

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

LPA-653-2023 (O&M)

Date of Decision: 31.07.2023

Krishan Chand

.....Appellant

Versus

The State of Punjab and others

.....Respondents

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

Present : Mr. Surinder Sharma, Advocate,
for the appellant.

Mr. Arjun Sheoran, Deputy Advocate General, Punjab.

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 19.01.2023, vide which the writ petition filed by the appellant was dismissed.

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

The appellant was appointed as Helper in the Department of Agriculture on 07.11.1975. A suit for mandatory injunction filed by him, directing the respondent-Department to promote him as Bio-gas Mechanic from 19.10.1982, along with all arrears of pay and allowances, was decreed by the civil court on 05.06.1987 (P-2). However, in an appeal filed by the State, the First Appellate Court, on 08.12.1987 (P-3), modified the said decree, as the Court could not direct the Department to promote the appellant and, at best, he had a right to be considered for promotion to Class

III post. Accordingly, the appellant was promoted to the post of Agriculture Sub Inspector on 15.03.1991 (P-4). But, soon thereafter, on 26.04.1991 (P-5), the order of his promotion was cancelled. Being aggrieved, the appellant, vide **CWP-6853-1991**, assailed the order of cancellation of his promotion. And, vide order dated 08.05.1991, the Division Bench, while issuing notice of motion, stayed the operation of the order of cancellation of his promotion. Resultantly, he continued to serve on the post of Agriculture Sub Inspector till his retirement on 31.07.2009. However, subsequently the petition (*ibid*), filed by him, was dismissed on 25.05.2011 (P-7). For the learned Single Judge was of the view that appellant possessed no indefeasible right to be promoted as Agriculture Sub Inspector, as, vide decree dated 08.12.1987, which had attained finality, he only had a right of consideration for promotion. Resultantly, vide order dated 03.05.2012 (P-9), passed by the Department, pay of the appellant was re-fixed as Helper (Class IV). And, once again, he was impelled to approach this Court vide **CWP-12588-2012**. The records would show that on **09.07.2012**, the learned Single Judge, while issuing notice of motion, stayed the operation of the order dated 03.05.2012 (*ibid*). However, as indicated above, vide impugned order and judgment 19.01.2023, the said petition has since been dismissed.

We had heard learned counsel for the parties and perused the records.

While scrutinizing and sifting through the records and for it was considered expedient, the records of **CWP-6853-1991**, were requisitioned. Which shows that a Division Bench, on **08.05.1991**, had stayed the operation of the order of cancellation of promotion of the appellant. And, since despite the said order the appellant was not being permitted to

function, he moved a miscellaneous application (CM-853-1992). Accordingly, vide order dated 17.02.1992, the respondents were directed to allow the appellant to continue to work as Agriculture Sub Inspector:-

“Vide order dated April 26, 1991, the order regarding petitioner's promotion was cancelled. The operation of this order was stayed by the Motion Bench vide order dated May 8, 1991, Even after the service of notice of the writ petition, the interim order was not vacated. In spite of this, the petitioner is not being allowed to work as Agriculture Sub Inspector. The petitioner has moved this miscellaneous application for the issue of a direction to the respondents to allow him to continue to work as Agriculture Sub Inspector during the pendency of the writ petition.

Notice of this application was directed to be issued to the Advocate General, Punjab. The office reports that the notice has been duly served. Learned counsel for the petitioner states that copy of the misc. application was supplied to the office of the Advocate General, Punjab on January 28, 1992. In spite of service, no one has appeared on behalf of the respondents to contest this application. Mr. Varinderpal Singh, AAG(P) who is present in Court states that he has no instructions in the matter. Accordingly, the respondents are directed to allow the petitioner to continue to work as Agriculture Sub Inspector during the pendency of this writ petition.

17-2-1992”

The order, referred to above, remained operative for nearly **two decades** and the appellant continued to work on the post of Agriculture Sub Inspector till he retired on **31.07.2009**. However, it appears that when the petition eventually matured for final disposal on 25.05.2011, the above position was not brought to the notice of the Court. The records further show

that no written statement/response was filed by the Department either. The limited argument that possibly was raised and dealt with by the learned Single Judge was: in the wake of the decree passed by the First Appellate Court, no indefeasible right vested in the appellant to claim promotion to the post of Agriculture Sub Inspector. And, since the said decree had become final, the petition was accordingly dismissed. Be that for the lack of legal advice or a fatigued Class IV employee did not have the means and strength to fight further, the order and judgment, dated 25.05.2011 (*ibid*), attained finality. However, he moved another miscellaneous application (CM-11017-2011), for clarification of the judgment dated 25.05.2011 that the same would not be an impediment for the Department to grant him all consequential service benefits for the post of Agriculture Sub Inspector, on which, he actually worked till his retirement. And, vide order dated 23.08.2011(P-8), the learned Single Judge disposed of the said application:-

“Notice of the application to the respondents.

On the asking of the Court, Ms. Bhavna Gupta, DAG, Punjab, accepts notice on behalf of the respondent-State.

After hearing learned counsel for the parties, this petition is disposed of with the clarification that the judgment dated 25.05.2011 passed by this Court in Civil Writ Petition No. 6853 of 1991, would not affect the Proficiency Step-up and ACP scale, if the same are due and were to be granted to the applicant-petitioner and any other consequential benefits.”

But, as indicated earlier, owing to the judgment dated 25.05.2011 as also the order dated 23.08.2011 (*ibid*), the Department, vide

order dated 03.05.2012, re-fixed the pay of the appellant as Helper (Class IV). Whereupon, as narrated above, he was constrained to approach this Court (CWP-12588-2012) again. We also requisitioned the original record of the said petition. Which showed that while issuing notice of motion on 09.07.2012, the learned Single Judge had stayed the operation of the order dated 03.05.2012, which remained operative till dismissal of the petition:-

“Heard.

The petitioner, who was working on the post of Agriculture Sub Inspector in the Department of Agriculture, State of Punjab retired upon the age of superannuation on 31.07.2009. He is presently aggrieved from the order dated 03.05.2012 (Annexure P-9), whereby his pay has been re-fixed retrospectively w.e.f. the year 1991.

Notice of motion for 08.10.2012.

Mr. B.S. Chahal, DAG Punjab accepts notice on behalf of the respondents. Three sets of the paper book be furnished to him during the course of the day.

In the meanwhile, operation of the impugned order dated 03.05.2012 (Annexure P-9) shall remain stayed.”

Before proceeding further, we consider it expedient to even refer to the reliefs prayed for by the appellant in the said petition:-

“(ii) Issuance of an appropriate writ, direction or order quashing the impugned order dated 3.5.2012 (Annexure P-9) vide which the pay of the petitioner has been fixed in the pay scale of Class IV employee in a most illegal and arbitrary manner;

(iii) by issuing a writ of mandamus, the respondents be directed not to withdraw the pay scale of the post of Agriculture Sub Inspector i.e. the post on which the petitioner has continuously been working till his retirement and was

paid salary accordingly, the respondents be further directed to grant to the petitioner the revised pay scale meant for the post of Agriculture Sub Inspector revised from time to time as well as the other benefits such as grant of proficiency step ups, A.C.P. etc. for which the petitioner is legally entitled, the respondents be also directed to fix the pension and all other pensionary benefits of the petitioner accordingly”

However, again, it appears that the only argument that was possibly advanced before the Writ Court was: owing to the decree dated 05.06.1987, passed by the Civil Court, the Department was obliged to promote the appellant as Agriculture Sub Inspector, which was rejected by the learned Single Judge:-

“5. The learned counsel representing the petitioner has failed to draw the attention of the court to the service rules which entitle the helper to be considered for promotion as the Agriculture Sub Inspector. However, he submits that as per the judgment passed by the First Appellate Court, the petitioner is entitled to promotion as the Agriculture Sub Inspector. As is evident from the reading of the judgment passed by the First Appellate Court, the judgment and decree passed by the trial court was modified and the State of Punjab was only directed to consider the case of the petitioner for promotion, which on such consideration has been rejected by the State.

6. Keeping in view the aforesaid facts, no ground to issue the writ as prayed for, is made out.

7. Dismissed.”

Apparently, it appears that neither the factual position, as sketched out above, was brought to the notice of the learned Single Judge, nor the questions/factors that may arise therefrom were raised during the

hearing.

Be that as it may, in our considered opinion, the above position, that stems from CWP-6853-1991, the interim orders dated 08.05.1991, 17.02.1992 and 23.08.2011 passed therein and their effect was/is required to be factored in, to judge and appreciate the claim of the appellant. Further, even if the order and judgment dated 25.05.2011 (*ibid*) had become final, what was the sanctity and significance of the order dated 03.15.2012, whereby pay of the appellant was re-fixed in the scale of Class IV employee, was another question to be addressed. Not just that, it appears that in the written statement, this was not the case of the Department either that since under the service rules the appellant could not be promoted as Agriculture Sub Inspector, his claim was rejected:-

“That para No.10 of the petition is replied in this manner that petitioner was promoted on 15-03-1991, but the said order was cancelled by the department vide order dated 26-04-1991 as the confirmation of the department regarding the promotion of the petition was not received back. After getting the ad-interim order of the Hon’ble Court, the petitioner was continued his work on the post of Agriculture Sub Inspector and was regularly get all the service benefit of the post of Agriculture Sub Inspector till the date of retirement. From the office of answering respondent, the petitioner never received any letter in writing that the answering respondent is demanding any kind of recovery with regard to salary or pension benefits/service benefits i.e. Class-III Employee, which has already been given by the department to the petitioner, even who is receiving benefits of Class-III Employee.”

Still further, even if under the service rules, the appellant was

not entitled for promotion to the post of Agriculture Sub Inspector, the question that possibly required to be addressed/examined was/is: whether, in that situation, the decree passed by the First Appellate Court dated 08.12.1987, could be considered to have been satisfied.

Thus, in the wake of the position demonstrated above, the only and the inevitable conclusion that could be reached is: to remit the matter for re-consideration and decision afresh. Accordingly, the impugned order and judgment, dated 19.01.2023, is set aside. And, the matter is remitted to the Writ Court.

To be placed as per roster.

Needless to assert that this order shall not constitute an expression of opinion on the merits of case of either party, for the Writ Court shall re-decide the matter, in accordance with law.

The appeal is, accordingly, disposed of, in the above terms.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.07.2023
AK Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No