

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

(220)

CWP-11455-2016
Date of decision:- 13.02.2023

Ram Phal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana
for the respondents.

SUVIR SEHGAL, J. (Oral)

By way of present petition filed under Article 226/227 of the Constitution of India, petitioner is before this Court seeking issuance of a writ in the nature of mandamus directing the respondents to release the arrears of the difference of pay from 30.07.2009 to 22.05.2015 as the petitioner was working on a promotional post during this period, along with interest @ 18% per annum.

Factual matrix leading to the filing of the petition is that on a recommendation made by the Subordinate Service Selection Board, petitioner was appointed as a Clerk and joined the post on 24.09.1991. Juniors to the petitioner were promoted to the post of Assistant without clearing the Typing Test. As the petitioner was ignored, he served a legal notice dated 05.02.2014, Annexure P-4, and filed CWP-10205-2014, which

was disposed of by order dated 23.05.2014, Annexure P-5, with a direction to respondent No.2 to decide the legal notice. In compliance of the direction passed by this Court, vide order 28.07.2009, Annexure P-7, petitioner was promoted to the post of Investigator. By a subsequent order passed on 22.05.2015, promotion to the post of Investigator was cancelled and the petitioner was instead promoted retrospectively as Assistant w.e.f. 24.09.1996. Claiming that the petitioner has been discharging duties on a higher post of Investigator, petitioner seeks the difference of the arrears of pay of the two posts.

Upon notice, writ petition has been contested by the respondents by a filing an affidavit.

I have heard counsel for the parties and perused the paper-book with their able assistance.

In the affidavit, filed on behalf of the respondents, it has been submitted that by letter dated 13.03.2013, Annexure R-1, petitioner expressed his willingness to be posted to the post of Assistant/Accountant/Cashier/Junior Auditor and in view of his request, his promotion as Investigator was cancelled and he was promoted to the post of Assistant w.e.f. 24.09.1996 on notional basis, when he completed five years as a Clerk and acquired the requisite experience. In so far as the claim of the petitioner regarding the arrears of difference of pay is concerned, it has been submitted as under:-

“4. That it is further submitted that the posts of Investigator and Assistant carries equivalent pay scales. But it is incorrect that all the posts of Investigator are promotional post. In fact as for Haryana Social Defense and

Security now renamed as Social Justice & Empowerment Group-C Service Rule 1998, only 40% posts of Investigators are filled from graduate (sociology) Clerks/Steno-typist etc. the remaining 60% posts are filled up by direct recruitment from MA Sociology or MSW candidates. Whereas, in the case of Assistant, all the posts are promotional and are filled up from Clerk/Steno-Typist etc., whose minimum educational qualification is Matric. It is further submitted that the post of Assistant and Investigator carries different nature of duties and are a different cadre posts. These posts cannot be amalgamated with each other. Hence, there is no question of equating the post of Investigator with the post of Assistant. It is relevant to point out that the petitioner has already been paid salary/allowances of the post of Investigator (i.e. equal pay scale to the post of Assistant) for the period he had actually worked on their (sic the) post. Therefore, he cannot be given any benefit of arrear of difference of pay between due and drawn w.e.f. 30.07.2009 to 22.05.2015, after fixation of his pay in the post of Assistant. Therefore, the petitioner is trying to wrongly interpret its matter just to grab the benefit in his favour.

So the petitioner is not entitled for arrear of different of pay w.e.f. 30.07.2009 to 22.05.2015. Since the petitioner had already been given the benefit of higher pay from Rs.11580/- (9180+2400 G.P.) to Rs.12730/- (9530+3200 G.P.) for the period he had worked as Investigator, therefore, the petitioner cannot claimed (sic claim) for arrears of difference of pay along with interest between due drawn for the above period.”

From the above, it is evident that the petitioner had been granted the benefit of higher pay for the period he had worked as Investigator, therefore, petitioner has no cause to approach this Court.

Finding no merit in the petition, it is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

13.02.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No