

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

Date of decision : 24.05.2019

1. CWP-10495-2016 (O&M)

Harbhajan Singh Khunger and others

...Petitioner

Versus

State of Punjab and others

...Respondents

2. CWP-12980-2016 (O&M)

Pirthi Pal Singh and others

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gurbachan Singh, Advocate,
for the petitioner(s).

Ms. Gunkirat Kaur, AAG, Punjab.

JITENDRA CHAUHAN J. (ORAL)

The above noticed two writ petitions are being disposed of by this single judgment, as common questions of facts and law are involved therein. However, the facts are being derived from CWP-10495-2016, for

brevity.

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ of Certiorari quashing order dated 12.01.2016 (Annexure P-5), whereby, the claim of the petitioner for grant of higher salary for the period they discharged duties on a higher post, was rejected.

It is contended that the petitioners are working as Superintendent Grade-II in the Water Supply and Sanitation Department, Punjab. Earlier, a proposal was sent by the Chief Engineer (North), Water Supply and Sanitation Department, Patiala vide letter dated 02.09.2013 (Annexure P-1), to fill up 43 vacant posts of Superintendent Grade-II by promoting Senior Assistants on ad hoc basis, as per seniority, as no eligible candidate was otherwise available for regular promotion. Accordingly, the petitioners were promoted as Superintendent Grade-II as per seniority and merit vide letter dated 01.11.2013 (Annexure P-2). However, it was specifically mentioned that the petitioners will not be given higher scale and grade of the higher post. The petitioners subsequently preferred CWP-24476-2015 before this Court seeking benefits of the higher post. The writ petition was disposed of vide order dated 20.11.2015 (Annexure P-4) with a direction to the respondents to decide the representation dated 06.10.2015 (Annexure P-3), already moved by them. Pursuant thereto, the claim of the petitioners was rejected vide order dated 12.01.2016 (Annexure P-5). Hence, the instant petition.

The grouse of the petitioners is that despite having discharged

duties on the higher post of Superintendent Grade-II, they are not being paid higher salary attached to the post in question.

On the other hand, learned State counsel submits that the promotion of the petitioners to the post of Superintendent Grade-II cannot be considered as a regular promotion, therefore, they are not entitled to the higher pay-scale and other allowances attached with the post.

Heard.

This Court has passed the following order on 25.05.2016:-

“Counsel, at the outset, does not press his claim against order dated 12.01.2016 (Annexure P5) and restricts his claim only to the grant of higher pay-scale of Superintendent Grade-II, on the ground that the petitioner is working and discharging the duties of the said post on ad hoc basis since the last 2 ½ years.

Notice of motion for 26.09.2016.”

There is no dispute with regard to the fact that the petitioners are continuously discharging their duties as Superintendent Grade-II on *ad hoc* promotion. A Full Bench of this Court in ***Subhash Chander Vs. State of Haryana and others, CWP-21358-2008, decided on 20.12.2011***, while deciding the question “Whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale without being substantively appointed to such post.”, has held as under:-

“12. A close examination of Rule 4.13 of the Rules would show that once a person like the

petitioner has been given independent charge of a post, which involves assumption of duties and responsibilities of greater importance than the one attaching to the post held by such an employee on which he holds a lien or would have held his lien had it not been suspended, then he is entitled to pay of the higher post. A post is regarded to involve assumption of duties and responsibilities of greater importance if it carried higher pay scale than the one on which he holds the lien. In the present case, the pay scale of the post of Accountant is lower than that of the post of the Secretary.

13. xxxx

14. xxxx

15. xxxx

16. xxxx

17. *In view of the above, the question posed in para no.1 is answered in affirmative and it is held that if any 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....”*

The case of the petitioner is also squarely covered by the ratio of law laid down by Hon'ble the Supreme Court in ***State of Punjab and another Vs. Dharam Pal, 2017(4) Law Herald (SC) 2669***, wherein, it has been held as under:-

“10. Certain Notes have been appended to the said Rule

but they are not relevant for adjudication of the present controversy. On a close scrutiny, it is noticeable that the said Rule postulates that the government employee appointed to an officiating post shall not draw pay higher than his substantive pay in respect of a permanent post unless the post in which he is appointed to officiate is one enumerated in the Schedule to the Rules and further the officiating appointment involves assumption of duties and responsibilities of greater importance than those attached to the post. It is not in dispute that the posts of Superintendent Grade II and Grade I are covered under the Schedule. Be it mentioned, the extension of benefit is subject to the provisions of Rules 4.22 and 4.24.

11. In view of the aforesaid Rule position, it is necessary to reproduce Rule 4.22 and Rule 4.24. They read as follows:

"Rule 4.22. The 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, the Government employee shall draw the highest pay to which he would be entitled if his appointment to one of the posts stood alone: Provided that the employee must fulfil the requisite qualifications and conditions for services for both the posts.

Rule 4.24. When a Government employee holds current duty charge of another post, in addition to that of his own substantive post, he does not officiate in the former post and as such is not entitled to any additional remuneration."

12. As we understand the said Rules, they categorically convey that the employee who holds the higher post must fulfil the requisite qualifications and conditions for service for both the posts. It is not controverted at the Bar that the respondent was eligible to hold the post of Superintendent Grade II and Grade I. In this context, the learned counsel for the appellants has commended us to Rule 4.16. The said Rule reads as follows:

"Rule 4.16. A competent authority may fix the pay of an officiating Government employee at an amount less than that admissible under these rules.

Note 1.- One class of cases falling under this rule is that in which a Government employee merely holds charge of the current duties and does not perform the full duties of the post.

Note 2.- When a Government employee is appointed to officiate in a post on a time-scale of pay but has his pay fixed below the minimum of the time-scale under this rule he must not be treated as having effectually officiated in that post within the meaning of rule 4.4 or having rendered duty in it within the meaning of rule 4.9. Such a Government employee, on confirmation, should have his initial pay fixed under rule 4.4 (b) and draw the next increment after he has put in duty for the usual period required, calculated from the date of his confirmation.

Note 3.- The power conferred by this rule is not exercisable save by a special order passed in an

individual case and on a consideration of the facts of that case. A general order purporting to oust universally the operation of rule 4.14 would be ultra vires of this rule. Although, the practice of passing ostensibly special order on every individual case would not be ultra vires of this rule it would constitute the grossest possible fraud thereon."

13. On a careful scrutiny of the aforesaid prescription, it is perceptible that the said Rule envisages a different situation altogether. The present factual matrix is quite different. We are inclined to so hold as the respondent herein was holding higher posts and further he was performing the duties of higher responsibility attached to the posts. Thus analysed, we arrive at the conclusion that the Rules do not bolster the proposition advanced by the learned counsel for the State.

The impugned action of the respondents is also in contravention of the finance department notification dated 20.07.2011 (Annexure P-8), which reads thus:-

"I am directed to invite a reference to the subject cited above and to say that a clarification has been asked from the Department of Finance regarding fixation of pay of a Government employee who is appointed to a post involving the assumption of duties and responsibilities of greater importance on or with effect from the date of coming into force the Punjab Civil Services (Revised Pay) Rules, 2009.

2. *After careful examination of the matter, it has been decided that the pay of a Government employee, who is appointed to a post involving the assumption of duties and responsibilities of greater importance, or of with effect from the date of coming into force of the Punjab Civil Services (Revised Pay) Rules, 2009 as amended vide Government Notification No.5/10/09-5FPI/339 dated the 29th July, 2009, shall be fixed in the same manner as laid down in Rule 11 of the aforesaid rules for fixation of pay in the case of promotion from one grade pay to another.*

3. to 5. XXX XXX XXX XXX”

This Court is of the considered opinion that the case of the petitioners is squarely covered by the government instructions (Annexure P-8). Accordingly, the petitioners are held entitled to the higher pay and emoluments attached to the post of Superintendent Grade-II. Their pay may be re-fixed accordingly and the arrears thereof shall be paid within three months from the date of receipt of a certified copy of this judgment.

Allowed in the above terms.

Photocopy of this judgment be placed on the file(s) of the connected case(s).

24.05.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No