

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

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**LPA No.403 of 2018 (O&M)
Decided on : 25.08.2022**

State of Punjab and another

... Appellants

Versus

R.K. Rampal and another

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE JAGMOHAN BANSAL**

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab
for the appellants.

Mr. K.S. Dadwal, Advocate for the respondents.

G.S. Sandhawalia, J. (Oral)

CM-1059-LPA-2018

Application for condonation of delay of 349 days in filing the appeal has been filed.

The same has been opposed by filing reply by the respondents.

We have gone through the application, wherein it has been mentioned that the judgment was passed on 08.03.2017 and the copy of the order had been received on 25.04.2017. Sanction had been granted on 18.09.2017 and resultantly the same was got vetted from the office of Advocate General on 06.02.2018, which led to delay in filing the appeal.

We are of the considered opinion that on account of procedural formalities the delay has occurred and it is settled principle that each and every day's delay is not to be explained as laid down by Apex Court in **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, (1987) 2 SCC 107.**

Accordingly, the application is allowed. Delay of 349 days in filing the appeal is condoned.

CM stands disposed of.

LPA-403-2018

The present appeal arises out of the order dated 08.03.2017 of the learned Single Judge passed in **CWP No.22596 of 2010 ‘R.K. Rampal and another Vs. State of Punjab and another’**, wherein while allowing the writ petition, which was primarily filed for the release of pay scale of Director of Agriculture for the period the writ petitioners worked, the learned Single Judge had also fixed the pension on the higher post.

The stand of the State was that the additional charge of the post of Director of Agriculture was given in the special circumstances to the writ petitioners who were working as Joint Directors and the representations have been filed after a period of more than 6 years.

The State now has quoted Rule 2.4 of the Punjab Civil Services Rules, Vol.II, Chapter-II, wherein it has been averred that the respondents are not entitled for the salary earned during as officiating period as last pay drawn and no claim of pension is admitted. The said rule reads as under:-

“2.4. In the following cases no claim to pension is admitted.

(a) When a Government employee is appointed for a limited time only, or for a specified duty on the completion of which he is to be discharged.”

However, the learned Single Judge had issued directions for re-fixation of pay and also that the pensionary benefit shall also be re-

fixed which was beyond the scope and the relief claimed. The operative part of the judgment passed by the learned Single Judge, wherein relief was given, reads as under:-

“Accordingly, the pay of the petitioners shall be refixed and consequently, their pensionary benefits shall also be refixed and released. In this case, after the retirement of the petitioners, they approach this Court in the year 2010 only, therefore, they shall not be entitled to any interest till they approached this Court i.e. 16.12.2010.

Let the pay and retiral benefits of the petitioners be accordingly refixed and released to them within a period of three months from the date of receipt of certified copy of this order along with interest @ 9% per annum from 16.12.2010 till actual payment.

As such, the present petition is allowed.”

Counsel for the State has placed reliance upon the Division Bench judgment passed in ‘**Pritam Singh Dhaliwal Vs. State of Punjab and another**’, 2004 (4) RSJ 599. Relevant part of the said judgment reads as under:-

“6. In the case at hand, the plea of the Government is that the seniority of District Development and Panchayat Officers and the Deputy Directors etc. has been challenged before the Supreme Court and, therefore, making regular appointments was not possible. This would not come in the way of the Government to deny the right of the employee, who has been asked to officiate in the post or hold the post as a temporary measure or on current duty charge. It is the admitted case that the petitioner had been asked to officiate as Deputy Director with effect from 14.3.1996 and he has been continuously posted to equivalent posts such as Addl. Deputy

Commissioner (D) and that till his superannuation the officiating charge was never withdrawn. In view of the law laid down by the Hon'ble Supreme Court of India and so also the view expressed by the two Division Bench judgments of this Court, with which we are in respectful agreement, we hold that the petitioner is entitled to claim the higher pay scale in the post in which he had been asked to officiate and perform his duties till his superannuation. The respondents are directed to carry out the mathematical exercise accordingly and grant the relief (including fiscal benefits) to the petitioner in the right and correct perspective within a period of three months from the date of receipt of certified copy of this order. It shall be apposite to mention that the case of the respondents in that the seniority of the Deputy Directors and District Development and Panchayat Officers is under challenge before the Supreme Court, as and when the said matter is determined by the Supreme Court, the petitioner shall be well within this rights to stake his claim accordingly. The petition is disposed of in the above terms.

Order accordingly.”

Thus, we are of the considered opinion that learned Single Judge erred in granting the relief of fixation of pay on the higher post, since the writ petitioners were never promoted on the said higher post till their date of superannuation. Rather the Apex Court in the case of '**Selva Raj Vs. Lt. Governor of Island, Port Blair**', 1999 AIR SC 838 specifically has made it clear that the difference amount of salary shall not be treated to amounting to any promotion on the said post. Relevant part of the said judgment reads as under:-

“4. The decision of the Central Administrative Tribunal rejecting iliac claim of the appellant to the aforesaid limited

extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29-1-1992 to 19-9 1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs.

Order accordingly.”

In such circumstances, the present appeal is partly allowed to the extent that the writ petitioners are only entitled to the financial benefits for the period the duties were performed on the higher post. Apart from the above modification, the order of the learned Single Judge is justified in all manners. The dues/interest be paid within a period of 2 months from the receipt of certified copy of this order, if not already paid.

The appeal is partly allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

August 25, 2022
Naveen

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No