

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

LPA-346-2023 (O&M)

Date of Decision: 07.08.2023

Balwan Singh and another

.....Appellants

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

**Present : Mr. Vinod Bhardwaj, Advocate,
for the appellants.**

ARUN PALLI, J.

1) This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 20.01.2023, vide which the writ petition, preferred by the appellant, was dismissed.

2) A brief narration of facts that have led the appellants to the current stage shall be expedient.

3) The appellants were appointed as Clerks in the year 1990-91. Dharambir, who, per the seniority list of Clerks, was junior to the appellants, was promoted as Assistant on 13.09.1995. Aggrieved, Tilak Raj, who also happened to be senior to Dharambir, approached this Court, vide CWP-18333-2002. And, vide order dated 16.08.2005, the Division Bench allowed the petition and directed the respondents to consider his claim for promotion from the date his junior (Dharambir) was promoted. A Special Leave to Appeal preferred by the State against the said decision was dismissed on 23.07.2008. Resultantly, vide order

dated 02.12.2008, Tilak Raj was promoted as Assistant w.e.f. 13.09.1995. Whereupon, the appellants, who were also senior to Dharambir, approached this Court, vide **CWP-15902-2013**, and prayed for the similar reliefs. And, during the pendency of the said petition, the authorities, vide orders dated 04.02.2015 (w.e.f. 22.10.1996) and 29.09.2015 (w.e.f. 13.09.1995), even promoted the appellants. The petition was accordingly disposed of on 30.05.2017. However, the appellants again approached this Court, vide **CWP-14515-2017**, with a prayer to quash orders dated 04.02.2015 and 29.09.2015 (*ibid*), to an extent they were only extended the benefit of notional pay fixation from the date of their retrospective promotion. Whereas, the actual benefit of drawl of pay on the post of Assistant was granted only from the date of their joining the promoted post. Accordingly, they prayed that they be granted arrears of pay/salary, at least, for a period of 38 months prior to filing of their first petition (CWP-15902-2013). As indicated above, vide impugned order and judgment, the said petition has since been dismissed. For the learned Single Judge was of the view that appellants even in the first petition (CWP-15902-2013) had claimed consequential accrued benefits, along with interest, upon their promotion to the post of Assistant, but they never pressed their claim at the time of disposal of the said petition. Further, no liberty was sought by the appellants either to claim or litigate for any such relief in any separate/subsequent proceedings. Hence, their claim for arrears of salary was impliedly barred. And they could not be permitted to re-agitate the matter.

4) We have heard learned counsel for the appellant and perused the records.

5) As indicated above, when the appellants first approached this Court (CWP-15902-2013), they prayed for a direction to the authorities to consider their

claim for promotion from the date their juniors were promoted, and also specifically prayed for a consequential relief:-

“Further direct the respondents to release the consequential benefits accrued thereof alongwith interest @ 18% p.a. i.e. after promoting the petitioners to the post of Assistant w.e.f. the date juniors to them have been promoted as this Hon’ble High Court in the case of Satbir Singh Vs. State of Haryana RSJ 2002 (3) 38, has held that it is the implicit obligation on the part of State Govt. to grant the same relief to other members of the cadre whose claim is based upon identical facts and points of law, if the judgment has attained the finality.”

6) Concededly, as indicated earlier, during the pendency of the said petition, they were promoted as Assistants, vide orders dated 04.02.2015 (w.e.f. 22.10.1996) and 29.09.2015 (w.e.f. 13.09.1995). Subject, however, to a condition that they would be given the benefit of notional pay fixation from the date of their promotion, whereas the actual benefit of drawl of pay to the post of Assistant would be granted from the date of their joining on the promoted post:

“Conditions:-

1. xx xx xx

2. *They will be given the benefit of notional pay fixation from the date(s) of their promotion as shown against their names. However, they will be given the actual benefit of drawl of pay to the post of Assistant/Accountant/Cashier from the date(s) of their joining in the respective office where they have now been posted.”*

7) The appellants accepted their promotions and continued to serve thereafter on the promoted post. However, it was after **two years**, on 30.05.2017, when the petition filed by them (CWP-15902-2013) was taken up, counsel for the

parties informed the Court that appellants had since been promoted in 2015 itself. And, the matter was accordingly disposed of. Now, it was thereafter, the appellants chose to file a second petition (**CWP-14515-2017**), assailing the orders of their promotion, to an extent, their pay was fixed notionally from the date of their retrospective promotion. *Ex facie*, the claim of the appellants that upon their promotion, they were also entitled to all the consequential benefits was directly and substantially in issue even in the first petition. Therefore, when the said petition (CWP-15902-2013) was disposed of by the learned Single Judge on 30.05.2017, they could always press their claim/prayers as regards consequential benefits/arrears of pay etc. Rather, it appears that when the matter was taken up, their counsel brought to the notice of the Court that since the appellants had been promoted **two years ago**, nothing further survived in the matter. And the petition was accordingly disposed of:

“Matter relates to promotion to the post of Assistant. Petitioners’ grievance was not considered for promotion. Hence, the present petition. During pendency of the petition, it is learnt that petitioner Nos.2, 3 and 4 have been promoted. Insofar as first petition is concerned, it is stated that he was facing disciplinary proceedings. If the disciplinary proceedings are completed and if the first petitioner is exonerated, in that event, first petitioner’s name may also be considered for promotion on par with his juniors.

With the above observations, petition stands disposed of.”

8) Thus, upon being confronted, as to how the second petition claiming the same relief/benefits would even be maintainable, learned counsel for the appellants failed to substantiate that second petition, in the given situation, was not barred in law. Apparently, the second petition filed by the appellants was

speculative in nature and an afterthought. For, it was filed after two years of having accepted the promotion to the post of Assistant. Particularly, when condition No.2 (*ibid*), in their orders of promotion, envisaged, in no uncertain terms, that they would only be granted notional pay from the date of their retrospective promotion. Further, for the second petition was filed after two years, the learned Single Judge, in our view, rightly dismissed the petition even on account of the gross and inordinate delay it suffered from. Still further, while placing reliance upon the decision of the Supreme Court in *Union of India Vs. B.M. Jha, (2007) 11 SCC 632*, it was concluded that arrears and salary cannot be granted in view of the Principle of ‘no work no pay’ in case of retrospective promotion.

9) In the wake of the position sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal, being bereft of merit, is dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

07.08.2023
AK Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No