

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9381-2014 (O&M)

Date of decision: - 28.02.2019

Ram Murti Sharma

....Petitioner

Versus

Punjabi University, Patiala and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Alka Chatrath, Advocate,
for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate
with Ms. Aastha Goyal, Advocate
for respondent No.1.

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that though he has been granted promotion as Personal Assistant with retrospective effect from 25.01.2001, but no consequential benefit of arrears has been granted to him despite the fact that a Division Bench of this Court while deciding LPA No.551 of 2002 directed the Punjabi University, Patiala to re-determine the seniority of the petitioner and grant the consequential benefits in case he is found entitled for. Further, the grievance raised is that the basic pension of the petitioner has been reduced by the respondents upon the grant of retrospective promotion as Personal Assistant, which cannot be done.

The facts as stated in the petition are that petitioner joined the Punjabi University Patiala as a Steno-Typist on 27.08.1975. Thereafter, he was promoted as Senior Steno-Typist on 11.03.1981 and the next promotion to the post of Senior Stenographer. The contention of the petitioner is that he appeared for the shorthand test on 11.09.1987 for promotion to the post of Senior Stenographer and qualified, still, he was not granted the promotion. In the seniority list, which was issued in the cadre of Senior Stenographer, the petitioner was not granted the position as he was expecting for and he was placed junior to certain Senior Stenographers which led to filing of CWP No.16402 of 1995 by the petitioner.

In the said writ petition, the prayer of the petitioner was to issue the appropriate directions to the Punjabi University, Patiala for granting him the seniority at an appropriate place. The said writ petition was disposed of this Court on 13.02.2002 and a direction was issued by this Court that the matter will be re-examined by the Punjabi University, Patiala within a period of three months. The relevant portion of the judgment is as under: -

“....The learned counsel Mr. Agnihotri argued that some of the private respondents had been ranked and placed senior to his client even they have not passed the departmental examination. This contention is being refuted by the learned senior counsel appearing on behalf of respondents No.1 and 2. Be that as it may the backbone of the amended rule is that it is a condition precedent that to become a senior stenographer one has to clear the departmental examination. Therefore, I give directions to the university to examine if any of the private respondents had cleared

the departmental examination or not. If he had not cleared such candidate shall be reverted to his original seniority in the cadre of senior steno typist. If on the examination the university finds that private respondents had already cleared the departmental examination of the senior stenographer even in special chances, such candidate shall be protected in the matter of his seniority. The necessary exercise as directed by me shall be done by the respondent No.1 and 2 within three months. In the case of any reversion, the seniority of the petitioner shall be re-fixed and shall be allowed all consequential benefits. There shall be no order as to costs.”

Aggrieved against the said action, as the petitioner was not satisfied with the said order, he preferred a LPA No.551 of 2002. The said LPA was disposed of this Court on 14.12.2009 and the Punjabi University, Patiala was directed to take fresh decision in the matter of inter-se seniority of the petitioner herein and the respondents over whom the petitioner was asking the seniority after giving due opportunities to all concerned and in case the petitioner was found to be senior, he was to be given consequential benefits in accordance with law. The relevant portion of the order passed by the Division Bench is as under: -

“7. Accordingly, the case of the appellant vis-vis-vis respondents No. 6 to 11 is required to be re-considered after giving due opportunity to all concerned. There is no reason given by learned Single Judge as to why inspite of rule to the contrary, direction has been given that seniority of respondents No. 6 to 11 be protected irrespective of date of passing of test. This part of the observation by learned Single Judge cannot be upheld.

8. Accordingly, we allow this appeal and direct the University to take a fresh decision in the matter of inter-se seniority of the appellant and respondents No. 6 to 11, after giving

opportunity to all concerned. If the appellant is held to be senior, as claimed, further consequential benefits be also considered in accordance with law.”

In pursuance to the directions given by the Division Bench, an order was passed by the respondents granting the promotion to various candidates, vide order dated 13.12.2010. The seniority was determined vide order dated 13.12.2010 and in pursuance to the said seniority, the promotion was granted to the petitioner, vide order dated 09.06.2011 as Personal Assistant. By the said order, though the promotion was granted as a Personal Assistant with retrospective effect, but the same was granted on notional basis. The relevant portion of the order dated 09.06.2011 is as under: -

“In the light of para No.13.21 of the decision of Syndicate dated 24.03.2011 and in anticipation of approval of Syndicate, the Vice Chancellor has granted approval to promote Sh. Rajinder Kumar Rohila from dated 03.08.2000 to 02.09.2004 and Ram Murti Sharma from dated 25.01.2001 to 02.09.2004 as Personal Assistance on notional basis.

Vide office order No.21617-22/Estt./A-1 dated 03.09.2004, Sh. Rajinder Kumar Rohila and Sh. Ram Murti Sharma have already been promoted as Personal Assistant w.e.f. 03.09.2004.

Sd/-Registrar”

This order is under challenge in the present petition.

Counsel for the petitioner states that though the petitioner has been granted promotion as a Personal Assistant from 25.01.2001, but the same has been granted on notional basis only and without any arrears of

salary, which contrary to the order passed by this Court while deciding LPA No.551 of 2002.

The second plea which the petitioner has raised in para No.14 of the present writ petition is that even the salary of the petitioner has not been fixed properly upon the grant of promotion as a Personal Assistant w.e.f. 25.01.2001. It has been mentioned that though on promotion, an employee was entitled for two increments, only one increment has been given to the petitioner and therefore, his salary has not been fixed properly.

Upon notice of motion, reply has been filed on behalf of the respondents defending their action in grant of promotion retrospectively to the petitioner on notional basis as well as the fixation of the salary in the cadre of Personal Assistant w.e.f. 25.01.2001.

In the reply, it has been stated by the respondents that as the petitioner had already retired and retrospective promotion was given after reconsidering his case and granting him seniority and he has not worked on the said post from the year 2001, the arrears cannot be granted and therefore, though the petitioner was given promotion as a Personal Assistant on 25.01.2001, but the same was granted notionally.

In respect of the fixation of the salary, the respondents have stated that according to the 1988 Rules governing the service for fixing the revised pay, the pay of the petitioner has been rightly fixed and no grievance can be raised in this regard.

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

The first claim of the petitioner is for the grant of arrears on account of the retrospective promotion, which has been denied to him vide order dated 09.06.2011.

Counsel for the petitioner states that once the petitioner has been found entitled for the promotion retrospectively, he is entitled for all the consequential benefits including arrears. Counsel for the petitioner further states that even the Division Bench directed to the grant of consequential benefits to the petitioner and therefore, the denial of the arrears to him is defiance of the order passed by the Division Bench. Thus, petitioner should be granted the arrears on retrospective promotion as a Personal Assistant starting from 25.01.2001 onwards as the order dated 09.06.2011 is contrary and is liable to be set aside.

Learned Senior counsel appearing on behalf of the respondents states that the petitioner is wrongly interpreting the order passed by the Division Bench. The Division Bench only directed that grant of consequential benefits should be considered in accordance with law and therefore, as the petitioner has not discharged the duties of the post of Personal Assistant starting from 25.01.2001, he is not entitled for the grant of arrears especially on the ground that the said retrospective promotion has been granted to the petitioner only on account of the fact of change in the seniority, which was determined in pursuance to the directions of the Division Bench issued on 14.12.2009.

I am of the opinion that the claim for the grant of arrears as claimed by the petitioner is not sustainable. From the order passed by the Division Bench in LPA No.551 of 2002, decided on 14.12.2009, it is

clear that the grant of consequential benefits was to be considered in accordance with law in case the petitioner was found senior and became entitled for retrospective promotion. In the present case though the petitioner was found senior after the change of seniority, which was granted to him by the respondents on 13.12.2001, he was granted retrospective promotion as Personal Assistant on 09.06.2011.

It is a settled principle of law that where an employee gets retrospective promotion on account of the change of seniority, the arrears is not must. The arrears can be denied on the ground of 'No work No Pay'.

In Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others, 1990 (3) SCC 472, the Hon'ble Supreme Court held that there is neither equity nor justice in favour of employees to award them emoluments of higher posts with retrospective effect when the employees did not work on the said post. Hon'ble Supreme Court further held that no work no pay principle is attracted where the employees have not worked on a higher post, but have only been granted retrospective promotion/appointment.

The Hon'ble Supreme Court in State of Haryana Vs. O.P. Gupta etc., 1996(7) SCC 533, has followed the same principle and held that the arrears of salary cannot be granted from the deemed date of promotion upon change of seniority. Relevant portion of the judgment is as under: -

“In these appeals unless the seniority list is prepared and finalised and promotions are made in accordance with the Rules on

the basis of the above seniority list, the question of entitlement to work in the promotional posts does not arise. Consequently, the payment of arrears of salary does not arise since, admittedly the respondents had not worked during that period. The High Court was, therefore, wholly illegal in directing payment of arrears of salary. The order of the High Court accordingly is quashed.”

Even the Division Bench of this Court in **Prem Kumar Chauhan Vs. Punjab State Electricity Board and others**, 2008 (4) SLR 635, after considering the law on the grant of arrears on retrospective promotion, has held that consequential benefits cannot be claimed as a matter of right on getting retrospective promotion/appointment. The relevant part of the said judgment is as under: -

“In ***Union of India v. K.V. Janakiranam (1991) 4 SCC 109***, it was held that where an employee is completely exonerated and gets promotion under a sealed cover procedure, he was entitled to consequential benefits of promotion. However, in ***Telecommunication Engineering Services Association and (India) another v. Union of India and another 1994 Supp. (2) SCC 222***, the said judgment was distinguished and it was held that where due date of promotion on revision of seniority was given as a result of decision of Court and notional promotion was given with retrospective effect, consequential benefits did not automatically follow. In ***Varinder Kumar & ors. v. Avinash Chandra Chadha & ors. AIR 1991 SC 958***, it was held that where promotion is given on the basis of quota and rota rule and a date of deemed appointment is given with retrospective effect, consequential benefits did not follow. In ***Paluru Ramkrishnaiah and others v. Union of India and another AIR 1990 SC 166***, it was held that where an employee did not work on promotional basis, he could not claim

consequential benefits on getting retrospective date of promotion.

Xxxx xxxxx xxxxx xxxxx xxxxx xxxxx.

4. In *State of Kerala and others v. E.K. Bhaskaran Pillai (2007) 6 SCC 524*, it was observed that no hard and fast rule could be laid down about denying consequential benefits on the principle of no work no pay. There are exceptions when the Courts have granted monetary benefits also. Where a person is wrongly denied his due, full benefits may be given.”

It is correct that not in all the situations, on retrospective promotion, the arrears can be denied. Where an employee, who was entitled for promotion on a particular date, but was denied the promotion due inaction on the part of the respondents, is entitled for arrears when he is granted his due benefit.

In the present case, the facts are different. Petitioner only became eligible for promotion from retrospective effect when he was granted seniority in the cadre of Senior Stenographer over and above the others and therefore, the present case for the grant of arrears on retrospective promotion is covered by the decision of the Hon’ble Supreme Court in **O.P. Gupta's case (supra)** mentioned above. Hence, the prayer of the petitioner for the grant of arrears by setting aside the order dated 29.06.2011 is declined.

The second argument which has been raised by the counsel for the petitioner is that the salary of the petitioner has wrongly been fixed upon retrospective promotion.

Counsel for the petitioner states that the petitioner was entitled for grant of two increments on promotion whereas only one increment has been granted to him. In order to support the contention, the

petitioner has relied upon Rule 8 of the Punjab Civil Services revised scales Rules, 1998, which deals with Fixation of Pay on Promotion and the same is as under: -

“8. **Fixation of Pay Promotion**

“Notwithstanding anything contained in these Rules, in case of promotion to a higher post effected after the date of publication of this Notification in Punjab Government Gazette the benefit of minimum two increments shall be given while fixing the pay in the scale of the higher post. The next increment in the scale of the higher post shall be allowed after the completion of twelve month’ qualifying service in that scale.”

Counsel for the petitioner further states that as the petitioner was granted promotion as Personal Assistant, he was entitled for minimum of two increments.

Learned Senior counsel appearing on behalf of the respondents states that in reply to the said contention, the following reply has been submitted by the respondents. Paragraph 14 of the written statement is reproduced as under: -

“14. That the contents of para No.14 of the writ petition are admitted being reproduction of rules. However, it is submitted that the petitioner has been granted one increment after his promotion as personal assistant w.e.f. 25.1.2001 according to the Rule mentioned as under: -

“If an employee is promoted to the next higher promotional post in the regular way at any time before one of the benefits under this scheme becomes due, the grant of such benefit shall stand postponed accordingly and shall be granted after completion of service of 8 years in such promotional post. If the promotion of an employee to higher

post occurs after having got placement in higher scale of the proficiency step up/ups under this scheme, the benefit of only one increment instead to two increments normally admissible on promotion shall be given in fixing his pay in the scale of pay of the promotional post.”

From the facts narrated above, it is clear that on promotion, an employee is entitled for two increments. It is only in the case if an employee has been granted the benefit of proficiency step up prior to the date of promotion, than an employee is entitled for only one increment.

In the present case, the petitioner was not granted the proficiency step up prior to 25.01.2001 and therefore, he becomes entitled for the grant of two increments on his promotion. Hence, the respondents are directed to reconsider this aspect of fixation of his salary w.e.f. 25.01.2001, by applying proper rules including the grant of two increments upon his promotion. In case only one increment was granted while fixing the salary, the respondents shall refix the salary of the petitioner by granting him two increments. Thereafter, whatever the benefit which the petitioner will be entitled for, the same shall be extended to him in respect of refixing his pensionary benefits accordingly.

Let this aspect be examined by the respondents within a period of two months from the date of receipt of certified copy of this order and an appropriate order be passed within the above-said time frame. In case, the petitioner is found entitled for a higher pay fixation, the same shall be granted and the consequential benefits of the same on

refixation of the pensionary benefits shall be extended to him.

Present writ petition stands disposed of in the above terms.

February 28, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes