

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

CWP-12112-2016

Date of decision: 16.11.2022

SHAMSHER SINGH

...Petitioner

VS

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Manoj Makkar, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondents to release the withheld arrears of salary of the petitioner for the period from 30.05.2013 to 03.11.2013.

2. This is second foray of the petitioner before this Court. Earlier he had instituted CWP No.17794-2013 assailing the termination of his services. He was restored to the status as before disengagement pursuant to an order dated 31.10.2013 passed by Rajiv Narain Raina, J. (as he then was), which reads as under:-

“On 04.10.2013 this Court passed the following interim order:

CM No.14440 of 2013

Allowed as prayed for, subject to all just exceptions.

CWP No. 17794 of 2013

Learned State counsel prays for time to file reply. Let him do so with a copy of advance to the counsel opposite.

Post for final disposal on 31.10.2013.

In case reply is not filed, it will be presumed that the petitioner is qualified and had the requisite experience to the post to which he was appointed and from which his services have been disengaged."

Today, Ms. Kirti Singh, DAG, Haryana prays for further time to file reply. She is permitted to do so but the State would bear the brunt of status quo ante till further orders so that delay does not defeat the ends of justice.

The result of the status quo ante would be that the petitioner would be restored his status as on the day of disengagement dated 29.05.2013 and thus would be taken back in service forthwith.

List on 10.12.2013.

Order dasti."

3. Perusal of the above clearly reflects that while issuing the directions, learned Judge had made it very clear that result of the status quo *ante* would be that the petitioner would be restored his status as on the day of disengagement dated 29.05.2013. Meaning thereby that on the date of disengagement i.e. 29.05.2013, he would be deemed to be in service.

4. In the premise, for the period, petitioner physically remained out of service, the fault is entirely attributable to the respondents who did not take work from him, despite his being available and in any case, it is not the case of the respondents that during the interregnum, the petitioner was gainfully employed anywhere else.

5. In this context, respondents cannot adopt the ruse of Principle of '**No work, no pay**'. Reference may be had to a Division Bench Judgment rendered by this Court in "**Vidya Parkash Harnal Vs. State of Haryana**" reported in **1995 (3) S.C.T.785** wherein

speaking for the Bench, R.P.Sethi, J. (as his Lordship then was) opined as below:

“7. Similarly, the argument that the petitioner was not entitled to the grant of emoluments on the principle of ‘No work, no pay’ is apparently misconceived and based upon wrong notions of law. If a civil servant is not offered the work to which he was legally entitled, he cannot be deprived of the wages for the post to which he subsequently is held entitled to. Permitting such a course to be adopted would be encouraging the imposition of double penalty, that is, firstly by declining the civil servant his right of promotion and secondly by depriving him of the emoluments to which he would have been entitled to upon promotion which subsequently is considered in his favour. Deprivation to work against the post to which a civil servant is entitled on promotion is always at the risk and responsibility of the State and cannot be made a basis for depriving such a civil servant of the emoluments to which he was entitled, had he been promoted in accordance with the rules at the time when he became eligible for such promotion. The Courts cannot ignore the magnitude of the sufferings and the pains to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this age of skyrocketing prices and non-availability of essential requirements of livelihood. The Court cannot shut its eyes and forget the holocaust of economic deprivation to the petitioner and his dependents. Such a deprivation might have upset the career of the dependents, depriving the society of the services of such youth and budding dependents or children of the petitioner. The executive once being satisfied that a civil servant was entitled to the promotion with retrospective effect cannot deprive him of the benefits of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons. The order impugned in this case by which the petitioner/appellant was deprived of his right to claim back wages is admittedly non-speaking without assigning any justification or cogent and specific reasons.”

6. Adopting the same analogy as has been set forth by the Division Bench *ibid*, I see no reason why the petitioner be also not

accorded the benefit of his wages for the period employer itself did not offer him work despite his being available.

7. Accordingly, the writ petition is allowed. It is directed that the petitioner be paid arrears of his salary after adjusting the amount already paid for the period he remained out of service for no fault of his. Needful be done within a period of three months from today.

(ARUN MONGA)
JUDGE

November 16, 2022
Vandana

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