

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

LPA No.1497 of 2019(O&M)

Date of decision: 06.09.2019

State of Haryana and others

... Appellants

Versus

Baldev Krishan Sharma (deceased) through its LRs

... Respondents

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

Present: Mr. Samarth Sagar, Additional Advocate General, Haryana,
for the appellants.

KRISHNA MURARI, C.J. (Oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 17.11.2018 passed by the learned Single Judge allowing the writ petition filed by the respondent seeking quashing of the order dated 18.12.2015 passed by the appellant, whereby his claim for grant of pay/emoluments of the higher post of Section Officer on which he was working since 2008, had been declined.

Facts in brief relevant for the purpose of adjudication of the controversy can be summarized as under.

Respondent-petitioner was initially appointed as Clerk in the Department of Renewable Energy, Haryana on 21.11.1996. Subsequently, he was promoted to the post of Assistant in July, 2005. In the meantime, he also acquired a qualification of State Accounts Service, Part-1, in the year 2006. Vide order dated 17.04.2008, he was offered appointment as SAS Officer in

his own pay scale with a special pay of Rs.100/- as incentive. He was posted

as Section Officer in the office of respondent No.3 vide order dated 22.05.2008. Respondent-petitioner continued to function on the said post without any break. Subsequently, he started to claim salary to the said post and accordingly made a representation for the same, which was declined vide order dated 18.12.2015, which was challenged in the writ petition. It is also to be taken note of that in the interregnum period, the respondent-petitioner on a number of occasions made a request to relieve him from the duties, but he was intimated vide letter dated 08.08.2013 that on account of his exceptional performance and non-availability of any other capable/trained officer, he cannot be relieved from the assignment.

The writ petition was contested by the appellant herein on the ground that respondent-petitioner had given willingness for appointment against the post of Section Officer in his own pay scale, and since he does not hold the basic qualification for the post of Section Officer, therefore, he cannot claim payment of salary admissible to the said post.

Learned counsel for the appellants laying much stress on the terms and conditions of the letter/order whereunder appointment as Section Officer was made, argued that once he has agreed to work on the said post without making any claim to the salary admissible to the said post, he is not entitled for payment of the same. It is no doubt correct that one of the conditions enumerated in the appointment letter was that he will not have any right or claim either for the regular or permanent appointment on the said post nor to the pay scale or any other benefit attached to the said post because initially it was a purely stop gap arrangement and the incumbent was liable to be reverted back on availability of qualified persons.

Undisputed fact is that he has been made to work on the said post for almost

10 years without any break and his request to relieve him from the assignment has been rejected by the appellant on the ground that no suitable officer to function on the said post was available, and during the interregnum period he was given further promotion to the post of Store Purchase Officer on regular basis vide order dated 21.07.2009, it does not appeal to reason at all that he will not be entitled for payment of regular pay scale admissible to the post of Section Officer though he was found entitled to be promoted on the next higher post. Learned counsel for the appellant relying upon a Full Bench decision of this Court in the case of **Subhash Chander v. State of Haryana and others**, 2012(1) PLR 778, and in particularly paragraph 14 of the said report, contended that since the officiating promotion was given to the respondent-petitioner on account of administrative exigency, he would not be entitled to payment of regular pay scale admissible to the said higher post. No doubt, the Full Bench in paragraph 14 of the said report observed the same, but the facts of the present case being entirely different, the preposition of law laid down in the said judgment in this regard is not at all attractive. On the contrary, the Full Bench while addressing the question posed before it i.e. Whether an employee who is given an independent charge and responsibility of a higher post is entitled to regular pay scale without being substantively appointed to such post, answered the question in affirmative and held 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. Thus, the Full Bench decision being relied upon by the learned Additional Advocate General for the State of Haryana is in fact in favour of the respondent-petitioner. Though initially the

respondent-petitioner was given the higher post as a stop gap arrangement on account of administrative exigency, but he was made to continue to work on the said post regularly for more than 10 years and while working as such he was given promotion to the next higher post of Store Purchase Officer, which went to show that he worked with utmost satisfaction of the department now he cannot be denied the benefit of regular pay scale of the said post merely on the ground that his appointment was a stop gap arrangement. Such an arrangement is for a short period to overcome the exigency and if it is allowed to continue for a long period such as 10 years, it cannot be said to be a stop gap arrangement. The fact that his request to be relieved from assignment is being declined by the appellant on the ground that his services were exceptional is in itself to demonstrate that he worked with sincerity and utmost satisfaction and cannot be denied the benefit of regular pay scale admissible to the post of Section Officer on which he was made to work for more than 10 years.

In view of the aforesaid facts and discussion, we find no reason to take a different view from the one taken by the learned Single Judge while allowing the petition. The appeal is devoid of merit and accordingly stands dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

06.09.2019
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO