

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 369 of 2018 (O&M)

Date of decision : October 5th 2021

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Pankaj Kumar

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Abhishek Kumar Premi, Advocate for the petitioner.

Mr. Sharad Aggarwal, AAG, Haryana.

Mr. Padamkant Dwivedi, Advocate for respondent No.4.

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H. S. Madaan, J.

Petitioner – Pankaj Kumar, aged about 48 years s/o Dhillu Ram, resident of Ghanouli Gate, V&PO Chhachhrauli, District Yamuna Nagar, has brought the instant civil writ petition under Articles 226/227 of the Constitution of India, against respondents - State of Haryana through Principal Secretary, Government of Haryana, Urban Local Bodies Department, Chandigarh; Director,

Urban Local Bodies Department Haryana, Sector 17-B, Chandigarh; Deputy Commissioner, Ambala, District Ambala and Municipal Council, Naraingarh through its Secretary, District Ambala, craving for issuance of writ in the nature of certiorari for quashing impugned order dated 8.8.2017 (copy Annexure P-15), passed by Director, Urban Local Bodies Department, Haryana, Chandigarh – respondent no.2, further praying for issuance of a writ in the nature of mandamus, directing the respondents to grant the minimum pay scale for the post of Sub-Fire Officer, for the period the petitioner was given the current duty charge of Sub-Fire Officer in his own pay scale, vide order dated 29.11.2016 / 6.11.2016, till he was regularly promoted and appointed as Sub-Fire Officer on 29.11.2006.

Inter alia in the petition, the petitioner has contended that he was initially appointed as Fireman on regular basis by the respondents w.e.f. 1.10.1997. Thereafter, he was promoted to the rank of Leading Fireman on 19.9.2006; that the petitioner possesses the requisite qualification; that a large number of vacancies of Sub-Fire Officer were there and such vacancies were to be filled up as a result of promotion from Leading Fireman; that the respondents decided to fill up the vacancies on temporary basis; that the petitioner was given current duty charge of Sub-Fire Officer, in his own pay scale vide order dated 29.11.2006; that some other Leading Fireman were also given current duty charge of Sub-Fire Officer in the similar way, vide order in question; that the petitioner started working as Sub-Fire Officer. However, he came to know that respondent No.2 had passed

order dated 24.4.2007, intimating the withdrawal of earlier order dated 29.11.2006 vide which the petitioner had been given current duty charge of Sub-Fire Officer. It was statedly so done as per Government instructions dated 17.4.2006; that the petitioner alongwith his co-employees had challenged order dated 24.4.2007, by way of filing CWP No. 6263 of 2007; that in that writ petition, operation of impugned order was stayed; that Deputy “Commissioner, Ambala – respondent No.3 promoted petitioner from the post of Leading Fireman, Municipal Council, Naraingarh, to the post of Sub-Fire Officer, on regular basis, in the Fire Service Centre of Municipal Council, Naraingarh, in the pay scale of 9300 – 34800 + grade pay of Rs.3200/- during the pendency of writ petition No. 6263 of 2007.

According to the petitioner, he had submitted a representation to the respondents, to grant him pay scale of Sub-Fire Officer for the period he held current duty charge of Sub-Fire Officer. He had submitted further representations also and got served a Legal Notice dated 8.11.2016 upon the respondents, but without evoking any response. The petitioner then filed a writ petition, bearing CWP No. 24845 of 2016, which was disposed of by the Court, vide order dated 1.12.2016, issuing a direction to respondent No.2 to consider and decide the legal notice of the petitioner dated 8.11.2006 in accordance with law with a period of four months from the date of receipt of certified copy of the order. The respondents had given personal hearing to the petitioner also. However, claim of the petitioner was not accepted, though an order was passed on notice of

the petitioner, which was so done on 8.8.2017. The petitioner feeling aggrieved by that order, has filed the present writ petition.

Notice of the petition was given to the respondents, who appeared and file joint written statement, contesting the writ petition.

In the written statement, they have raised several preliminary objections, challenging locus standi of the petitioner, to bring the writ petition, further contending that no cause of action arose to the petitioner to do so; that the petition is not maintainable; that the petitioner was assigned work of the post of Sub-Fire Officer on temporary basis vide order dated 29.11.2006 to maintain the proper working of the fire stations alongwith three other officials in different Municipal Committees. In terms of instructions circulated by the Chief Secretary to Government of Haryana to all the Heads of Departments dated 17.2.2006, it was directed that practice of assigning the current duty charge to the officials in various departments/organizations, be stopped, therefore, order dated 29.11.2006 was withdrawn. In that way, the petitioner worked temporarily on the post of Sub-Fire Officer in his own interest, whereas the aforesaid temporary charge given to him was already withdrawn as per Haryana Government instructions. The petitioner was working in the pay scale of regular employee as Leading Fireman. Therefore, he cannot be granted benefit of pay scale of the promotional post. The petitioner was promoted to the post of Sub-Fire Officer by Deputy Commissioner, Ambala, vide his office order dated 4.7.2011, by giving relaxation of about three months experience

of the post of Leading Fireman. On merits, the assertions in the writ petition were controverted, whereas the pleas taken in the preliminary objections were reiterated, finally praying for dismissal of the writ petition.

The petitioner filed re-joinder to the written stated.

I have heard, learned counsel for the parties, besides going through the record.

Learned Senior counsel for the petitioner has argued on the lines of the pleas taken in the writ petition. He has referred to various judgments, i.e. – i) *Pankaj Kumar vs. State of Haryana and another, by this Court in CWP No. 24845 of 2016 decided on 1.12.2016;* ii) *Smt. P. Grover Vs. State of Haryana 1983 AIR (SC) 1060;* iii) *Pritam Singh Dhaliwal vs. State of Punjab and another, 1983 SCC (L&S) 525;* iv) *Municipal Committee Samalkha vs. Shree Bhagwan, 1983 (3) SLR 473;* v) *Shambhu Dutt Sharma vs. Principal Secretary to Govt. of Punjab 1983 LIC 1661;* vi) *Des Raj and others vs. State of Punjab and others, by this Court in CWP No. 26506 of 2014 decided on 23.12.2014;* vii) *M.R. Gupta vs. Union of India 1983 (3) SCR 654;* viii) *Hans Raj vs. State of Haryana 1983 (2) Scale 172;* ix) *State of Haryana vs. Hans Raj Gupta and others, by this Court in LPA No. 1528 of 2015, decided on 20.10.2015;* x) *State of Haryana and another vs. Hans Raj Gupta and others, in SLP No. 30936 of 2016, decided on 14.9.2018;* and xi) *Mohinder Singh Bhardwaj vs. State of Haryana and others, by this Court in CWP 15918 of 2015, decided on 5.5.2017,* in support of his contention that

an employee discharging duties of higher post on temporary basis as current duty charge, is entitled to get the pay and other emoluments attached to that higher post, even if it is mentioned in the order that he/she would work as such in his/her own pay.

On the other hand, learned counsel appearing for the respondents have contended that the petitioner has no right to ask for the pay scale of Sub-Fire Officer during the period he held current duty charge on temporary basis, because the order vide which the petitioner and other Leading Fireman were given the work of Sub-Fire Officer, dated 29.11.2006, copy Annexure P-5, makes the things crystal clear, in as much as, it is mentioned therein that the current duty charge was being given in their own pay scales; that order was accepted by the petitioner without any murmur of protest. Therefore, he is bound by the same and cannot wriggle out of it. Counsel for respondent No.4 has placed reliance upon two judgments, first by a Division Bench of this Court, *Deepak Talwar vs. Haryana State Agricultural Marketing Board, 2007 (7) SCT*, wherein it was observed that when the petitioner was given the current duty charge of a higher post, in his own pay scale and petitioner had accepted the terms and conditions of order, then he would not be entitled to salary for the period he was holding the current duty charge. He has further referred to judgment *State of Haryana vs. R.K. Aggarwal 1997 (3) S.C.T. 638*, by the Apex Court, wherein such type of controversy came up for adjudication and it was observed that when the petitioner, who was working as Superintending Engineer, was given current

duty charge of Chief Engineer in his own pay scale during pendency of the litigation regarding inter-se seniority of various concerned officers, he cannot claim pay scale of promotion post for the period he was not actually promoted for the valid reason that it was not known at that time as to who will be promoted after determining the seniority and further current duty charge was given to him under a clear conditional order.

Here we are faced with a situation, where both the sides have cited judgments by the Apex Court in support of their respective contentions. Petitioners relying upon judgment in Smt. P. Grover's case Supra, whereas the respondents pressing into service judgment in R.K. Aggarwal's case Supra. Judgment Smt. P. Grover's case Supra was earlier in time, whereas judgment R.K. Aggarwal's case Supra, reflects the latest view of the Supreme Court on the subject. Furthermore, in this judgment, judgment delivered in Smt. P. Grover's case Supra has been noticed and duly considered. Therefore, when the case of the present petitioner is examined in light of the law laid down by the Apex Court in R.K. Aggarwal's case Supra, then it comes out that the present civil writ petition does not have any element of merit and is doomed for failure.

The petitioner himself having consented to work as Sub-Fire Officer in his own pay scale, now he cannot back out and start claiming that he be given the scale of the higher post. His act and conduct clearly debars him from filing the present writ petition. His claim was rightly rejected by the respondents and no fault can be

found with it.

Finding no merit in the writ petition, the same stands dismissed.

October 5th, 2021
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(H.S. Madaan)
Judge

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