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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20576-2015

Date of Decision: 05.07.2023

Dr. Mangal Singh Sandhu

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. R.P.S. Bara, Advocate
 for the petitioner.

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Present Writ Petition has been filed by the petitioner praying for quashing of the order dated 17.09.2015 (P-9) whereby the petitioner has been removed from the post of Director Agriculture on which he is officiating since 2011, and directing the respondents to grant the petitioner higher pay-scale for the period, the petitioner had discharged the duties of higher post of Director Agriculture.
2. The petitioner was directed to be given the charge of the post of Director, Punjab State Seed Certification Authority in addition to his own duties vide order dated 19.12.2011 (P-4). Thereafter, he worked as officiating director and was continued by subsequent order dated 19.02.2014 (P-5) till he retired on 30.04.2015 and thereafter he was given further extension to work on the post of Director Agriculture from 01.05.2015 to 30.04.2016.

3. As has come on record from reply, the post of Directors could not be filled in view of directions issued by this Court in *CWP-7205-2001* wherein it was directed that the post may not be filled on regular basis but the department can make working arrangement till such time regular appointment is made. It is in terms of the aforesaid directions that the petitioner was made officiating director.
4. Learned counsel for the petitioner claims salary for the post of director for the period he worked on the said post. Respondents have denied him the said salary stating that he was not appointed on the said post and was only given officiating charge.
5. I have considered the submissions.
6. Rule 4.4 (c) of the Punjab Civil Services Rules provide as under:

“(c) (i) Notwithstanding anything contained in these rules, where a Government employee holding a post in a temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above his pay drawn by him in the lower post provided it is certified by the Head of the Department in which the Government employee was holding the lower post that he would have continued to officiate in the lower post but for his promotion/appointment to the higher post:

Provided that if a Government employee either – (a) has previously held substantively or officiated in – (i) the same post, or (ii) a permanent or temporary post on the same time-scale, or (iii) a permanent post other than a tenure post, or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale ; or (b) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated ; then proviso to rule 4.4 (b) shall apply in the matter of the initial fixation of pay and counting of previous service for increment. (ii) The provisions of sub-rule 2 of rule 4.14 shall also be applicable in any case where the initial pay is fixed under this

clause. In cases, where a Government employee is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed in the same manner as provided in sub-clause (1) above.”

- 7. The aforesaid is a *non-obstante* clause and would have to be read independently of Rule 4.4 which lays down the Rules regarding fixation of initial pay. The Rule thus allows salary in the time scale of the higher post if the person has worked in temporary or officiating capacity.
- 8. Since the petitioner was admittedly working on a higher post of Director and which carried duties and responsibilities of greater importance than those attached to the post originally held by him, he was entitled to be given the said benefit of higher post pay scale.
- 9. In view of above, the claim of the petitioner is found to be made out in terms of Rule (supra).
- 10. Accordingly, this Writ Petition is **partly allowed** to the aforesaid extent and it is directed that the respondent shall fix the petitioner’s pay on the higher post of Director Agriculture and release his salary accordingly for the period from the date he was given charge of the post of Director till he retired.
- 11. Consequential benefits shall also follow.

(SANJEEV PRAKASH SHARMA)
JUDGE

July 05, 2023

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |