

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

CWP No. 12862 of 2015.

Date of Decision: 04.02.2019.

Paul Mohinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Vivek K. Thakur, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN.J.

The present petition is for quashing the order dated 05.09.2014 (Annexure P-3) passed by respondent No.3 vide which the claim of the petitioner for grant of pay scale attached to the post of Joint Director Agriculture (Engineering) was declined.

The learned counsel for the petitioner contends that the petitioner was appointed as Assistant Agriculture Engineer in the Agriculture Department on 08.02.1983. He was promoted to the post of Agriculture Engineer on 21.03.2001 and while working on the said post, he was given the charge of Joint Director Agriculture (Engineering Wing) vide order dated 05.11.2009. The petitioner performed the duties of the Joint Director Agriculture (Engineering) from 06.11.2009 to 30.06.2011 i.e. till the date of his retirement. It is

contended that the petitioner deserves to be granted the pay scale attached to the post of Joint Director Agriculture (Engineering Wing).

In Selvaraj vs. Lt. Governor of Island, Port Blair

and others 1998(4) RSJ 22, Hon'ble the Supreme Court in para Nos. 3

& 4 has observed as under:-

“3. 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.”

Further, in **Subhash Chander Vs. State of Haryana,**

2012 (1) SCT, 603, a Full Bench of this Court has held 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.”

In **CWP No. 4552 of 2003 titled as “Darshan Singh**

and another vs. State of Punjab and others” decided on 01.07.2010;

this Court had observed as under:-

“Learned DAG has argued that even though he is not in a position to cite any judgment contrary to this, yet the distinguishing factors are that in the order relating to the petitioners it was specifically mentioned that they would not be entitled to any such pay while there was no such stipulation in the case of Selvaraj (supra).

In my opinion this would not be determinative. What the Hon'ble Supreme Court has decided in the case of Selvaraj (supra) is the entitlement of an employee to get the emoluments of the post against which he actually worked.”

In view of the ratio of law laid down in **Selvaraj's**

case, Subhash Chander's case and Darshan Singh's cases (supra)

and taking into consideration the fact that the respondents have admitted in their reply that the petitioner was given additional charge of the post of Joint Director Agriculture (Engineering Wing) in addition to his own work, the claim of the petitioner deserves to be allowed.

In view of above, the present civil writ petition is allowed. The impugned order dated 05.09.2014 (Annexure P-3) is hereby set aside. The respondents are directed to pay the higher pay scale to the petitioner for the period, he has performed the duties on higher post of Joint Director Agriculture (Engineering), within three months from the date of receipt of certified copy of this judgment.

04.02.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No