

**245 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.9459 of 2015.

Date of Decision: 01.05.2019

Smt. Tejinder Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Ranjivan Singh, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN J.

By way of present civil writ petition, the petitioner has sought direction to promote her as Lecturer in Punjabi and to grant her consequential benefits.

On 07.12.2017, the following order was passed by this

Court:-

“Petitioner, who was serving on the post of S.S. Mistress under the Punjab State Education Department, filed the instant petition in the year 2015 praying for the issuance of a Writ of Mandamus to be considered and granted promotion as Lecturer, Punjabi w.e.f the date her juniors had been so promoted.

Filing of the petition and issuance of notice seems to have woken-up the respondents. Appended along with the reply at Annexure R-1 is an order dated 11.3.2016 and in terms of which petitioner has been promoted to the post of Lecturer, Punjabi w.e.f. 19.5.2012. However, a decision has been taken to fix her pay on a notional basis. In other words, petitioner has been denied actual arrears of salary admissible to the post of Lecturer for the period 19.5.2012 to 22.3.2016.

Pleadings on record would indicate that petitioner was denied promotion to the post of Lecturer along with her juniors w.e.f. 19.5.2012 on the basis that

her A.C.R for the year 2009-2010 had been treated as 'Below Average' and as such, she fell short of the requisite bench mark. Subsequently, A.C.R for the year 2009-2010 is stated to have been revised as 'Good' and consequently the order dated 22.3.2016 (Annexure R-1) promoting the petitioner as Lecturer w.e.f. 19.5.2012, has been passed.

A communication dated 29.8.2013 placed on record and appended as Annexure P-11 along with the writ petition would be relevant. It is a communication written by the Head Master of the school concerned and addressed to the Director Public Instructions (S.E.), Punjab. The contents of such document are not disputed by the State. The same would clearly reveal that a clarification had been issued on 29.8.2013 itself that the A.C.R for the year 2009-2010 is to be considered as 'Good' and the 'Below Average' A.C.R recorded was on account of scores/marks not correctly evaluated. In spite of such clarification having been issued by the Reporting Officer on 29.8.2013 pertaining to the A.C.R for the year 2009-2-010, petitioner was denied the benefit of the promotional post. It is only after filing of the instant petition that the order dated 11.3.2016 (Annexure R-1) has been passed.

Prima facie, this Court is of the view that the principle of 'No Work No Pay' would not apply so as to deny to the petitioner the arrears of salary of the promoted post and at least w.e.f. 29.8.2013 onwards. Learned State counsel seeks time to address submissions on such aspect.

List on 12.2.2018."

Learned State counsel has failed to explain as to how the principle of 'No Work No Pay' would apply in this case.

It is to be noticed that the petitioner was denied promotion on the ground that her ACR for the year 2009-2010 had been treated as 'Below Average' whereas, communication dated 29.08.2013 (Annexure P-11) would show that the ACR for the year 2009-10 is to be considered as 'Good' as the ACR 'Below Average' was recorded on account of scores/marks not having been correctly evaluated. The

mistake was rectified by the department vide order dated 11.03.2016 (Annexure R-1) and the petitioner was promoted to the post of Lecturer, Punjab with effect from 19.05.2012. However, she has been denied actual arrears of salary admissible to the post of Lecturer for the period 19.05.2012 to 22.03.2016. This Court is of the opinion that once the department on reappraisal has upgraded the ACR and has rectified the mistake by promoting the petitioner with effect from back date i.e. 19.05.2012, the petitioner cannot be denied the actual salary from that date. The principle of 'No Work No Pay' will not be applicable in this case as the petitioner was ready and willing to work on the promotional post but was not allowed to work as Lecturer by the respondents themselves by assessing the petitioner against the record.

Consequently, the civil writ petition is allowed. The respondents are directed to release the actual arrears of salary of the promoted post with effect from 19.05.2012 to 22.03.2016 in favour of the petitioner.

The necessary exercise be done within a period of two months from the date of receipt of certified copy of the judgement.

01.05.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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