

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17526-2019 (O&M)

Reserved on 04.09.2023

Pronounced on 17.11.2023

Gurcharan Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. AK Viridi, Advocate for the petitioner

Mr. Gaurav Jindal, Addl. AG Haryana

Ms. Aditi Sharma, Advocate for

Mr. CS Bakshi, Advocate for respondents No.2 to 6

Sandeep Moudgil, J.

(1) This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a writ of *certiorari* for quashing the order dated 13.05.2019 (Annexure P1) passed by respondent No.4 and further seeks a direction to the respondents to grant him pay/salary for the post held by him as AE/SDO for the period from 01.01.2015 to 31.12.2018 along with consequential benefits and arrears.

(2) Learned counsel for the petitioner submits that the petitioner was appointed as JE in the respondent-Nigam on 03.08.2004 and being as such was subsequently posted to perform the duties of SDO/Store (current duty charge) on 01.01.2015 in public interest with the approval of MD. The petitioner, who was JE, was later on transferred to Jeevan Nagar on 26.04.2016 and thereafter as SDO in DHBVN, Bhiwani on 19.08.2016 and SDO, DHBVN, Sirsa (CDC) till his retirement on 31.12.2018, and as such was made to perform the duties and functions for the post of SDO.

(3) It is contended that the fact that the petitioner was made to perform all the duties and responsibilities as SDO, though he was JE, made him entitled for pay and allowance admissible to SDO from the period from 01.01.2015 till his attaining the age of superannuation w.e.f. 31.12.2018 on the principle of 'equal pay for equal work'. In this regard, the petitioner was served the respondents with a legal notice dated 11.03.2019 (Annexure P10) for the pay/salary of the post of AE/SDO which has been declined vide order dated 13.05.2018 (Annexure P1).

(4) Learned counsel has placed heavy reliance on a similar matter i.e. CWP-16541-2015 (PD Kaushik vs. State of Haryana & Ors.) where this Court vide judgment dated 29.11.2016 (Annexure P-11) had directed the respondents to pay the salary to the writ-petitioner from the date he was given current duty charge and the said order has been implemented by the respondents vide order dated 29.07.2017 (Annexure P12). Similar directions were issued by this Court in CWP-7642-2018 (Nihal Singh vs. State of Haryana & Ors.) decided on 28.03.2018 and the LPA preferred against the said judgment also stands dismissed and as such, the judgment passed in Nihal Singh's case also stands implemented by the respondent-Nigam vide order dated 12.10.2018 (Annexure P15).

(5) Reliance has been placed on Subhash Chander vs. State of Haryana & Ors. 2012 (1) RSJ 442, wherein the Full Bench of this Court considered the question whether an employee who is given independent charge and responsibility of a higher post alone, is entitled to regular pay scale without being substantively appointed to such post to hold that the employee holding

responsibility of greater importance than those attaching to the substantive post would be entitled to salary of his officiating post in higher grade.

(6) Notice of motion was issued on 09.12.2019 and pursuant thereto, the respondents have filed reply by way of affidavit of Sunil Kumar, Under Secretary/HR-I, DHBVN, Hisar.

(7) Ms. Aditi Sharma, Advocate submitted that the petitioner has not disclosed that he had filed a similar writ petition i.e. CWP No. 6463 of 2019 on the same grounds and this Court vide its order dated 11.03.2019 had permitted the petitioner to withdraw the writ petition with liberty to raise his claim by way of representation or legal notice. In pursuance thereto, the respondents considered the claim of the petitioner in detail and declined the same vide reasoned order dated 20.08.2019 (Annexure R-1).

(8) She further submitted that the petitioner, who was working as JE, was assigned Current Duty Charge for the post of SDO, in his own pay scale of JE without any extra remuneration on 01.01.2015 (Annexure P-2) and as such, the petitioner was not entitled for any difference of pay. That apart, it is also argued that the petitioner cannot claim parity with P.D. Kaushik and Nihal Singh as their cases are different from that of the petitioner as both the cases were prior to the applicability of HCSR Rules, 2016 which were made applicable to the respondent-Nigam on 08.05.2017 (Annexure R-2). It is further averred that the petitioner is governed by the HSCR (Pay) Rules 2016 and Rule 76 thereof, specifically bars grant of additional pay for holding duties of another post of the same or higher grade pay regardless of the duration.

(9) Leaned counsel further urged that the Government of Haryana has issued notification No.2/2/2016-4FR/22280 dated 29.06.2016 wherein it has

been provided that the claims of pay and allowances shall be regulated by the Rules which were in force at the time when the same are claimed. Therefore, in view of the above said HSCR (Pay) Rules 2016 being applicable to the case of the present petitioner, the cases of P.D. Kaushik and Nihal Singh are at different footing as no such rules were applicable to their case.

(10) Heard learned counsel for the parties and gone through the record.

(11) Admittedly, the petitioner has performed the duties and responsibilities of the higher post of SDO w.e.f. 01.01.2015 till 31.12.2018. Though the case of the respondent-Nigam is that the petitioner performed his duties as SDO, in his own pay scale of Junior Engineer.

(12) It has been argued on behalf of the petitioner that when the petitioner was given CDC in the year 2015, the Punjab Civil Services Rules (which were applicable to the State of Haryana) were in operation and as per Rule 4.13 of the said Rules, the petitioner was entitled for the grant of benefit of pay and allowances of the post on which he was discharging his duties i.e. SDO. Rule 4.13 of the PCSR Rules is reproduced as under:-

Pay of Officiating Government Employees

*4.13. (1) Subject to the provisions of rules 4.22 to 4.24, a Government employee who is appointed to officiate in a post shall not draw pay higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which he is appointed to officiate is one enumerated in the schedule to this rule or unless the officiating appointment **involves the assumption of duties and responsibilities of greater importance than those attaching to the post**, other than a tenure post on which he holds a lien:*

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(2) *For the purpose of this rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibility of greater importance if the post to which it is made is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien or would hold a lien had his lien not been suspended, or on a scale of pay identical therewith.*

xxxx xxxx xxxx

Note 4.(i) Punjab Government have sanctioned the adoption of the following guiding principles for purpose of clarifying the position and for the working of the convention usually known as the "next below rule":-

(1) xxxx xxxx xxxx
(2) *the fortuitous officiating promotion of some one junior to a Government employee who is out of the regular line does not in itself give rise to a claim under the next below rule.*

(3) xxxx xxxx xxxx
(4) xxxx xxxx xxxx
(5) (i) xxxx xxxx xxxx

(iv) In cases where the period for which officiating promotion is lost exceeds three months the officer concerned may be granted the pay of the higher paid post for the excess period but arrangements should be made wherever possible to avoid depriving officers of lengthy period of officiating promotions."

(13) From the above reading of Rule 4.13, it is clear that if officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post on which an employee holds a lien or would have held a lien, had his lien not been suspended, then he would draw pay higher than his substantive post in respect of a permanent post. Sub Rule 2 of Rule 4.13 of the Rules makes it abundantly clear that the officiating appointment on a post is not to be regarded assumption of duties and

responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post on which he holds lien. In other words, if the officiation is on a post carrying the same pay scale then it would not be considered to have duties and responsibilities of greater importance than attaching to the post, an employee is holding on a substantive basis. A perusal of the clause 2 of Note 4 makes it further clear that a fortuitous officiating promotion of some one junior in a cadre to a Government employee who is out of the regular line would not earn him the right to draw pay higher than his substantive pay. This provision takes care of an eventuality when on account of administrative exigency, the higher post falls vacant and the employee available in the feeder cadre at station may not be the senior most but he is asked to officiate on the vacancy caused on account of administrative exigency like retirement, death or promotion, it would not then ensure the benefit of such a junior employee. However, if the officiating promotion exceeds three months then the officer concerned may be granted the pay of higher post, which is further mandated by clause 5(iv) of Note 4.

(14) Thus on close examination of Rule 4.13 of the Rules, it is unequivocal that once a person like the petitioner has been given independent charge of a post, which involves assumption of duties and responsibilities of greater importance than the one attaching to the post held by such an employee on which he holds a lien or would have held his lien had it not been suspended, then he is entitled to pay of the higher post. A post is regarded to involve assumption of duties and responsibilities of greater importance if it carries higher pay scale than the one on which he holds the lien. it is well settled principle of law that the incumbent holding current duty charge, even if it were

to be as an additional charge, then the higher pay attached to the higher post for additional work involving higher responsibilities, deserves to be paid. In the present case, the pay scale of the post of Junior Engineer is lower than that of the post of the SDO.

(15) The reference answered by the Full Bench of this Court in **Subhash Chander's** case has been consistently followed by various courts, besides the said judgment being a binding precedent. The Full Bench has also taken into consideration the judgments rendered by the Apex Court in **Smt. P. Grover vs. State of Haryana, AIR 1983 SC 1060** and **Selvaraj vs. Lt. Governor of Island, Port Blair, 1999 (2) SCT 286**, which had accepted and applied the principle of quantum merit and the State's obligation to pay emoluments in the higher pay scale for work actually performed on the superior post, though in officiating capacity. The decision rendered by a coordinate Bench in **Balbir Singh Dalal vs. State of Haryana, 2002 (4) SCT 422**, was also considered wherein the principle was reiterated that a person appointed to hold duties on full charge basis of a higher post in addition to the duties of his own post, was held entitled and allowed the pay admissible as if he was appointed to officiate in the higher post.

(16) In **Pritam Singh Dhaliwal vs. State of Punjab and another, (2004) 6 SLR 758 (DB)**, a Division of this Court, while dealing with similar issue, held that if a person is asked to perform the duties regularly though in officiating capacity or on current duty charge or as a temporary measure, the said person would be entitled to the higher pay i.e. the pay which is payable while performing the duties in higher/promotional post. In the said case also, the petitioner therein had continued to work on the higher post in officiating

capacity till his superannuation. In the present case also the factual matrix is similar. The petitioner had continued with the current duty charge of SDO for the period from 01.01.2015 up to the date of his superannuation on 31.12.2018 and the officiating charge was never withdrawn till he retired from service, and he was fully eligible to be promoted as Sub Divisional Officer.

(17) In view of the above discussion, this writ petition is allowed and the petitioner is held entitled to the benefit of regular pay scale attached to the post of Sub Divisional Officer for the period he discharged duties and responsibilities of the said post entailing higher responsibilities, on current duty charge w.e.f. 01.01.2015 till 31.12.2018.

(18) Let all the consequential benefits/pensionary benefits be assessed accordingly and the arrears thereof, be paid to the petitioner. The respondent-Nigam is directed to make payment of the aforesaid amount to the petitioner within a period of three months, failing which interest would be calculated at the rate of 9% p.a. till its realisation.

(19) Ordered accordingly.

17.11.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No