

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

L.P.A. No.1491 of 2016 in
Civil Writ Petition No.4445 of 2015
Reserved on : August 22, 2019
Date of decision: November 27, 2019

State of Haryana

...Appellant

Versus

Sita Ram

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Gagandeep Singh Wasu, Addl. AG, Haryana.

Mr.J.S.Maanipur, Advocate for the respondent.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 07.12.2015 in CWP No.4445 of 2015 titled 'Sita Ram vs. State of Haryana and others' whereby the writ petition filed by the respondent was allowed.

2. The respondent joined as Gram Sachiv in the Panchayat Department of the State of Haryana on 07.03.1979. He was promoted as Social Education and Panchayat Officer on 18.06.1998. Vide order dated 19.08.2009, he was given Current Duty Charge (CDC) of the post of BDPO in the pay-scale of Social Education and Panchayat Officer. He continued working as such but he was paid the salary of the Social Education and Panchayat Officer. He served legal notice dated 29.11.2013 for promoting him as BDPO and for grant of salary of BDPO for the period he was

holding Current Duty Charge of that post. When no decision was taken on the legal notice, he filed CWP No.972 of 2014 which was disposed of on 21.01.2014 with a direction to consider and decide the legal notice within two weeks. Order dated 19.12.2014 was passed rejecting the case of the respondent for promotion as BDPO. However, there was no mention in the order with regard to his claim of salary of the post of BDPO (CDC). He retired on 28.02.2014 as BDPO (CDC) on attaining the age of superannuation.

3. He filed COCP No.3714 of 2014 alleging non-compliance of order dated 21.01.2014. Thereafter, order dated 04.02.2015 was passed rejecting his claim for salary as BDPO for the period when he held Current Duty Charge as such. Aggrieved, he filed the writ petition, which has been allowed. The respondent was held entitled to the higher salary of the post of Block Development and Panchayat Officer (for short 'BDPO') for the period he discharged the higher responsibility as a BDPO. Hence, the present appeal by the State of Haryana.

4. Ld. Counsel for the appellant has argued that that the respondent had rightly been denied the salary of the post of BDPO as he had been given Current Duty Charge of the post of BDPO in his own pay scale of SEPO without any extra remuneration. The CDC was given to him against direct quota posts and the vacancies caused due to suspension of some Block Development & Panchayat Officer. Due to non-availability of candidates for appointment against the direct quota recruitment, the respondent continued to hold the current duty charge of the post of BDPO

till his superannuation. There was no post available in the promotion quota against which the respondent could be considered or allowed to officiate. Hence he was not entitled to the salary.

5. Ld. Counsel for the respondent on the other hand argued that the respondent had discharged the responsibilities of the office of BDPO for over four years and he could not have been denied the salary of that post.

6. At the outset, it may be appropriate to extract the order whereby the petitioner was assigned Current Duty Charge.

*“HARYANA GOVERNMENT/ DEVELOPMENT AND
PANCHAYATS DEPARTMENT
ORDER*

The Governor of Haryana is pleased to order dated Sh.Sita Ram, Social Education and Panchayats Officer, Hisar-II Block will hold the Current Duty Charge of the post of Block Development & Panchayats Officer in his own pay scale of Social Education and Panchayats Officer without any extra remuneration till further orders.

2. *The grant of Current Duty Charge to the above officer is further subject to the following conditions:-*

- i. The Current Duty Charge of the post of Block Development and Panchayats Officer is given to him against direct quota posts and the vacancies caused due to suspension of some Block Development & Panchayat Officer. Hence, the Current Duty Charge of the post of Block Development & Panchayats Officer can be withdrawn at any time without any notice on joining of new candidates on the post of B.D.P.Os*

against the vacant post of B.D.P.O and he continued to hold Current Duty Charge of the post of BDPO from 19.08.2009 till his retirement on 28.02.2014.

7. The question as to the salary to be drawn where a person is asked to officiate on a higher post has arisen in a number of cases and the law in this regard is well settled. It has been held that in the absence of any provision in the applicable Service Rules such salary cannot be denied.

8. A Full Bench of this Court in ***Subhash Chander vs. State of Haryana and others, 2012(1) RSJ 442*** considered the provisions of the Punjab Civil Service Rules and answered the question as under:

“10. A perusal of the Rule 4.13 of the Rules would show that if officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post on which an employee holds a lien or would have held a lien had his lien has not been suspended then he would draw pay higher than his substantive post in respect of a permanent post. Sub-Rule 2 of Rule 4.13 of the Rules makes it abundantly clear that the officiating appointment on a post is not to be regarded assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post on which he holds lien. In other words, if the officiation is on a post carrying the same pay scale then it would not be considered to have duties and responsibilities of greater importance than attaching to the post, an employee is holding on a substantive basis. A perusal of the clause 2 of Note 4 makes it further clear that a fortuitous officiating promotion of some one junior in a cadre to a Government employee who is out of the regular line would not

earn him the right to draw pay higher than his substantive pay. This provision takes care of an eventuality when on account of administrative exigency, the higher post falls vacant and the employee available in the feeder cadre at station may not be the senior most but he is asked to officiate on the vacancy caused on account of administrative exigency like retirement, death or promotion it would not then ensure the benefit of such a junior employee. However, if the officiating promotion exceeds three months then the officer concerned may be granted the pay of higher post, which is further mandated by clause 5 (iv) of Note 4.

14. We wish to make it clear that the Rules laid down by us would not cover a case where a fortuitous officiating promotion is given to an employee working in the lower cadre on account of administrative exigency resulting in vacancy of a higher post. For illustration, if the post of Sub Division Officer is a feeder cadre for promotion to the post of Assistant Executive Engineer then on vacancy caused by retirement, death or promotion etc., the promotion of the Sub Division Officer available at the station on the post of Assistant Executive Engineer would not earn him higher pay scale because it is a fortuitous circumstance unless he is senior enough to stake his claim for regular promotion. The aforesaid principle has been laid down by their Lordships' of Hon'ble the Supreme Court in the case of Ramakant Shripad Sinai Advalpalkar v. Union of India, 1993(3) S.C.T 586 : 1991 (Suppl. 2) SCC 733.

15. We are further of the view that Rule 4.13 of the Rules would virtually sound like the principle laid down in the judgment of Hon'ble the Supreme Court in Smt. P. Grover v. State of

Haryana, AIR 1983 SC 1060. In that case, an employee in the State of Haryana was given promotion as acting District Education Officer about two years before her superannuation. The order giving her promotion as an acting District Education Officer recited a condition that she was to draw salary in her own pay scale which meant that her scale would continue to be that of the post of Principal, Higher Secondary School. Accordingly, their Lordships' of Hon'ble the Supreme Court accepted the claim of Smt. P. Grover as if the principles laid down in Rule 4.13 of the Rules have been applied. The concluding para of the judgment reads as under :

"3. We mentioned that she was promoted as an acting District Education Officer with effect from July 19, 1976. The order of promotion contained a superadded condition that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order was extending her services recited that she was an acting District Education Officer, but contained a super added condition that her pay would not be more than the maximum of the principal's grade. Smt. Grover claims that having been promoted as District Education Officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Article 136 of the Constitution. The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt. P. Grover after she was promoted to act as District Education Officer. All that was said in the counter-affidavit was that there was no Class-I posts available and therefore she was not entitled to be paid the salary of District Education Officer. We, are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education Officer a Class-I post, on an acting basis. Our, attention was not invited to any Rule which provides that promotion on an Acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such

refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled be paid the salary of a District Education Officer from the date she was promoted to the post, that is, July 19, 1976, until she retired from service on August 31, 1980. The appeal is accordingly, allowed with costs."

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."

9. In **Arindam Chattopadhyay v. State of W.B., (2013) 4 SCC 152** the appellants were appointed as Assistant Child Development Project Officer (ACDPO) in 1986-1987. After about 12 years the competent authority issued an order dated 7-7-1999 whereby they were temporarily transferred to ICDS projects to act as CDPOs in their existing pay scales. They made representation dated 15-2-2011 that they either be promoted to the post of CDPO or be given pay scale of that post as they had been discharging the duties of the post of CDPO. When no action was taken on

their representation they filed OA before the State Administrative Tribunal, West Bengal which was dismissed. Their Writ Petition before the High Court was also dismissed. Thereafter they approached the Supreme Court.

10. Their contention was that in view of the doctrine of equality enshrined in Articles 14 and 16 read with Article 39(d), they were entitled to be paid salary and allowances in the scale meant for the post of CDPO because they were discharging the duties of that post. It was argued that the stipulation contained in the order dated 7-7-1999 that they are temporarily transferred to ICDS Project to act as CDPOs in their existing pay scale could not be made the basis for depriving them of their constitutional right guaranteed under Articles 14 and 16.

11. The respondent- State referred to the provisions contained in the Service Rules to show that the post of CDPO is required to be filled up by promotion and argued that the appellants did not have the right to be paid salary in the higher pay scale because they had so far not been promoted as CDPOs.

12. Hon'ble Supreme Court allowed the appeal. It was observed:

“10. We have considered the respective submissions. The applicability of the doctrine of equality, enshrined in Articles 14 and 16 of the Constitution, in the matter of pay and allowances was explained in Randhir Singh v. Union of India in the following words: (SCC pp. 622-23, para 8)

“8. It is true that the principle of ‘equal pay for equal work’ is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims ‘equal

pay for equal work for both men and women’ as a directive principle of State policy. ‘Equal pay for equal work for both men and women’ means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The Preamble to the Constitution declares the solemn resolution of the People of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word ‘socialist’ must mean something. Even if it does not mean ‘to each according to his need’, it must at least mean ‘equal pay for equal work’. ‘The principle of “equal pay for equal work” is expressly recognised by all socialist systems of law e.g. Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in

all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance' (vide International Labour Law by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions 'involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled'. Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle 'equal pay for equal work' is deducible from those articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

(emphasis supplied)

11. Though the judgment in Selvaraj v. Lt. Governor of Island, Port Blair can be distinguished on the ground that in the order passed by the competent authority requiring the appellant, who was holding the post of primary teacher, to look after the duties of Secretary (Scouts), it was mentioned that pay will be drawn against the post of Secretary (Scouts) under general fundamental rules, the principles laid down in State of W.B. v. Pantha Chatterjee has direct bearing on the question arising in this appeal. The respondents in that case were appointed as part-time Border Wing Home Guards. They filed writ petition before the Calcutta High Court with the complaint that they were being discriminated vis-à-vis other regular Border Wing Home Guards of West Bengal and the Border Security Force Personnel despite the fact that they were performing similar duties and discharging same responsibilities. The learned Single Judge referred to the judgments in Bhagwan Dass v. State of Haryana, Daily Rated Casual Labour v. Union of

India and DTC v. Mazdoor Congress, and held that the respondents are entitled to the same benefits as are admissible to the permanent Border Wing Home Guards. The Division Bench of the High Court agreed with the learned Single Judge and dismissed the appeal filed by the State of West Bengal with some modification.

12. *While dismissing the appeal, this Court observed: (Pantha Chatterjee case)*

“12. There is no dispute about the fact that there has been disparity in emoluments and other working conditions, between the part-time BWHG and the BWHG on the permanent staff although both have been deployed for performing the same nature of duties and have been working for the same duration in the same conditions but one of them with and the other without the necessities of the job, facilities and benefits of the service. It is true and rightly held that BWHG could not compare themselves with BSF personnel but the difference between the permanent staff and the part-time staff which had been made in the Scheme was obliterated and rendered ineffective. There is no real distinction between the two, namely, the permanent BWHG and the part-time BWHG in absence of non-release of the latter after three months of the appointment, as per the Scheme. It has not been indicated by the appellants or the Union of India that the petitioners were ever disengaged of their assignment temporarily or the State Government had availed of their services after due and prior permission of the Central Government, or they were ever freed to resume their old vocational pursuits. It is in the affidavit of the authorities that BWHG are under operational command of BSF authorities, when deployed for patrolling along the Indo-Bangladesh border. In the background of what has been indicated above, in our view the findings arrived at by the High Court cannot be faulted with.

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15. *With a view to recapitulate the legal position, we may briefly refer to some decisions of this Court apart from those relied upon by the High Court. In a decision reported in Jaipal v. State of Haryana it has been held to be a constitutional obligation to ensure equal pay for equal work where the two sets of employees discharge*

similar responsibilities under similar working conditions. The plea of temporary or casual nature of employment or full-time and part-time employees had been negated. Similarly, in the case reported in Dhirendra Chamoli v. State of U.P. it was held that casual workers could not be denied same emoluments and benefits as admissible to the temporary employees on the ground that they had accepted the employment with full knowledge of their disadvantage. In Grih Kalyan Kendra Workers' Union v. Union of India though on facts no discrimination was found but the principle of 'equal pay for equal work' was upheld and recognised where all were placed similarly and discharging same duties and responsibilities irrespective of the casual nature of work. This right had been held to have assumed the status of a fundamental right in service jurisprudence having regard to the constitutional mandate of 'equality' in Articles 14 and 16. In Daily Rated Casual Labour v. Union of India right of daily-rated casual workers in the P&T Department was recognised and they were directed to be paid in minimum of the scale as was admissible to the regular workers as both discharged similar work and responsibilities."

13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS Projects. If this would have been a stopgap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter is that as on the date of filing of the original application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this

Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs since July 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalised for the Government's failure to undertake the exercise of making regular promotions.

14. *In the result, the appeal is allowed. The impugned order as also the one passed by the Tribunal are set aside and the respondents are directed to pay salary and allowances to the appellants in the pay scale of the post of CDPO with effect from the date they took charge of those posts. This exercise must be completed within 8 weeks from today. The arrears shall be paid to the appellants within a period of 9 months."*

13. Hon'ble Supreme Court considered the question yet again in **State of Punjab v. Dharam Pal, (2017) 9 SCC 395**. In this case the respondent was appointed as a clerk on 22-5-1970. He was promoted to the post of Senior Assistant on 22-9-1980. He was given the officiating charge of the Superintendent Grade II vide order dated 9-12-2004 and thereafter, he was directed to function as Superintendent Grade I vide Government Order dated 26-5-2007. He superannuated on 31-3-2008. He filed Civil Writ Petition challenging the action of the State in not granting him the

benefit of the pay scale for the posts of Superintendent Grade II and Superintendent Grade I despite his having performed the duties of officiating on those posts. This Court allowed his petition. Hon'ble Supreme Court dismissed the appeal of the State. It made a detailed reference to the Punjab Civil Service Rules and the relevant judgments.

“14. Having analysed the Rule position, we may allude to the authorities that have been commended to us. First, we shall dwell upon the decision in Pritam Singh Dhaliwa that has been relied upon by the High Court in the impugned order. In the said case, the Division Bench of the High Court had placed reliance upon P. Grover v. State of Haryana and Selvaraj v. Lt. Governor of Island, Port Blair and earlier decisions of the High Court and analysing the Rule position opined that the officer therein had been asked to officiate as Deputy Director with effect from 14-3-1996 and he had been continuously posted to equivalent posts such as Additional Deputy Commissioner (D) and till his superannuation the officiating charge was never withdrawn and hence, his entitlement to claim higher pay scale for the post for which he was asked to officiate and perform his duties till his superannuation would not be negated.

15. As the reasoning of the High Court is fundamentally based on enunciation of law propounded by the Court in P. Grover, we think it apt to appreciate the ratio laid down in the said case. A two-Judge Bench of this Court was dealing with the fact situation wherein keeping in view the policy decision, the appellant therein was promoted as an acting District Education Officer. The order of promotion contained a superadded condition that she would draw her own pay scale

which apparently meant she would continue to draw her salary on her pay scale prior to promotion. The claim was put forth by the appellant that she was entitled to the pay of District Education Officer and there was no justification for denying the same to her. A writ petition was filed before the High Court and the State filed the counter-affidavit contending, inter alia, that she was promoted to the post of acting District Education Officer as there was no Class I post and hence, she was not entitled to be paid the salary of District Education Officer. Appreciating the fact situation, the Court held: (SCC p. 293, para 3)

“3. ... We are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education Officer, a Class I post, on an acting basis. Our attention was not invited to any rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt Grover is entitled to be paid the salary of a District Education Officer from the date she was promoted to the post, that is, 19-7-1976, until she retired from service on 31-8-1980.”

16. *In Tilak Raj, the issue arose regarding justification of grant of minimum pay in the scale of pay applicable to the regular employees to the daily wagers. A two-Judge Bench referred to various decisions and came to hold thus: (SCC p. 127, paras 11-12)*

“11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible

to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of “equal pay for equal work” is an abstract one.

12. “Equal pay for equal work” is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.”

On a careful perusal of the said decision in its entirety, we are of the considered opinion that it is not an authority for the proposition canvassed by the learned counsel for the appellants. It remotely does not support the principle that is assiduously sought to be built by the State.

17. In S.C. Chandra, the appellants therein had filed a writ petition in the High Court of Jharkhand seeking a writ of mandamus against Respondents 3 to 6 to release the pay, DA with arrears along with interest and further a direction not to close the school or in the alternative, to issue a direction to Respondents 1 to 2 to take over the management and control of the school in question. The writ petitioners before the High Court were teachers and non-teaching staff of the school and claimed themselves to be the employees of Hindustan Copper Ltd. (HCL). The Court, after going through the judgment of the High Court, came to hold that solely because the management of HCL was giving financial aid that by itself cannot be construed that the school was run by the management of HCL and accordingly, the Court dismissed the appeal. We have no hesitation in opining that the principle that has been laid down in the said judgment has no applicability to the facts at hand.

20. In Hari Om Sharma, the respondent was promoted as a Junior Engineer I in 1990 and had been continuing on that

post without being paid salary for the said post and without being promoted on regular basis. It was in this situation, he approached the Central Administrative Tribunal which allowed the claim petition with the direction that the respondent shall be paid salary for the post of Junior Engineer I. That apart certain other directions were also issued. The Court took note of the fact that the respondent was promoted on a stop-gap arrangement as Junior Engineer I and opined that this by itself would not deny his claim of salary for the said post. In that context, the Court held: (SCC p. 89, para 6)

“6. ... If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.”

21. After so stating, the Court proceeded to opine thus:

(Hari Om Sharma case, SCC pp. 89-90, para 8)

“8. The learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant

benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.”

(emphasis supplied)

The principle postulated in the said case is of immense significance, for it refers to concept of public policy and the conception of unconscionability of contract.

22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in P. Grover and Hari Om Sharma. As far as the authority in A. Francis is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma and resultantly we hold that the view expressed by the High Court is absolutely impeccable.”

14. In the light of the aforesaid settled position, there is no merit in the present appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 27, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No