

**222 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-6576-2017

Date of Decision: 06.04.2022

Rajinder Singh and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Lalit Rishi, Advocate, for
Mr. S.S. Dinarpur, Advocate,
for the petitioners.

Mr. Raman Kumar Sharma, Additional A.G., Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed with a prayer that the petitioners, who were directed by the respondents to discharge the duties for the higher post of the Deputy Superintendent of Police, are entitled for grant of the salary for the said post during the period for which they discharged the duties of the said higher post of the Deputy Superintendent of Police.

Learned counsel for the petitioners argues that the petitioners, who were working on the substantive rank of Inspector, were directed by the respondents to discharge the duties for the post of Deputy Superintendent of Police, vide order dated 23.11.2012 (Annexure P-4), though it was mentioned in the said order that no financial benefit will be granted to the petitioners. Learned counsel for the petitioners submits that the claim of the petitioners is that once the petitioners have discharged the duties of the higher post, keeping in view the settled principle of law, they

are entitled for the grant of the pay of the said higher post.

After notice of motion, the respondents have filed a reply, wherein it has been pleaded that though the charge of the higher post of the Deputy Superintendent of Police was extended to the petitioners but as the same was conditional that the petitioners will not be entitled for any financial benefits, coupled with the fact that the petitioners were not eligible for promotion to the post of Deputy Superintendent of Police, no benefit of the higher pay with regard to the post of Deputy Superintendent of Police can be extended to the petitioners.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a settled principle of law that once an employee has been directed to discharge the duties of a higher post, he/she becomes entitled for grant of the salary of the said higher post. In the present case, it is not a disputed question of fact that vide order dated 23.11.2012 (Annexure P-4), the petitioners were given the current duty charge of the higher post of Deputy Superintendent of Police, which they discharged, starting from the date of the passing of the said order dated 23.11.2012 till they attained the age of superannuation. That being so, the petitioners are entitled for the grant of salary of the higher post, i.e. of Deputy Superintendent of Police, for the said period.

The question here is whether the condition No.2 of the order of promotion, according to which, the petitioners would not be entitled for the grant of any financial benefits, can bind the petitioners, even if the same is contrary to the law. Once under the law, an employee becomes entitled to get the salary for the post on which he/she has actually discharged the duties, then if there is a condition of non-grant of financial benefits, the

same cannot come to the rescue of the Department, when the benefits are claimed by the said employee. Only a condition, which is permissible under law, can restrict the claim of the petitioners and as the condition of non-grant of financial benefits is contrary to the settled principle of law, the same cannot be put into operation to deny the financial benefits of the post of Deputy Superintendent of Police to the petitioners.

Further the argument that the petitioners were not eligible for the grant of promotion, therefore, they cannot be granted the financial benefits for the higher post of Deputy Superintendent of Police, is of no consequence for the reason that it is the respondent-Department only, which gave the petitioners the current duty charge of the higher post of Deputy Superintendent of Police. In case, the respondents felt that the petitioners are not capable for discharging the duties of the higher post due to the non-acquiring of the minimum qualification required for promotion, they should not have given the current duty charge to the petitioners. Further, nothing has come on record that the petitioners did not discharge their duties as required for the said higher post. That being so, merely for the reason that the petitioners did not fulfil the qualification for promotion at the time of the grant of current duty charge, cannot be a ground to deny the benefit of financial compensation to the petitioners for discharging the duties of the higher post of Deputy Superintendent of Police on current duty charge.

Division Bench of this Court, while passing judgment in **CWP-10152-2000**, titled as ***“Balbir Singh Dalal and others Vs. State of Haryana and another”***, decided on 09.05.2002, held as under:-

“- x - x -

4. *We have already noticed that there is no dispute to the fact that petitioners were performing duties and*

functions of higher responsibility and were given complete charge of the post of Sub Divisional Officers. The expression "assigned the current duty charge" cannot mean to suggest that it was merely looking after some functions of the post carrying higher responsibilities. On the contrary, the petitioners were given the complete charge of the post and they were not performing duties of their original post. In other words, they were excluded from performing the functions of the lower cadre which was a feeder cadre to the post of Sub Divisional Officers. Once a person is appointed to hold full charge of the duties of a higher post, even in addition to duties of his own post, has to be allowed pay admissible to him as if he was appointed to officiate in the higher post. In this regard Rule 4.22(i) is amply clear.

5. On the cumulative reading of Rules 4.4, 4.13 and 4.16 of the Punjab Civil Services Rules it is clear that even a Government employee officiating on a higher post is entitled to the higher pay unless for reasons to be recorded, his pay is reduced within the preview and scope of the said rules. In the present case, there are no reasons recorded by the competent authority for denying the higher scales to the petitioner. The condition stated in the letter of appointment that they would discharge the functions of the higher post in their own pay scales is not of any consequence. Once a Rule grants a benefit to an employee, it cannot be taken away by the administrative authority except in consonance with the rules. It is not the case of the respondents in the written statement that for any reasons recorded in the order passed by the competent authority, it had been decided to grant lessor pay to the petitioners what they are entitled to.

6. Right from the date of their initial appointment to the

higher post in the year 1996, the petitioners have worked continuously undisturbed in the higher post till the time their services were regularised in the same post in the year 1999. The petitioners have worked for a considerably long time and as such it cannot be even termed as a stop-gap arrangement. These appointments were made in accordance with service rules and the instructions governing the subject. Performance of duties and functions of higher responsibilities by the petitioners in the higher post are not in controversy. At this stage we may make a reference to the judgment of the Hon'ble Apex Court in the case of [Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma, 1998\(3\) SCT 90](#), where their Lordships, after considering various judgments of the Apex Court and in the circumstances where Government employees were just asked to officiate on stop gap arrangement on higher posts, were entitled to the benefit of higher pay scale and referring to the case of [P. Murugesan and others v. State of Tamil Nadu and others, 1993\(2\) S.C.T. 416 : 1993\(2\) SCC 340](#), held as under :-

"Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer-I, he had given an undertaking to the appellant that on the basis of stop arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his

period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer-I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act."

Reference can also be made to a Division Bench judgment of this Court in the case of [Gurmej Singh v. State of Punjab and another, 1995\(3\) SCT 279 \(P&H\) \(DB\) : 1995\(3\) R.S.J. 491](#), where the Division Bench, after discussing various judgments on the issue, held as under :-

"Factually, it is not disputed that the petitioner, who was working as a Social Education and Panchayat Officer, was given current duty charge of the post of B.D. and P.O. with effect from 20.12.1988 and till retirement on 30.11.1989, he went on discharging the duties of B.D. and P.O. to which post he was otherwise also entitled to be considered for promotion, the petitioner was entitled to pay and emoluments of the post of B.D. and P.O. with all consequential benefits. The primary reliance is on the judgment of the Supreme Court in case reported as AIR 1983 Supreme Court 1061. Learned counsel for the petitioner further relied on a D.B. judgment of this Court in Civil Writ Petition No. 13465 of

1991 rendered on 16.1.1992, whereby a similarly situated S.E. and P.O. who had been given current duty charge of the post of B.D. and P.O. was granted the pay and emoluments of the post of B.D. and P.O. A copy of this judgment has been attached as Annexure P-4 with the writ petition."

7. The learned counsel for the respondent-State relied upon the judgment of the Hon'ble Apex Court in the case of [Rama Kant and others v. Union of India and others, 1993\(3\) S.C.T. 586 : AIR 1991 Supreme Court 1145](#) to contend that the employees required to look after or directed to officiate in higher post is not a promotion as they continue to hold their substantive lower posts and they only discharge duties of higher posts on stop gap arrangement. In view of the rules aforereferred and the judgment of the Hon'ble Apex Court in the case of Secretary- cum-Chief Engineer, Chandigarh (supra), this contention hardly has any merit. The question before this Court is not that whether the grant of current duty charge to the petitioners tantamounts to a regular promotion entitling them the benefits thereof. The petitioners have been promoted on regular basis in continuation with their appointment on current duty charge. The later decision of the Hon'ble Apex Court in the case of Secretary-cum-Chief Engineer (supra) is squarely applicable to the facts and circumstances of the case.

8. The essentials for raising such a claim are satisfied in the facts and circumstances of the present case. The petitioners were provided appointments in accordance with rules and were required to discharge functions and duties of the posts which admittedly carried higher responsibilities. They were not holding a dual charge.

Against the posts to which they were appointed on current duty charges, the services of the petitioners were regularised. Thus, we see no reason, whatsoever, to reject the request of the petitioners for grant of appropriate pay scales payable to the post of Sub Divisional Officer for the limited period afore noticed.

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Division Bench of this Court while again adjudicating the same question of law and passing judgment in another writ petition, being CWP-6723-2004, titled as **“Pritam Singh Dhaliwal Vs. State of Punjab and another”**, decided on 23.08.2004, held as under:-

“ - x - x -

5. We have heard the learned counsel for the parties and have also perused the pleadings and so also the documents appended by way of annexures. We are of the opinion that the petitioner is justified in claiming the higher pay for having performed the duties of Deputy Director of Panchayat/Addl. Deputy Commissioner (Development) from time to time pursuant to the orders passed by the Government, copies of which have been appended as Annexures P2 to P8. It is the settled principle that if a person is asked to perform the duties regularly though in officiating capacity or on current duty charge or as a temporary measure, he would be entitled to the higher pay i.e. the pay which is payable while performing the duties in the higher/promotional post. In this regard, it shall be apposite to mention rules 4.22 and 4.13 of the Punjab Civil Services Rules, Volume I Part-I, which read as under :-

"4.22. A competent authority may appoint one Government employee to hold substantively, as a temporary measure, or to officiate in, two or more

independent posts at one time. In such cases, his pay is regulated as follows:-

(a) the highest pay, to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;

(b) For each other post he draws such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the competent authority may fix; and

(c) If compensatory allowances are attached to one or more of the posts he draws such compensatory allowances as the competent authority may fix : Provided that such allowances shall not exceed the total of the compensatory allowances attached to all the posts.

Note : xx xxx xx".

"4.13. (1) Subject to the provisions of rules 4.22 to 4.24, a Government employee who is appointed to officiate in a post shall not draw a higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which he is appointed to officiate is one enumerated in the schedule to this rule or unless the officiating the appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post on which he holds a lien or would hold a lien had his lien not been suspended :

Provided that the competent authority may exempt from the operation of this rule, any service which is not organised on a time scale basis and in which a system of acting promotions from grade to grade is in force at the time of the coming into force of these rules :

Provided further that the competent authority may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions

of this rule and subject to such conditions as the competent authority may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide and may thereupon be granted the same pay (whether with or without any special pay, if any, attached to such posts) as they would have received if still in the ordinary line.

(2) For the purpose of this rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien or would hold a lien had his lien not been suspended, or on a scale of pay identical therewith."

Note 1. - The words 'duties' and 'responsibilities' used in this rule are to be interpreted in a wide sense as including besides the works to be performed the general responsibilities and liabilities incidental to being member of a particular service. See also note 7 below 4.4.

xx xx xx xx xx "

The principle of "quantum merit" (so much as the employee has earned - is found on premises i.e. to pay the employee for doing a thing as much as he has earned or merited; projects where a special contract has been entered into to pay the employee a particular amount or he is entitled to recover equivalent to the value of work that has been put in by him. The employer is obligated to pay the employee as per the emoluments available in the higher pay scale during the time he/she actually works on the post though it may be in the officiating capacity/as temporary measure and or current duty charge. The rigour of

"regular promotee" would not come in the way under these circumstances.

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Keeping in view the above, the petitioners have made out a case for the grant of benefit of the salary, for the period for which the petitioners discharged the duties of the higher post of Deputy Superintendent of Police. Let the said financial benefits be calculated by the respondents and the difference of salary be extended to the petitioners within a period of two months from the date of receipt of the copy of this order. It is made clear that the salary of the higher post will not be taken into account for computing the pensionary benefits of the petitioners as the same will be computed only on their substantive ranks.

Allowed in the above terms.

06.04.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes