

209

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

**CWP No.24421 of 2012 (O&M)
Date of Decision: 29.05.2023**

I.C JAIN AND ANR

.....Petitioners

Vs

STATE OF HARYANA AND ANR

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Aditya Yadav, Advocate
for the petitioner No.1.

Mr. Inderjit Kaushal, Advocate
for the respondent No.2.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. This writ petition has been preferred by the petitioners, challenging the order dated 23.10.2012 in respect of petitioner No.1 vide which the earlier order dated 15.01.2008 was ordered to be corrected to the extent of showing the petitioner No.1 to be Deputy Director working in his own pay scale on current duty charge of Deputy Director. In the order dated 15.01.2008, the petitioner No.1 was shown to be Joint Director at the time of his retirement on 31.01.2008.

[2]. So far as petitioner No.2 is concerned, he had retired from the government service w.e.f. 30.11.2007. At that time, the petitioner No.2 was also shown to be Joint Director at the time of retirement on 30.11.2007. The status of the petitioner was changed from Joint Director to Deputy Director vide order dated 14.11.2007 by showing that the petitioner was Deputy Director working in his own pay scale by holding the current duty charge of Joint Director and retired from the said post w.e.f. 30.11.2007. In the endorsement of the aforesaid order, the order dated 14.11.2007 appears to have been replaced by the Director, Local Audit Department, Haryana with respect to Memo No.II(PF)/LAD/2013/2437 dated 30.05.2013.

[3]. The basic grievance of the petitioners is that the order of retirement showing the petitioners to be the Joint Directors at the time of their retirement has been changed to that of Deputy Directors working in their own pay scale and having the current duty charge without any notice to them.

[4]. With reference to the case law viz. **Hans Raj and others vs. State of Haryana and another, 2014(3) S.C.T. 416,** learned counsel for the petitioners submitted that principle of *quantum meruit* fully applies in the instant case. The petitioners being on current duty charge are very much within their right to claim difference of arrears of salary and other benefits of the

permitted post.

[5]. Learned counsel for the petitioner also by relying upon **Chandigarh Administration vs. Vipin Gupta and another, 2011(2) SCT 560** and **Chief Engineer, Union Territory, Chandigarh vs. Ram Sarup Walia, 2012 (3) SCT 157**

submitted that the petitioners are entitled for declaratory directions to the respondents that they would have a right to arrears of difference of pay of the two posts for the period served holding the current duty charge. They would, therefore, be entitled to pay parity and to have their annual increments calculated on the pay scale of the higher post of Joint Director.

[6]. At this stage, without going into the other details of the case, it would be just and appropriate to ascertain whether any show cause notice was issued to the petitioners before changing the status of the petitioners as that of Deputy Directors.

[7]. On 11.01.2023, following order has been passed by this Court:-

“Perusal of the record would indicate that the petitioner who was working as Deputy Director was appointed/posted on the post of Joint Director in his own pay scale vide order dated 18.01.2007. The petitioner on attaining the age of superannuation retired from Government service w.e.f. 31.08.2008 in accordance with the provisions of Rule 3.26 of Punjab Civil Services Rules,

Volume I, Part I. At the time of retirement the petitioner was shown to be Joint Director, Kurukshetra University, Kurukshetra.

The grievance of the petitioner is that after about 4 years of his retirement the order has been passed on 23.10.2012 reviewing the status of the petitioner from Joint Director to the Deputy Director by observing that the petitioner being the Deputy Director was working in his own pay scale holding current duty charge. The aforesaid order has been passed without hearing or issuing any notice to the petitioner.

Learned State counsel seeks time to verify the aforesaid fact. Other grounds are also left open.

Adjourned to 18.04.2023.”

[8]. The said order was passed keeping in view the factual status of the petitioner No.1. The same factual position is with difference in date applies to the petitioner No.2 as well. In compliance of the aforesaid order, a clarification has been given by the office of Director, Local Audit Haryana, Panchkula saying that the petitioners were given opportunities of hearing through the legal notices.

[9]. Evidently at the time of passing of the order dated 23.10.2012 in case of the petitioner No.1 and the order dated 30.05.2013 (Annexure R-2) in case of the petitioner No.2, no show cause notice was issued to them. The impugned orders are liable to be quashed on this short ground.

[10]. Resultantly the impugned orders are set aside. The writ

petition is allowed. However the competent authority would be at liberty to revisit the issue by issuing show cause notices to the petitioners and thereafter may take final decision in accordance with law. If the petitioners are found entitled to any relief, the same be accorded in accordance with law at the earliest.

[11]. It is relevant to note here that during pendency of the writ petition, the petitioner No.2 has expired and his legal representatives have been brought on record. The competent authority shall adhere to the factual position *qua* the petitioner No.2 and consider the case in terms of retiral benefits in favour of the rightful claimants.

May 29, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No