

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

**CWP-9501-2014 (O&M)
Date of decision : 14.03.2019**

Jagjiwan Kumar Bansal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Puneet Gupta, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN J. (ORAL)

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 09.09.2013 (Annexure P-4), whereby, the claim of the petitioner for grant of higher salary for the period he discharged duties on a higher post, was rejected.

It is contended that the petitioner joined the services as Punjab Civil Medical Services-I as Medical Officer on 30.06.1980. He was sent on deputation with Chandigarh Administration as a Medical Officer from 11.07.2002 till 06.07.2011. During this period, promotions were made to the post of Senior Medical Officer. Upon repatriation to the State of Punjab, the petitioner was posted as a Senior Medical officer at Civil Hospital, Derabassi, vide order dated 23.06.2011 (Annexure P-1), on which post he

joined as 07.07.2011. The petitioner was also the Drawing and Disbursing Officer (DDO). He continuously discharged his duties as Senior Medical Officer till he was regular promoted as such vide order dated 06.08.2012 (Annexure P-2).

The grouse of the petitioner is that despite having discharged duties on the higher post of Senior Medical Officer, for a period of 13 months till his regular promotion on the said post, he is not being paid higher salary attached to the post in question.

On the other hand, learned State counsel submits that upon repatriation from Chandigarh Administration, the petitioner was merely assigned the rank and designation of Senior Medical Officer and was not actually promoted. Therefore, he is not entitled to the benefit claimed.

Heard.

There is no dispute with regard to the fact that the petitioner continuously discharged his duties as Senior Medical Officer for a period of 13 months, till he was given regular promotion on the said post. 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 Vs. Dharam Pal, 2017(4) SCT 460***, 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.

In view of the above, the petitioner is held entitled to the higher pay and emoluments attached to the post of Senior Medical Officer for the period he worked before his regular promotion on the said post. His 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.

14.03.2019
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(JITENDRA CHAUHAN)
JUDGE

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