203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7904 of 2015
Date of Decision: 26.2.2020

Dayanand Sheokand
.....Petitioner

Versus

State of Haryana and others
........Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Raman B. Garg, Advocate and
Ms. Gitanjali Chhabra, Advocate, for the petitioner.

Mr. Pankaj Mulwani, Deputy Advocate General, Haryana.

NIRMALJIT KAUR, J. (Oral)

Prayer in the present petition is for directing the respondents to pay the salary of the post of Deputy Secretary w.e.f. 1.1.2010 to 27.4.2011 and that of Joint Secretary from 28.4.2011 to 30.4.2011 in the respective pay scales to the petitioners with a further prayer to quash the order dated 8.7.2011 (Annexure P-5) and order dated 21.11.2012 (Annexure P-10) reverting the petitioner to the post of Deputy Secretary w.e.f. 28.4.2011 passed after the retirement of the petitioner.

Certain facts are required to be noted. The petitioner was promoted as officiating Deputy Secretary in PB-3, payment of ₹ 15600 and ₹ 39100+ Grade pay of ₹ 7600 against the vacant post subject to approval of the relevant amendment in the Haryana Vidhan Sabha Secretariat Service Rules, 1981 on 1.1.2020. Relevant part of the promotion order reads as under:-

"2. Shri Daya Nand Sheokand, under Secretary as an officiating Deputy Secretary in PB-3, Pay Band of ₹ 15600-39100 + Grade pay ₹ 7600/- against the vacant post subject to approval of relevant amendment in our Service Rules.”

The petitioner joined on the post of Deputy Secretary on 1.1.2010 itself. The petitioner completed his probation period and the same was certified to be completed by the competent authority vide order dated 11.2.2011. While replying to the same in para No.3, the respondents although did not dispute that the petitioner had completed his probation period but submitted that the same was still subject to approval of the relevant amendment in the Service Rules. Thereafter, the petitioner was further promoted as officiating Joint Secretary in PB-3 of ₹ 15600-39100 with Grade Pay of ₹ 8000/- with immediate effect by relaxing the qualification of LLB (professional) against the leave vacancy vide order dated 28.4.2011, which was again subject to the approval of the Government. The petitioner continued to work on the post of Joint Secretary upto 30.4.2011 i.e. the date of retirement on superannuation. The respondents meanwhile sanctioned all the retiral benefits considering the petitioner against the post of under Secretary. Since, the petitioner had been working on the post of Deputy Secretary and Joint Secretary from 1.1.2010 to 27.4.2011 and 28.4.2011 to 30.4.2011 and even completed his probation period on the post of Deputy Secretary itself before the retirement, he made representation to the respondents to grant him all the financial benefits of Deputy Secretary and Joint Secretary against which he actually worked. Instead of counting his salary on the post from which, he retired, the respondents reverted the petitioner from the post of officiating Joint

Secretary to Deputy Secretary vide order dated 8.7.2011 and Deputy Secretary to under Secretary vide order dated 21.11.2012.

Reply has been filed. As per the said reply, the amended service rules came into force on 27.8.2012, which were prospective in nature and not retrospective. Therefore, the promotion order of the petitioner as officiating Deputy Secretary was not in accordance with the service rules as neither the rules were amended by the Government till the retirement of the petitioner nor relaxation was given in favour of the petitioner from the retrospective date. Accordingly, the petitioner was reverted from the officiating post of Deputy Secretary to the post of under Secretary vide order dated 21.11.2012 w.e.f. 1.1.2010. Since, the amendment in service rules for the post Deputy Secretary was received from the competent authority only on 27.8.2012 by which date he had retired, he is not entitled for claiming the pay and grade pay of the post Deputy Secretary and Joint Secretary. In absence of the prior approval of the Government or enforcement of the rules with retrospective effect, no financial benefits as claimed can be given to the petitioner.

This Court may further note that the said order of reversion was passed during the pendency of CWP-8854-2012 seeking pay scale of Deputy Secretary and Joint Secretary. It is further important to note that the respondents had approved and notified the amended rules on 27.8.2012 (Annexure P-12). This fact is not disputed and is in fact admitted.

From the above, following facts have emerged:-

(a) The petitioner worked on the post of Deputy Secretary and was in fact on the post of Joint Secretary on the date of his retirement.

(b) These promotions were subject to the approval of the relevant amendment in the rules. The rules stood approved and then notified on 27.8.2012.

(c) In spite of the rules having been amended, the petitioner was reverted after his retirement and that too after the rules were notified.

(d) Reversion order was also passed during the pendency of the writ petition seeking salary for the period he was promoted on the respective post and thereafter to count the said salary towards his pension and pensionary benefits. Obviously, the order was passed as a counterblast to the writ petition.

From the above, it is evident that the petitioner was promoted on the post of Deputy Secretary against the vacant post subject to the approval of amended rules. The approval was never rejected uptill his retirement. Rather, he continued to work on the said post and the amended rules too were subsequently approved. The matter may have been different in case the petitioner had been reverted during his service or in case the amendment to the rules were rejected. He was allowed to retire on the said post pending the approval. The approval having been granted, he could not have been reverted after the grant of approval and that too after his retirement with retrospective effect. No show cause notice was issued to the petitioner before passing of the order of reversion. Such an order or reversion too cannot be sustained especially when the same was passed after the condition in the appointment letter that his appointment was subject to the approval of the amended rules was ultimately satisfied by the notification of the amended rules. Therefore, there was no reason available with the respondents to pass the order of reversion. Hence, the order of reversion is bad on the following counts:-

(a) The appointed was subject to the approval of the amended rules. The amended rules were duly notified.

(b) The petitioner was further promoted to the post of Joint Secretary. The order of reversion was passed at first from the post of Joint Secretary to Deputy Secretary and thereafter Deputy Secretary to under Secretary after his retirement which is not permissible.

(c) The same was passed without issuing show cause notice to the petitioner or following the principle of natural justice.

(d) The said reversion order was passed from the retrospective date. Such an order is not only illegal but also arbitrary on the face of it. The case of the petitioner is further strengthened by the judgment rendered by the Full Bench of this Court in CWP-21358-2008 titled as Subhash Chander vs. State of Haryana and others, decided on 20.12.2011. The question before the Full Bench was as under:-

> "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."

The same was answered 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."

This Court finds that the case of the petitioner is squarely covered by the judgment of the Full Bench in the case of Subhash Chander (supra).

Learned counsel for the petitioner does not dispute that the promotion of the petitioner on the post of Joint Secretary was subject to the approval of the Government, which was denied to him vide order dated 13.6.2011 (Annexure P-4) as promotion for three days against leave vacancy was not permissible under the rules to higher pension for all purposes. Thus, the approval to the post of Joint Secretary having been denied on that specific reason, this Court does not deem it proper to grant the salary for the period which was only three days he was officiating as Joint Secretary or to calculate the same towards his retiral benefits.

In view of the above, only the order dated 21.11.2012, is set aside with a direction to the respondents to grant the petitioner salary for the period he was officiating as Deputy Secretary as also to count the same towards his pension and pensionary benefits.

The needful be done within two months of the receipt of the certified copy of this order. The arrears be paid alongwith 6% per annum interest from the date the petitioner was entitled till it was finally paid. In case, the same is not paid within the period as mentioned above, the respondents shall be liable to pay interest 12% per annum after the expiry of two months.

(NIRMALJIT KAUR)
JUDGE

26.2.2020
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No