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

CWP-3776-2021

Date of decision : 12.05.2023

Lakhwinder Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. A.K. Viridi, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. Sehajbir Singh Aulakh, Advocate
for respondent No.4.

PANKAJ JAIN, J. (Oral)

Petitioner is aggrieved of order dated 14.01.2020 (P-10) passed by respondent-Department rejecting the claim of the petitioner for salary of post of SE(CDC).

2. Petitioner a Corporation Engineer (Executive Engineer) was given additional and independent charge of the promotional post of SE (O&M), Jalandhar Region vide order dated 23.01.2014 (P-1), but without any financial benefit. Vide order dated 11.03.2014 (P-3), the petitioner was ordered to look after the work of Street Light Branch as Superintendent Engineer. The petitioner who was due to retire on 31.10.2017 on attaining the age of superannuation was granted the extension till 31.10.2018. Thus, he retired on 31.10.2018.

3. Counsel for the petitioner submits that having worked on the promotional post of Superintendent Engineer from 23.01.2014 till

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15.01.2018, the petitioner is entitled for pay attached to the higher post. Reliance has been placed upon law laid down by Apex Court in the case *Smt. P. Grover vs. State of Haryana* reported as *AIR 1983 Supreme Court 1060*, *State of Punjab vs. B.K. Dhir* reported as *2017(9) SCC 337* and that in *State of Punjab and another vs. Dharam Pal* reported as *2017(9) SCC 395*.

4. Counsel for the respondents has relied upon *A. Francis vs. Management of Metropolitan Transport Corporation Ltd., Tamil Nadu* reported as *2014(13) SCC 283* to submit that in view of there being a clear condition in the order dated 23.01.2014 that the petitioner will not be granted any financial benefit, the claim of the petitioner cannot be allowed.

5. I have heard counsel for the parties and have gone through the records of the case.

6. The doctrine of quantum meruit propounded by Apex Court in the case of **Smt. P. Grover (supra)**, wherein it was held as under:-

“xx xx xx

We, are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education Officer a Class-I post, on an acting basis. Our, attention was not invited to any Rule which provides that promotion on an Acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher, post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled

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be paid the salary of a District Education Officer from the date she was promoted to the post, that is, July 19, 1976 until she retired from service on August 31, 1980.”

7. The aforesaid law as enunciated in **Smt. P. Grover (supra)** and a comparatively other view taken by Apex Court in the case of **A. Francis (supra)** has been further considered by Apex Court in the case of **Dharam Pal (supra)** to hold as under:-

“xx xx xx

18. In **A. Francis (supra)**, the Court was dealing with the entitlement of the appellant to the salary in higher pay of Assistant Manager wherein he had worked from 28.02.2001 till 31.05.2005. The employer had denied 15 16 certain benefits and the employee preferred a Writ Petition before the High Court which was allowed by the learned Single Judge. The Corporation filed Letters Patent Appeal which reversed the judgment of the learned single Judge. The appellant before this Court placed reliance on **Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and others, 1998(3) S.C.T. 90 : (1998) 5 SCC 87**. On behalf of the Corporation terms of the order were pressed into service contending that there were specific conditions stipulated in the order with regard to salary and emoluments and, therefore, the claim with regard to higher post was not tenable in law.

19. The Court appreciating the factual score held thus:

"The order dated 28-2-2001, by which the appellant was allowed to discharge duties in the post of Assistant Manager had made it clear that the appellant would not be entitled to

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claim any benefit therefrom including higher salary and further that he would continue to draw his salary in the post of Assistant Labour Welfare Officer. If the above was an express term of the order allowing him to discharge duties in the higher post, it is difficult to see as to how the said condition can be overlooked or ignored. The decision of this Court in Secy.-cum-Chief Engineer was rendered in a situation where the incumbent was promoted on ad hoc basis to the higher post. The aforesaid decision is also distinguishable inasmuch as there was no specific condition in the promotion order which debarred the incumbent from the salary of the higher post. Such a condition was incorporated in an undertaking taken from the employee which was held by this Court to be contrary to public policy."

20. In Hari Om Sharma (supra), the respondent was promoted as a Junior Engineer I in 1990 and had been continuing on that post without being paid salary for the said post and without being promoted on regular basis. It was in this situation, he approached the Central Administrative Tribunal which allowed the claim petition with the direction that the respondent shall be paid salary for the post of Junior Engineer I. That apart certain other directions were also issued. The Court took note of the fact that the respondent was promoted on a stop-gap arrangement as Junior Engineer I and opined that this by itself would not deny his claim of salary for the said post. In that context, the Court held:

"... If a person is put to officiate on a higher

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post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement."

21. After so stating, the Court proceeded to opine thus:

"Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim

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higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872."

[Emphasis added]

The principle postulated in the said case is of immense significance, for it refers to concept of public policy and the conception of unconscionability of contract.

22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in Smt. P. Grover (supra) and Hari Om Sharma (supra). As far as the authority in A. Francis (supra) is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma (supra) and resultantly we hold that the view expressed by the High Court is absolute impeccable."

8. The other thing that needs to be noticed is that similar question came up for consideration before Full Bench of this Court in the case of ***Subhash Chander vs. State of Haryana and others*** reported as **2012(1) PLR 778** holding as under:-

"xx xx xx

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

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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.”

9. In view of above, the present writ petition is allowed. Petitioner is found to be entitled for the pay and allowance attached to the higher post of Superintendent Engineer having discharged duties of the said post. The condition imposed in the order dated 23.01.2014 cannot have an effect of denying the financial benefits to the petitioner.
10. Resultantly, respondents are directed to release the benefits of the petitioner alongwith interest @ 6% per annum calculated for the period commencing from the date, the petitioner became entitled till the date of actual realization within a period of 12 weeks from the date of receipt of certified copy of this order.
11. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

12.05.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes