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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11033 of 2013 (O&M)

Date of decision : 20.03.2023

Ishwar Chand

..... Petitioner

versus

The Punjab State Power Corporation Ltd. & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. K.G.Chaudhry, Advocate and
Ms. Sakshi Singh, Advocate
for the petitioner.

Mr. Vivek Sharma, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition, the petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 23.10.2012 (Annexure P-5) whereby the petitioner was aggrieved of denial of promotion.

This is second round of litigation faced by the petitioner. He was regularized as Lineman w.e.f. 01.04.1978 and was further promoted as Junior Engineer only on 23.11.2001. The petitioner earlier claiming that as per instructions dated 19.09.1978, the adhoc service rendered by the petitioner ought to have been considered while fixing his seniority and he shall be entitled to be deemed to have been promoted from the day his juniors namely Lakhwinder Singh & Vijay Kumar were promoted. The said writ petition was allowed and the petitioner was held entitled for the relief.

After the respondents failed to comply with the order dated 08.08.2011 passed in CWP No.9284 of 2010 titled as ***Ishwar Chand Vs. Punjab State Power Corporation Ltd. (Power Com), Patiala & others***, the petitioner was constrained to file contempt petition bearing COCP No.2794 of 2012 which was decided vide order dated 09.04.2013. During the pendency of the said contempt petition, order dated 12.09.2012 was passed which has been placed on record as Annexure P-3 wherein the petitioner was held entitled and was granted deemed date of promotion as J.E. w.e.f. 09.04.82. However, monetary benefits were confined from the date of joining i.e. 22.11.2011 and arrears beyond the said date were denied. Operative part of the order dated 12.09.2012 reads as under :-

"In view of the submissions made by learned counsel for the parties, the present petition is disposed of with a direction to the respondents to consider the case of the petitioner in view of instructions dated 19.9.1978 as well as the case of other similarly situated employees namely Lakhwinder Singh and Vijay Kumar. In case the petitioner is found entitled for any relief, the same be granted within a period of three months from the date of receipt of copy of the order."

Learned counsel for the petitioner in the contempt petition admitted that so far as deemed date of promotion is concerned, he is left with no grievance, however he sought liberty to agitate and take legal recourse with respect to denial of the arrears and the said liberty was granted vide order dated 09.04.2013. Order passed by contempt Court is on record marked as Annexure P-7.

On the strength of the aforesaid facts Mr. K.G.Chaudhary, Advocate for the petitioner submits that the petitioner having informed to be eligible for promotion from the deemed date ought to have been granted arrears from the said deemed date. Learned counsel for the petitioner relies upon judgment passed by

this Court in *Sudesh Kumar Vs. Haryana Power Generation Corporation Ltd. & anr.*, 2006 (3) SCT 262, *Gian Singh Vs. State of Punjab & ors.*, (2011) 1 RSJ 256, *M.P.Singh Bargoti Vs. State of Madhya Pradesh & anr.* 2015(1) RSJ 682, *Gurdial Singh Vs. Ambala Central Cooperative Bank Ltd. & anr.*, 2011(3) RSJ 233 & *Food Corporation of India Vs. S.N.Nagarkar*, 2002(1) SCT 1050.

Per contra, learned counsel for the respondents- Corporation however, submits that in the absence of any challenge to the order dated 12.09.2012 (Annexure P-3), no such relief can be granted. He has relied upon judgment rendered by Apex Court in *State of Haryana Vs. O.P.Gupta etc.* 1996(7) SCC 533 and *Union of India Vs. B.M.Jha* 2007(11) SCC 632.

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

Learned counsel for the respondents-Corporation is right in contending that there is no prayer laying challenge to Annexure P-3, however, at the same time trite it is that this Court while exercising jurisdiction under Article 226/227 of the Constitution of India can always mould the relief. Though formal prayer has not been made in the writ petition yet the pleadings as raised in para Nos.10 to 13 can be referred to, wherein the petitioner has repeatedly echoed his grievance with respect to denial of the arrears and has claimed that the same is permissible. Though in the ordinary course writ jurisdiction is governed by strict principles of pleadings yet in the considered opinion of this Court, the prayer made by Mr. K.G.Chaudhary, Advocate for the petitioner would fall within clause 3 of the prayer clause, wherein the petitioner prays for issuance of appropriate writ, order or direction that this Court thinks just proper in the circumstances of the case.

In the considered opinion of this Court, it would not be in the interest of either of the parties to saddle them with the costs of monetary and Human Resources to undergo another round of litigation that too when the relief is found to be admissible to the writ petitioner. Law with respect to deemed date of promotion and the consequential arrears is well governed by law laid down by the Apex Court in *CA No.3041/2010 titled as 'State of U.P. and others vs. B.B.S. Rathore'* decided on 24th of July, 2014 wherein it was held that :

“The question of payment of salary on notional promotion was considered by this Court from time to time. In *State of Haryana & Ors. Vs. O.P.Gupta & Ors.*, (1996) 7 SCC 533, the Court observed and held as follows:

"6. Having regard to the above contentions, the question arises: whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instructions issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and postings were made accordingly on December 1, 1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1.1.1983, the respondents cannot legitimately claim to have

worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis.

7. This Court in *Paluru Ramakrishnaiah & Ors. vs. Union of India & Anr.* [(1989) 2 SCC 541, at P. 556, para 19] considered the direction issued by the High Court and upheld that there has to be "no pay for no work" a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in *Virender Kumar, G.M.N. Rlys. vs. Avinash Chandra Chadha* [(1990) 3 SCC 472 at p. 482, para 16]

8. It is true, as pointed out by Sri Hooda, that in *Union of India vs. K.V. Jankiraman* [AIR 1991 SC 2010] this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

Thereafter, the said issue was considered by three Judges Bench of this Court in *A.K.Soumini Vs. State Bank of Travancore & Anr.*, (2003) 7 SCC 238. In this said case, this Court held :

"8. In *State of Haryana & Others vs. O.P. Gupta & Others* [1996(7) SCC 533], this Court had an occasion to deal with a

claim for arrears, in a case where in adjudicating a dispute relating to seniority this Court directed the department concerned to prepare a fresh seniority list strictly in accordance with rules ignoring inconsistent administrative instructions and in compliance thereof a fresh seniority list came to be prepared and eligible persons were even given notional promotion by the department from a deemed date. When such promotees claimed for payment of arrears of salary as well, this Court rejected the claim applying the principle of 'No work, No pay' and set aside the orders of the High Court, countenancing such claims, to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusions this Court followed the earlier decisions reported in *Paluru Ramakrishnaiah vs. Union of India*, (1989) 2 SCC 541 and *Virender Kumar, G.M., N. Rlys. Vs. Avinash Chandra Chadha*. [(1990) 3 SCC 472]

9. So far as the case on hand is concerned, the appellant was denied promotion in terms of the promotion policy under which it was necessary for a candidate to secure at least a minimum eligibility mark of 6 1/2 at the interview and the learned Single Judge, allowed the claim only on the ground that such prescription of a minimum mark was not valid. Though, the Division Bench also affirmed the same, this Court overruled the said decision and upheld such prescription. But taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fact that her non-promotion was legal and there has been no unlawful interference with her right to promotion or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to

her by the Bank with suitable revision of her pay scales itself is more than sufficient to meet the requirements, be it either in law or in equity. The further claim for payment of arrears as well, is far fetched and can have no basis in law. The Division Bench, in our view, properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law to warrant of our interference.

In case of Union of India Vs. B.M.Jha (2007) 11 SCC 632, this Court took a similar view which is as follows:

"5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent normally he is entitled to all benefits flowing therefrom. However, this Court in the case of State of Haryana & Ors. v. D.P. Gupta & Ors., [1996] 7 SCC 533 and followed in A.K. Soumini v.State Bank of Travancore (2003) 7 SCC 238 has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay". The learned Division Bench in the impugned judgment has placed reliance on the case of State of Andhra Pradesh v. K.V.L. Narasimha Rao & Ors., (1999) 4 SCC

181. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17.5.2000 passed by the Division Bench of the High Court as also the order dated 11.1.2000 passed by the Central Administrative Tribunal, Principal Bench."

The Court in the case of State of Haryana & Another vs. S.K. Khosla & Others, (2007) 15 SCC 777 held that:

"2. Heard the learned counsel for the appellants. He brought to our notice a decision of this Court in State of Haryana v. O.P. Gupta whereunder in respect of an identical matter arising out of similar proceedings of even date this Court while setting aside the decision of the High Court allowed the appeal at the instance of the State and held that in the circumstances noticed in that case which are identical as well in the cases before us, the question of payment of arrears of salary with retrospective effect from the notional dates does not arise since, indisputably the respondents had never worked during that period in the promotional post, the settled principle in such cases being, "no work, no pay". The said principle applies with equal force to the cases before us too. Applying the ratio of the said decision these appeals are also allowed and the orders of the High Court are set aside and the writ petitions before the High Court shall stand dismissed. No costs."

The following principles emerge from the aforesaid judgments:

- (i) When a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom.
- (ii) In case of a notional promotion with retrospective effect, in normal course the incumbent is not automatically entitled to arrears of salary as he/she has not worked in the promotional post.
- (iii) The principle of "no work, no pay" is not applicable in case of retrospective promotion where the incumbent was willing to work but was denied the opportunity to work for no fault of him. For example, if the employee is kept under suspension during departmental enquiry and sealed cover procedure is adopted. In such cases if notional promotion is granted after completion of the proceeding the employee is entitled to the arrears of salary.

This principle has no application to the cases where the claims for promotion are considered in accordance with the rules and the promotions are made pursuant thereto.”

In view of the settled law, present writ petition is allowed. Order dated 12.09.2012 is set aside to the extent that the petitioner has been denied arrears even though granted deemed date of promotion. Respondents are directed to release the benefits payable to the petitioner within eight weeks from the date of receipt of certified copy of this order.

(PANKAJ JAIN)
JUDGE

20.03.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No