

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

**CWP No. 18859 of 2019 (O&M)
Reserved on: November 21, 2022
Pronounced on: 16.12.2022**

Baljit Singh Ubhi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Saguna Arora, Advocate, for
Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks issuance of a writ in the nature of Certiorari for quashing order dated 16.5.2019 (Annexure P/8) with a further prayer for direction to the respondents to grant benefit of pay fixation to the petitioner from the date of his retrospective promotion w.e.f. 01.02.2012.

2. The brief facts of the case are that initially the petitioner was appointed as Draftsman (Mechanical) with respondent No.3 on 24.1.1984 and was promoted as Instructor on 15.7.1985 and as Lecturer on 01.10.1991. The petitioner was given additional charge of the post of Head of the Mechanic and Engineering Department on 9.5.2011. One Sushil Kumar Prabhakar, who was holding the regular post of Head of the Mechanical Engineering Department retired from service on 31.01.2012 and

the petitioner being the senior most was looking after the charge of Head of the Mechanical Engineering Department and became entitled to his regular promotion w.e.f. 01.02.2012. However, the regular promotion as Head of the Mechanical Engineering Department was delayed without any justification and the same was allowed only on 22.1.2013 (P-2). Thereafter, entitlement of the petitioner for his retrospective promotion from due date i.e. 01.02.2012 was considered and the same was accepted, vide subsequent order dated 6.5.2014 (P-3). As is apparent the petitioner was discharging the duties of Head of the Department w.e.f. 01.02.2012, after the retirement of Shri S.K. Prabhakar, therefore, the petitioner requested for fixation of his pay on his promotional post w.e.f. 01.02.2012 and for grant of consequential benefits. The request of the petitioner was accepted by respondent No.3 and his case was forwarded to respondent No.2 for approval, which was returned on the ground that there is no such rule of the department for fixation of pay of an employee with retrospective effect.

3. On 23.04.2019, respondent No. 3, while referring the cases of one Shri Varinder Paul Singh and Jasvir Singh, employees of the same Institution, who were allowed the similar benefit of fixation of pay and salary on their retrospective promotion in CWP No. 11054 and 11118 of 2016 decided on 30.5.2016, again sent the case of the petitioner for fixation of his pay w.e.f. 01.02.2012, but respondent No.2, vide impugned order dated 16.05.2019, declined the same on the ground that there is no rule in the department for fixation of pay from back date. Hence the instant writ petition.

4. Learned counsel for the petitioner would submit that the case of

the petitioner is squarely covered by the judgments passed by this Court in **CWP No. 11054 of 2016 titled Varinder Paul Singh Versus state of Punjab and others** decided on 30.5.2016 and **CWP No. 11118 of 2016 titled Jasvir Singh Versus State of Punjab and others** decided on 30.5.2016. It is submitted that the claim of the petitioner has been rejected on frivolous ground that there is no rule in the department for fixation of pay from back date, whereas this Court in **Varinder Paul Singh's case** (supra) has clearly held that once the Government has already granted the promotion substantively to a person retrospectively, then the pay of the said employee in the regular pay scale has to be fixed from that particular date and not from the actual date of promotion.

5. Per contra, learned counsel appearing on behalf of the State would argue that the case of the petitioner for promotion and back dated promotion was not put up and was not considered by the Sub-Committee. As such the promotion was not done as per Grant-in-Code. Therefore, it is clear that the promotion/retrospective promotion of the petitioner has not been recommended by the Director, Technical Education & Industrial Training—respondent No.2. The retrospective promotion was given by the College at its own level. It is also submitted that the judgments rendered in **Varinder Paul Singh and Jasvir Singh's cases (Supra)** are not applicable to the present case as in the said cases the benefit of promotion from back date was given by the Management.

6. I have heard learned counsel for the parties and have perused through the record.

7. In **Varinder Paul Singh's case (supra)**, this Court, while dealing with the similar circumstances, held as under:-

“...If the competent authority is of the view that there are no instructions which grant benefits of promotion from back date or the benefits can accrue only from the date of joining, he is sadly mistaken. During the period in question the petitioner held the officiating charge of the post of Principal. It is a priori that once the Government has already granted the promotion substantively w.e.f June 2, 2014 then the pay of the petitioner in the regular pay scale of the post of Principal has to be fixed from June 2, 2014 and not from the actual date of the promotion order and accordingly, the last pay certificate is required to be drawn in the promotional pay scale of the higher post. Therefore, the first two bullets in the letter dated May 27, 2015 suffer from patent errors in reasoning and deserve to be set aside and the path restored to justice.

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The petitioner would also be entitled to difference of arrears of salary for discharging full duties and responsibilities of the post of Principal from June 2, 2014 till he was actually promoted vide order dated April 22, 2015 retrospectively from June 2, 2014 in view of the law in Smt. P.Grover v. State of Haryana, AIR 1983 SC 1060 : 1983 SCR (3) 654.”

In the present case, the petitioner has already been given promotion with retrospective effect i.e. from 01.02.2012, the date from which he was actually discharging the duties of Head of the Department independently. Once he was given promotion w.e.f. 01.02.2012, it is unjustified on the part of the respondents to deny him the fixation of his pay from the back date. The case of the petitioner is squarely covered by the judgment of this Court

in **Varinder Paul Singh's case (supra)**.

8. Consequently, the instant writ petition is allowed. The impugned order dated 16.5.2019 (Annexure P/8) is set aside. A direction is issued to the respondents to refix the pay and allowances of the petitioner w.e.f, 01.02.2021 in terms of the promotion order with all consequential benefits. Fresh orders be passed within one month from date of supply of this order and the monetary benefits be calculated and paid within the next one month.

December 16, 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No