

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

LPA No. 332 of 2015 (O & M)

Date of Decision: 12.05.2022

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Ms. Kuldeep Kaur

.....Appellant(s)

vs.

State of Punjab and others

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Ravi Kant Sharma, Advocate, for the appellant.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Dushyant Rana, Advocate,
for Mr. A.R. Takkar, Advocate,
for respondent No.3.

G.S. SANDHAWALIA, J. (Oral)

The present letters patent appeal is directed against the order of the learned Single Judge passed in ***CWP No. 12824 of 1995, Kuldeep Kaur vs. State of Punjab and others*** dated 24.07.2014 whereby, the prayer for grant of pay scale of typist with all consequential benefits was rejected. The conclusion arrived was that the petitioner was regularized as Mali/Beldar and she might have worked in the office as per the convenience and requirement of the Corporation, therefore, she cannot be granted the relief claimed by her as she had not been appointed against the vacancy of Punjabi Typist. The challenge to the order passed by the respondents dated 07.08.1995 (Annexure P-8) transferring the appellant to Rose Garden Nursery was accordingly repelled.

The learned Single Judge has noticed the fact that the case of the petitioner was that she has been regularized as Mali/Beldar but perusal

of the muster roll (Annexure R-3/1) would show that she had been described as Mali/Beldar in December, 1991 and similar was the position in February, 1992. The salary as such was also being received for the said post. Reliance was also placed upon letter dated 16.03.1993 (Annexure R-3/7) whereby, regularization was done on the said post w.e.f. 01.06.1992 keeping in view the orders of the Commissioner and after taking necessary sanction from the Department of the Local Government. It has also been noticed that her joining report also would show that she was regularized on the said post as per the Commissioner's orders dated 07.02.1993 and the office order dated 15.03.1993. It was accordingly held that she might have worked in the office as per the convenience and requirement of the Corporation at a higher post, but she had never been appointed on the post of Punjabi Typist and it was held that there was no ground for interference.

A perusal of the paper book would go on to show that the claim as such was that she had worked on the post of Punjabi Typist and had performed other duties of a miscellaneous clerk and order dated 30.11.1993 had been passed which would be clear from the office order dated 02.12.1993 (Annexure P-2). The same reads as under:-

“The Commissioner vide his order dated 30.11.93 has directed Smt.Kuldip Kaur, Beldar to work in the Estt. Brn of the M.C. She is presently working with the Horticulture Br. as Typist.

2. By the same orders Sh.Kuldip Rana, Peon working in the Licence Branch is also directed to work with Estt. Br. to the M.C.”

Similar is the intent of the communication dated 26.06.1995

day daily with C.&E.A. Establishment Branch. Similar is the intent of the letter dated 24.01.1994 (Annexure P-4).

The stand of the respondents is also that the joining report is of Mali/Beldar and she was never appointed on the post of Punjabi Typist and she had never been put in the pay scale of Rs.950-1800/- as her actual pay scale was Rs.770-1350/-. It was also admitted that it was the prerogative of the answering respondent to post/transfer any employee with any of the departments depending upon the requirements of work. The petitioner being a lady was given a concession to serve in offices as Mali/Beldar and take various *dak* files from one officer to another. Allegations were also made of the tampering of the record as such to show that she, with an ulterior motive, on her own and with her hand added words for 'office type work' in the letter dated 16.03.1993.

Resultantly, we are of the considered opinion that the finding which has been recorded as such by the learned Single Judge that initial appointment as such was on the post of Mali/Beldar is well justified. The regularization also had taken place on the same post and the claim as such that the petitioner is entitled for the benefits of the higher post on a permanent basis is not justified in the facts and circumstances.

The only issue which the learned Single Judge as such failed to redress was that for the work which was taken for higher responsibility, the petitioner should have been paid the benefits of the higher post.

A perusal of the paper book would go on to show that the appellant had been repeatedly representing qua her claim of having been given higher responsibilities in pursuance of the orders of the

Commissioner. A perusal of the letter dated 07.08.1995 (Annexure P-12) would go on to show that the Corporation itself had written that she be deputed for the full day in the Establishment Section for typing work and to mark her attendance with the Establishment Section even though she had been transferred to Rose Garden Nursery. She had time and again represented as per Annexure P-14 that she was a Graduate and has been doing the work of typing for the last 1-1/2 to 2 years and similarly, request was also made on 13.09.1995 that the salary admissible to the post of Punjabi Typist or Clerk be given as she had been working on a sanctioned post. The necessary certificate of Punjabi language at graduation level has also been placed on record as Annexure P-17 with the replication (though described as rejoinder).

The Full Bench of this Court in ***Subhash Chander vs. State of Haryana and others, 2012 (1) SCT 603***, while examining the law on the issue, decided the question that when a person is given an independent charge and responsibility of higher post, he would be entitled to regular pay scale without being substantially appointed to the said post. The relevant portion reads thus:-

“17. In view of the above, the question posed in para no. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of

Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

Resultantly, the appeal is partly allowed to that extent that the Corporation will take action and grant her the arrears of pay scale admissible to the post of the Typist for the period work was actually taken from her at the minimum of the higher scale without any allowances. The said exercise be completed within a period of 3 months.

(G.S. SANDHAWALIA)
JUDGE

12.05.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No