

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207

CWP-14515-2017

Date of decision :-20.01.2023

Balwan Singh and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ramesh Goyat, Advocate for the petitioners.

Mr. R.K.S. Brar, Addl. AG, Haryana
for respondents No.1 and 2.

SUVIR SEHGAL, J.

Petitioners have approached this Court under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari quashing promotion orders dated 04.02.2015 and 29.09.2015, Annexures P-4 and P-5, respectively, to the extent that they have been denied the payment of arrears of salary from the date of their retrospective promotion. A direction has been sought to the respondents to make the payment of the arrears of salary for 38 months prior to the date of filing of their previous writ petition along with interest.

Facts leading to the filing of this petition are that the petitioners were appointed as Clerks in the year 1990-1991. A tentative seniority list was prepared in the department in the year 1994. On objections submitted by the petitioners, a fresh seniority list was prepared and the petitioners were

assigned seniority as per their entitlement. However, Dharambir, who was junior to the petitioners was promoted as an Assistant on 13.09.1995. CWP-18333-2002 filed by one Tilak Raj was allowed by a Division Bench of this Court vide judgment dated 16.08.2005, Annexure P-1 and a direction was issued to the respondents to reconsider his claim for promotion from the date Dharambir was promoted. SLP preferred by the respondents was dismissed and Tilak Raj was promoted w.e.f. 13.09.1995 by the respondents vide order dated 02.12.2008. Petitioners claimed parity with Dharambir and Tilak Raj and approached this Court by filing CWP-15902-2013. During the pendency of the petition, vide orders, Annexures P-4 and P-5, the respondents promoted the petitioners and inserted condition No.2 to the effect that they will be given benefit of notional pay fixation from the date of promotion, but actual benefit of pay to the promoted post will be given from the date of joining. In view of this development, writ petition was disposed of by this Court vide order dated 30.05.2017, Annexure P-6. Aggrieved, petitioners have approached this Court by filing the present petition. Petition has been contested by the respondents by filing a written statement. Stand taken by them is that as the petitioners are not entitled to the payment of salary for the period they have not discharge duty on the promotional post.

I have heard counsel for the parties and considered their respective submissions.

Although in the previous writ petition, the petitioners had claimed consequential accrued benefits, alongwith interest, after promotion to the post of Assistant from the date their juniors were promoted, but they never pressed their claim for arrears at the time of the disposal of the writ petition nor did they seek liberty to invoke the jurisdiction of this Court

again. The claim for arrears of salary is impliedly barred and they cannot be permitted to re-agitate it. Still further, there is an inordinate delay on the part of the petitioners in approaching the Court.

Furthermore, it may be noticed that the Hon’ble Supreme Court in Union of India versus B.M. Jha, (2007) 11 SCC 632 has held that arrears of salary cannot be granted in view of the principle of “no work no pay” in case of retrospective promotion.

Looked at from any angle, petitioners are not entitled to the relief sought.

Petition is dismissed.

20.01.2023
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No