

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

CWP-7732-1997 (O&M)

Date of decision: May 09, 2022

Ram Gopal and others

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Ms. Sanah Sahni, Advocate,
For the petitioners.

Mr. R.D. Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Disenchanted with their promotions, petitioners are before this Court stating that vide impugned order dated 29.01.1997 (Annexure P-5) their so-called promotion has been reduced to a complete farce, inasmuch as, prior to the promotion, they were in pay scale of Rs.1200-2040 and drawing higher pay having rendered 14 to 16 years of service as 'Library Attendant'.

2. As a bolt from the blue under the garb of the promotional order, they were suddenly placed in lower pay scale of Rs.950-1500. Resultantly, not only their promotion is a complete moonshine but also inflicts severe pecuniary loss. Notwithstanding, that they were earlier drawing higher salaries by virtue of sheer length of service on the Feeder Cadre post.

3. Short controversy, therefore, warranting adjudication is whether an incumbent on promotion is entitled to higher pay scale than the one which was being accorded to him on the feeder post?

4. Not only the position in law is *res judice* on this issue but even the respondents themselves are fully alive to the same, as is borne out from the

candid stand taken by them in the return filed in sub para (v) of para 9, which is as below:-

“v) XXX XXX

It is further submitted that on promotion the incumbent is entitled in a higher pay scale. The library attendant, who is matriculate, is promoted to the post of restorer which is in the higher pay scale as mentioned in sub-para (iv) of the grounds. It is further submitted that on promotion a library attendant, who is placed in the higher standard pay scale of Rs.1200-2040, his pay is fixed by protecting his pay which is absolutely above Rs.1200. Hence it is wrong to say that the library restorer on promotion is placed in a lower pay scale. Hence, the action of the respondent is totally legal and not against the well settled canons of law.”

5. Perusal of the above reveals that being conscious that a promotee is entitled to higher pay than that being drawn in the feeder post, an attempt to justify to the contrary has still been made stating that though petitioners were put in lower pay scale but their pay was protected vis-à-vis what was being drawn by them on the feeder post.

6. Concededly therefore, it is the case of respondents that vide promotion order, petitioners were indeed put in the lower pay scale. To the extent that petitioners were accorded the benefit of pay protection, no interference is called for. However, the question remains whether on promotion, petitioners were accorded higher pay scale? To that by sheer stand taken in the pleadings, the answer that emerges is ‘No’. In this aspect, reference may be had to a Division Bench judgment rendered by this Court way back in the year 1994 titled as “**Sunder Lal Jain Vs. State of Haryana**” reported in **1995(2) RSJ 94**, wherein it is expressed thus:

“6. After hearing learned counsel for the parties and going through the records of the case, this Court is of the considered view that the defence projected by the respondents is not entirely correct.

XXX XXX

If there is no increase in the emoluments of a citizen on his promotion, no one would ever work with zeal and dedication nor would he ever like to acquire better experience and more

qualifications. This would result into complete stagnation. The action of the respondents in equating the promotional posts with that of inferior posts in the matter of pay scale would obviously result in restricting the natural aspiration of human being to go higher and higher in his service graph and would, thus, be wholly arbitrary. A direction is, thus, issued to forthwith fix the pay of petitioners in the scale immediately higher than the one they were getting on a lower post from which they were promoted. This Court is of the considered view that the authorities responsible for fixing the pay scales of petitioners should immediately get down and see through that the justice is done to the petitioners by fixing them in a pay scale commensurate to their nature of duties and post.”

7. The above views were recorded after having in fact referred to an earlier Division Bench view taken by two different Benches of this Court in case titled as '***Har Kishan and another Vs. State of Punjab and another***' reported in ***1987 (5) S.L.R. 539*** and followed by "***P.L. Goyal, Additional District and Sessions Judge Vs. The State of Haryana***" reported in ***1990 (5) S.L.R. 108***.

8. The above position in law has remained the same over the years.

9. In course of the arguments, learned State counsel has tried to steadfastly defend the impugned order canvassing that since pay protection was accorded to the petitioners, therefore, even if the pay scale has been reduced compared to the feeder post, no interference by this Court is warranted. In the alternative, he argues that no doubt, in case of promotion, a promotee is to be given higher pay scale than the one applicable to the feeder post, but in the absence of there being any specific pay scale in the applicable service rules, it is difficult for the competent authority to ascertain how to remove pay anomaly of the promotees vis-à-vis the feeder post and which pay scale is to be accorded to the promotees vis-à-vis the earlier pay scale given to them on the feeder post. Therefore, the matter has to be referred to pay anomaly committee constituted on the administrative side.

10. As regards first argument, the same has since already been dealt with and negated in view of my earlier discussion. Qua the second argument, the

administrative authorities were at liberty to have done the needful when the petitioners approached this Court in first round by instituting CWP No.18245-1995 which was disposed of vide order dated 14.12.1995 pursuant where to the impugned speaking order has been passed giving reasons of denial to the petitioners of what they had claimed in the earlier round of litigation, as well as, in the second foray before this Court vide current writ proceedings. They have chosen to not do so at their own peril.

11. Be that as it may, it was for the competent authority to take a decision as to what steps were required to be taken to remove the pay anomaly of the petitioners including referring the matter to any pay anomaly committee. Same was and still is open to the wisdom of the administrative authorities.

12. Needful exercise of removing the pay anomaly by way of passing a fresh administrative order or seeking the opinion of expert committee be carried out within a period of 6 months from today.

13. Needless to say, exercise will be carried out by keeping in mind the settled position in law, as cited in my order herein above and pursuant where to the opinion expressed by me.

14. In the aforesaid premise, writ petition merits acceptance and the impugned order dated 29.01.1997 (Annexure P-5) is set aside.

15. Allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

May 09, 2022

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No