputed that in October, 1999, when the petitioner was appointed, she was being paid salary in the pay scale of Rs.4500-7000/- and her basic pay as on 31.03.2006 was Rs.5250/- and gross salary was Rs.9659/-. There was no occasion or reason that the Government of Haryana should have stopped the payment of salary to the petitioner in the pay scale in which she was appointed and that too when she was allowed to discharge the duties of the post of JBT teacher after she was duly selected. In case, respondents State had any apprehension about the eligibility of the petitioner, State was free to take an appropriate action after adopting due procedure of law but once, that action was never taken and conditional approval granted to her appointment, which was never withdrawn, action of the respondents in stopping salary of the petitioner for which she was entitled while working against regular sanctioned aided post of JBT, was an arbitrary action. Petitioner was entitled for the salary of the post of JBT, of which she

was discharging the duties as being granted to the similarly situated employees, who were also working against regular sanctioned post of JBT teacher. As the respondent-State stopped the payment of salary to the petitioner, respondent No.4-School paid the salary to the petitioner out of their own resources, which was roughly 1/3rd of the salary, which she was receiving while working against an aided post of JBT. Even if, the salary was to be stopped, there has to be a procedure and without giving any opportunity of hearing to the petitioner, her salary could not have been reduced by the Government of Haryana.

Hon'ble Supreme Court of India has held that where an employee is asked to discharge the duties of higher post though not regularly promoted against the said post, employee is entitled for payment of post against which he/she is discharging the duties. Applying the same proposition of law, the petitioner was entitled for salary of the post of JBT, against which she was discharging the duties. Salary of the petitioner could not have been reduced by the respondents merely on the ground that the approval for the appointment of the petitioner as JBT teacher was under review. Even if approval to the appointment of the petitioner as JBT teacher in the pay scale of Rs.4500-7000 was under review but, the same had never been withdrawn till her retirement on 31.12.2015. Hon'ble Supreme Court of India in **Selva Raj vs. Lt. Governor of Island, Port Blair 1999 AIR (SC) 838** held that an employee, who is working against higher post, though, in the officiating capacity is still entitled for salary of the said post. Relevant paragraph of the judgment is as under:-

“It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner,

Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. The decision of the Central Administrative Tribunal rejecting iliac claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29-1-1992 to 19-9 1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs.”

The Full Bench of this Court while deciding CWP-21358 of 2008 titled as **Subhash Chander vs. State of Haryana and others** on 20.12.2011 has held that where an employee working/officiating on post, though, discharging duties of higher post is entitled for pay against which post he/she discharging the duties. Relevant paragraph of the judgement is as under:-

“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 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.

A Division Bench of this Court while deciding CWP-10152 of 2000 titled as **Balbir Singh Dalal and others vs. State of Haryana and another** on 09.05.2002 held that even if employee officiating against higher post, he/she will be entitled for salary of the higher post. The said question of law was again answered by a Division Bench of this Court in CWP-6723 of 2004 titled as **Pritam Singh Dhaliwal vs. State of Punjab and another** decided on 23.08.2004, wherein, it has been held that an employee who is discharging duties of higher post, though, on current duty charge is entitled for salary of the post on which he/she is discharging the duty. Relevant paragraph of the judgment is as under:-

“5. We have heard the learned counsel for the parties and have also perused the pleadings and so also the documents appended by way of annexures. We are of the opinion that the petitioner is justified in claiming the higher pay for having performed the duties of Deputy Director of Panchayat/Addl. Deputy Commissioner (Development) from time to time pursuant to the orders passed by the Government, copies of which have been appended as Annexures P2 to P8. It is the settled principle that if a person is asked to perform the duties regularly though in officiating capacity or on current duty charge or as a temporary measure, he would be entitled to the higher pay i.e. the pay which is payable while performing the duties in the higher/promotional post. In this regard, it shall be apposite to mention rules 4.22 and 4.13 of the Punjab Civil Services Rules, Volume I Part-I, which read as under :-

"4.22. A competent authority may appoint one Government employee to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time. In such cases, his pay is regulated as follows :-

(a) the highest pay, to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;

(b) For each other post he draws such reasonable pay, in no

case exceeding half the presumptive pay (excluding overseas pay) of the post, as the competent authority may fix; and

(c) If compensatory allowances are attached to one or more of the posts he draws such compensatory allowances as the competent authority may fix : Provided that such allowances shall not exceed the total of the compensatory allowances attached to all the posts.

Note : xx xxx xx".

"4.13. (1) Subject to the provisions of rules 4.22 to 4.24, a Government employee who is appointed to officiate in a post shall not draw a higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which he is appointed to officiate is one enumerated in the schedule to this rule or unless the officiating the appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post on which he holds a lien or would hold a lien had his lien not been suspended :

Provided that the competent authority may exempt from the operation of this rule, any service which is not organised on a time scale basis and in which a system of acting promotions from grade to grade is in force at the time of the coming into force of these rules :

Provided further that the competent authority may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions of this rule and subject to such conditions as the competent authority may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide and may thereupon be granted the same pay (whether with or without any special pay, if any, attached to such posts) as they would have received if still in the ordinary line.

(2) For the purpose of this rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien or would hold a lien had his lien not been suspended, or on a scale of pay identical therewith."

Note 1. - The words 'duties' and 'responsibilities' used in this rule are to be interpreted in a wide sense as including besides the works to be performed the general responsibilities and liabilities incidental to being member of a particular service. See also note 7 below 4.4.

xx xx xx xx xx "

The principle of "*quantum meruit*" (so much as the employee has earned - is found on premises i.e. to pay the employee for doing a thing as much as he has earned or merited; projects where a special contract has been entered into to pay the employee a particular amount or he is entitled to recover equivalent to the value of work that has been put in by him. The employer is obligated to pay the employee as per the emoluments available in the higher pay scale during the time he/she actually works on the post though it may be in the officiating capacity/as temporary measure and or current duty charge. The rigour of "regular promotee" would not come in the way under these circumstances.

From the above propositions of law, it is clear that employee is entitled for the salary of the post on which he/she discharges the duties. Admittedly, the petitioner discharged the duty of the post of JBT teacher, which was a regular sanctioned post duly aided by the Government of Haryana. Once, there was no withdrawal of the approval to the appointment of the petitioner as JBT teacher in the regular pay scale till her retirement, the petitioner is entitled for the salary of the post of JBT against which she had worked throughout her career.

Learned counsel for the respondents has not produced any document to show that approval, which was granted to the appointment of the petitioner on the pay scale of Rs.4500-7000/-, was ever withdrawn. Once the approval of appointment of the petitioner was not withdrawn, the petitioner is entitled for the said pay scale of the post of JBT while working on the said post.

This Court is not going into the claim as to whether the petitioner was eligible to be appointed, at the first instance as petitioner has already been superannuated from service during the pendency of the present writ petition and the only question, which has been raised now before this Court is for the grant of salary of the post of JBT, against which she discharged the duties alongwith arrears.

Keeping in view the facts and circumstances mentioned above, the claim of the petitioner for grant of salary of the post of JBT teacher on the pay scale of Rs.4500-7000/- is allowed. Respondents are directed to release the arrears of the salary to the petitioner. It is made clear that when the pay scale of the post of JBT teacher has been revised subsequently in the year 2006, the benefit of the said revision be also extended to the petitioner alongwith arrears. Further, as act of the respondents in not paying salary to the petitioner for

which she was entitled is without any valid justification, the arrears which will be calculated by respondents under this order will also carry interest @ 9% per annum from the date amount became due till the same is released.

Let calculations of the arrears as well as interest as per this order be calculated within a period of two months from the date of receipt of copy of this order and the same be released to the petitioner within a further period of one month.

Learned counsel for the petitioner states that the present writ petition has been filed in the year 2007 when the petitioner was in service, therefore, claim of the petitioner for grant of pension was not raised, but, now the petitioner has already been superannuated on 31.12.2015, thus, the respondents be also directed to consider the claim of the petitioner for her pensionary benefits as well by treating that the petitioner had worked against a regular sanctioned post of JBT teacher.

Learned counsel for the respondents very fairly states that keeping in view the order passed today, whatever benefits, for which the petitioner is entitled under the rules governing service including the grant of pensionary benefits alongwith arrears will be examined and appropriate orders will be passed in that regard as well and in case, the petitioner will be found entitled, the same will also be released to her within a period of two months from the date of receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

18.11.2019.

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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |