IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.196 of 2020 (O&M)
and XOBJL-1-2023
Reserved on: 27.03.2023.
Date of Decision: 17.04.2023.

HARYANA URBAN DEVELOPMENT AUTHORITY (NOW HARYANA SHEHRI VIKAS PRADHIKARAN), SECTOR-6, PANCHKULA THROUGH ITS CHIEF ADMINISTRATOR

. . . . Appellant/Respondent

Vs.

RAGHUBIR KAUSHISH

. . . . Respondent/Petitioner

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS.JUSTICE SUKHVINDER KAUR

Present: - Mr. Arvind Seth, Advocate
for the appellant.

Mr. Aman Dhir, DAG, Punjab.

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M.S. RAMACHANDRA RAO, J.

This Letters Patent Appeal is preferred against the judgment dt.14.09.2018 passed in CWP-3762-2016 passed by the learned Single Judge of this Court.

The Writ Petition

The respondent in the Appeal had filed the said Writ Petition seeking quashing of a decision dt.04.07.2012 taken in Agenda Item No. PC (27) in the meeting of the Personnel Committee of the appellant (which had not been communicated to the respondent) vide which he had been given notional promotion to the post of Senior Accounts Officer w.e.f. 28.07.2008 without any consequential benefits.

The respondent in the said Writ Petition sought a Writ of Mandamus for directing the appellant to grant deemed promotion w.e.f.

28.07.2008, the date from which counter part of the respondent had been promoted to the post of Senior Accounts Officer from the post of Accounts Officer along with all consequential benefits with interest.

Backgrounds Facts

The respondent had joined the service of the appellant as an Assistant on 18.01.1979. In 1986, respondent was promoted to the post of Accountant and in the year 2002, he was promoted to the post of Accounts Officer w.e.f. 2000.

The first charge sheet and dropping of charges against respondent

On 17.04.2007, respondent was issued a charge-sheet stating that while working in Estate Office, HUDA, Hisar, he has made acts of omission and commission while verifying 2nd reserve price fixation case of shopping booth, DSS and SCF of Shopping Centre-II, Hisar.

The respondent gave reply to the charge-sheet denying the allegations.

The Administrator, HUDA was appointed the Inquiry Officer on 02.11.2007 and he submitted his report on 11.03.2008 stating that the charge at the outset is contradictory in its contents giving the impression that the first proposal of the reserve price amounting to ₹16,39,440/- of these DSB's along with the SCF's was without any discrepancy, and so the question of fixing the reserve price at ₹36.56 Lakhs with a loss of ₹3.61 Crores to HUDA did not arise. The Inquiry Officer therefore exonerated the respondent evidence by the noting from 27.05.2003 to 29.05.2003 of the Chief Controller of Finance to C.A. and FCTCP submitted by the respondent in which it was observed that in the process of auction, no loss had been caused to the HUDA. The CCF, HUDA also agreed with the findings of the Inquiry Officer.

The matter was then placed before the Personnel Committee in its meeting held on 06.03.2009/29.04.2009 for consideration, and the said Committee also accepted the report of the Inquiry Officer.

On that basis, the said charges against the respondent were dropped vide Annexure P-3 proceedings dt.25.06.2009.

The second charge sheet and dropping of charges against respondent

On 09.12.2009, another charge-sheet was issued to the respondent under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 stating that he had audited and checked the account statement of the Industrial Plot No.69, Sector 59, Faridabad, and worked out extension fee ignoring the fact that the time limit for construction on the said plot had already been expired in 2002, to save the plot from resumption proceedings in connivance with the allottee, and he had failed to perform his official duties efficiently and diligently.

An Inquiry Officer was appointed to conduct regular departmental inquiry on 15.01.2010. The respondent submitted his defence to the charge-sheet on 19.01.2010. The Inquiry Officer submitted a report on 22.03.2010 holding that all the charges were proved against the respondent. Copy of the Inquiry report was sent to the respondent on 27.04.2010. The respondent gave a representation against findings of the Inquiry report on 24.05.2010 taking the stand that it was not the duty of the Accounts Branch to check the time-limit of construction/production, and if the file was in default for any action and resumption, the Allotment Branch should not have sent the file to the Accounts Branch for auditing and checking plot account. The matter was then placed before the Personnel Committee in its meeting held on 04.10.2020 for consideration.

The said Committee agreed with the report of the Inquiry Officer and decided to issue a Show Cause Notice for imposition of penalty of 10% cut in pension. This was conveyed to the respondent on 02.11.2010 for making a representation, and he gave representation on 17.11.2010.

On 17.01.2011, the Committee decided to afford an opportunity of hearing to the respondent, and after hearing him, it accepted the plea of the respondent that work of resumption of any plot pertains to Allotment Branch of the Estate Office, and while working in the Accounts Branch, he was neither required to nor in a position to ascertain whether the period of construction over the plot was expired or not. So the Show Cause Notice issued to him on 02.11.2010 was 'filed'.

In fact *after* his retirement, order dt.30.03.2011 (P-5) was passed by the competent authority of the appellant acquitting the respondent of all charges.

Thus the appellant was exonerated both times of the charges leveled against him.

The denial of promotion to respondent by appellant

In the meantime, in 2008, the appellant decided to fill up the post of Senior Accounts Officer by way of promotion under Rule 9 of the applicable Rules which provided that the 'promotion in respect of the post of Senior Accounts Officer shall be made on the basis of seniority-cum-merit and seniority alone would not give any right for such promotion'.

On 27.06.2008, the respondent's claim for promotion was considered by the Personnel Committee, but since disciplinary proceedings was being taken against him, his junior Sh. Radhey Shyam Goel, Accounts Officer, was given the promotion to the post of Senior Accounts Officer, and one post was kept reserved for the respondent vide Agenda Item No. PC (7) dt.27.06.2008 (Annexure P-1). The respondent's junior was given promotion order on 28.07.2008 to the post of Senior Accounts Officer.

The respondent was going to retire on 31.03.2010. Prior to that, vide order dt.21.08.2009, the appellant had given current duty charge of the post of Senior Accounts Officer to the respondent.

Respondent had also given representation to the appellant for his promotion on par with his junior Sh. Radhey Shyam Goel to the post of Senior Accounts Officer, but nothing was done, and he retired from service on attaining the age of superannuation on 31.03.2010.

The Minutes of the Personnel Committee P7 dt.4.7.2012

The respondent then made an application under RTI Act, 2005 seeking copy of the minutes of the meeting of the Personnel Committee held on 04.07.2012. The same were made available to the respondent vide P-7 document.

The said proceeding indicates that the respondent was graded "Very Good" for the period 1996-97 to 2005-06; there were no adverse remarks regarding his integrity; and so he was eligible for promotion to the post of Senior Accounts Officer; and he is entitled to the notional promotion from the date when his junior was promoted to the post of Senior Accounts Officer on 28.07.2008 till his superannuation on 31.03.2010. It was also stated that due to notional promotion, pay will be fixed notionally and nothing will be given to him actually on account of promotion, and pension will be fixed on the actual drawn pay not on the notional pay.

This proceeding was questioned by the respondent in CWP-3762-2016 before this Court.

The respondent contended that once the disciplinary proceedings against him were dropped, he should have been given regular promotion instead of notional promotion from the date when his junior was promoted particularly when he was granted charge of the post of Senior Accounts Officer vide Annexure P-4 dt.24.08.2009 as a stop gap arrangement in his own pay scale of Accounts Officer till the date of his superannuation.

The counsel for the appellant sought to contend that respondent was entitled to only notional promotion to the post of Senior Accounts Officer and not regular promotion since he had not worked on the post of Senior Accounts Officer, and he cannot be allowed financial benefits. He contended that at the time of notional promotion, 40% of pay was fixed notionally, and no other benefit was granted to him, and finally as per the advice given by the Financial Department, as per 6.24 (4) of the Central Civil Service Rules, Volume-II, pensionary benefits of the respondent were to be calculated on the basis of the emoluments actually drawn by him. Thereafter, difference of DCRG and Leave Encashment of the retired officer was released vide order dt.25.08.2015.

Order of the learned single Judge

The learned Single Judge had noted the respective contentions of the parties.

Learned Single Judge held that in the case of ***Surinder Kumar and others Vs. State of Haryana and others***[1], a Division Bench of this Court had held that a person appointed to hold full charge of duties of a higher post in addition to duties of his own post has to be allowed pay admissible to him as if he was appointed to officiate in a higher post; that no reasons were

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1. 2002(4) SCT 424

recorded by competent authority in the instant case for denying higher scales to the respondent; and the condition stated in the letter of appointment that the respondent would discharge functions of the higher post in their own pay scale would not be of any consequence. She further held that in the Full Bench judgment to this Court in the case of ***Subhash Chander Vs. State of Haryana and others***[2]***,*** it has been observed 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 the higher grade.

She therefore held that respondent is entitled to the higher pay scale from the date he has assumed the charge of the post of Senior Accounts Officer with all consequential benefits including promotion and directed that his pay be re-fixed and the arrears of his pay should be calculated from the date when he has been officiating on the post of Senior Accounts officer. The arrears of pay be made within three months from the date of the said order.

The LPA

Challenging the said order, the instant LPA is filed by the appellant with a delay of 225 days.

The appellant filed CM-528-LPA-2020 seeking condonation of the said period of delay by invoking Section 5 of the Limitation Act, 1963.

Though the explanation offered in the delay condonation application is not satisfactory, but since counsel for the respondent stated that he had objection for the condonation of delay because the respondent had filed cross objections in the LPA seeking payments of interest on the arrears of pay, the said period delay was condoned by this Court.

2 Passed in CWP No.21358 of 2008 decided on 20.12.2011

Consideration by the Court

In the LPA, counsel for the appellant contended that the Writ Petition is barred by limitation since it was filed in the year 2016 whereas the Personnel Committee's meeting was held on 04.07.2012.

It is not the case of the appellant that the decision taken in the meeting held on 04.07.2012 was ever communicated to the respondent by the appellant. The respondent was made known of the same only much later on 28.04.2014 when the same was supplied to the respondent when he applied it under the RTI Act, 2005.

A party cannot be accused of laches if he was not informed of any adverse order passed against him.

In ***Bipromasz Bipron Trading Sa v. Bharat Electronics Ltd.***[3]**,** the Supreme Court held:

> *" ... an order passed by an authority cannot be said to take effect unless the same is communicated to the party affected. The order passed by a competent authority or by an appropriate authority and kept with itself, could be changed, modified, cancelled and thus denuding such an order of the characteristics of a final order. Such an uncommunicated order can neither create any rights in favour of a party, nor take away the rights of any affected party, till it is communicated."*

Thus the respondent who was unaware of the order dt.4.7.2012 till 2014 cannot be blamed for not questioning it immediately in 2012. There is thus no merit in the plea of the appellant that the respondent was guilty of laches.

Admittedly the charges against the respondent had been dropped in the second charge-sheet issued to him only on 30.03.2011 after he had been

3 (2012) 6 SCC 384

attained the age of superannuation 31.03.2010, and thereafter respondent had made representations dt.20.06.2011, 18.10.2013, 29.04.2014 and 09.06.2014. Thus, he was asserting his rights against the appellant.

In any event, laches is not an absolute bar for entertaining the Writ Petition for the reason that no third party rights have intervened, and shocking injustice had been done to the respondent by the appellant by denying him regular promotion in spite of the fact that the charges framed against him under both charge-sheets had been dropped.

So the respondent should have been given regular promotion to the post of Senior Accounts officer by the appellant prior to his retirement w.e.f date his junior got promoted since he had good ACR grades in cadre of Accounts Officer for the period 1996-97 to 2005-06 and so was entitled to a regular promotion to the said post.

We agree with the finding of the learned Single Judge that in view of the decisions of in ***Surinder Kumar and others*** **(Supra 1)** and ***Subhash Chander*** **(Supra 2)**, the respondent, who was holding charge of the post of the Senior Accounts Officer, though as a current duty charge in addition to his post of Accounts Officer, cannot be denied the salary of his officiating post in the higher grade in which he had worked w.e.f. 21.08.2009 till he attained the age of superannuation on 31.03.2010.

Conclusion.

Therefore we find no error in the order of the learned Single Judge insofar as the learned Single Judge granted reliefs to the respondent.

But in our opinion, the learned Single Judge ought to have also granted interest on the payment of arrears excluding the period of delay in filing the Writ Petition.

In other words, learned Single Judge ought to have granted interest on the arrears of pay w.e.f. 28.07.2008 till 04.07.2012 @ 6% per annum and thereafter from the date of filing of the Writ Petition till payment by appellant.

Accordingly, the LPA is dismissed; the cross objections of the respondent are allowed; the appellant is directed to pay to the respondent interest on the arrears of pay w.e.f. 28.07.2008 till 04.07.2012 @ 6% per annum, and thereafter from the date of filing of the Writ Petition till payment by appellant. Such payment shall be made within 8 weeks from the date of receipt of certified copy of this order. No costs.

Pending application(s), if any, stands disposed accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 17, 2023.
Ess Kay

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*