

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.20042 of 2018 (O&M)
Date of Decision.01.08.2019

Sushila Kumari

...Petitioner

Vs

State of Haryana and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for petitioner.

Mr. Harish Nain, AAG, Haryana.

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AMIT RAWAL J.

Petitioner has invoked extraordinary writ jurisdiction of this Court for seeking two-fold relief i.e. to quash impugned order dated 7.8.2018 (Annexure P-5) whereby petitioner has been ordered to be transferred from Govt. College for Girls, Sector 14, Gurugram to Govt. College for Women, Rewari and payment of full salary as admissible to post of Principal from the date of discharging duties on current duty charge including release of arrears.

Petitioner, according to averment made in writ petition, on 18.12.1986 joined as Lecturer in Higher Education Department, Haryana on recommendation of Haryana Public Service Commission. On 31.03.2017 (Annexure P-2), petitioner was given current duty charge of Principal being senior most Associate Professor.

Mr. R.K. Malik, Senior Advocate assisted by Mr. Sandeep Dhull appearing for petitioner submitted that as per Policy dated 7.8.2018, a person cannot be transferred prior to three years and

within one year of retirement. Though petitioner has retired, he does not press for first relief but insists second relief, on the premise that it is settled law that a person, who discharged full-fledged duties of higher post, is entitled to salary meant for said post. In support of contention, relies upon Full Bench judgment of this Court rendered in **Subhash Chander Vs. State of Haryana and others 2012(1) PLR 778** and Division Bench judgment rendered in **Balbir Singh Dalal and others Vs. State of Haryana and another 2002(4) SCT 422.**

Mr. Harish Nain, AAG, Haryana submitted that in CWP No.8256 of 2014 titled as 'Meer Singh Vs. State of Haryana', interim direction was issued to not to promote Principals from Associate Professors and in such circumstances as well as according to Instructions dated 2.11.2016, petitioner was given current duty charge of higher post and such charge is always given to a senior most officer, who is otherwise found fit for promotion but it was with condition that current duty charge shall assigned to petitioner in his own pay scale i.e. ₹37400-67000+Grade Pay ₹9000. Petitioner already had given acceptance for drawing same pay scale and therefore, estopped to claim to higher pay scale, thus, urges this Court for dismissal of writ petition.

I have heard learned counsel for parties and appraised paper book. Facts, as narrated, above are not in dispute. The only question raised in writ petition is whether petitioner, who has already superannuated, would be entitled to higher pay scale while performing current duty charge of Principal w.e.f 01.04.2017 to 31.05.2019 and condition imposed would be contrary to law laid

down already. Full Bench of this Court in paragraph 17 of judgment rendered in **Subhash Chander**'s case (supra) held that if a person is appointed on a post involving assumption of duties and responsibilities of greater importance than those attaching to substantive post then he would be entitled to salary of his officiating post in higher grade. Para 17 reads as under:-

17. 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.

Division Bench of this Court in **Balbir Singh Dalal's** case (supra), noticing the condition imposed in the order assigning current duty charge held that imposition of condition for drawing pay

scale on substantive post cannot take away benefit to the petitioner while discharging duties on post involving higher responsibilities, thus, in these circumstances condition imposed in the order dated 31.03.2017 (Annexure P-2) is hereby set aside. Petitioner is entitled to the higher pay scale from the date she assumed charge of the post of Principal with all consequential benefits. Her pay be re-fixed and arrears of pay are directed to be calculated from the date when she had been officiating on the post of Principal. The payment of arrears shall be made within three months from the date of receipt of certified copy of this order with all consequential benefits.

Writ petition is allowed.

(AMIT RAWAL)
JUDGE

August 01, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No