

2023:PHHC:166544

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-24935-2016

DECIDED ON: 25th JULY, 2023

LAXMAN DASS

PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Raman B. Garg, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Padamkant Dwivedi, Advocate for
Mr. Piyush Bansal, Advocate
for respondent No.3.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Mandamus* directing the respondents to grant the petitioner salary for the higher post of Secretary, Municipal Council from 11.10.2002 till 31.08.2016.

2. The petitioner was appointed as Secretary, Municipal Committee (B&C Class) upon his selection by Subordinate Services Selection Board, Haryana amongst all the eligible candidates in the wake of advertisement No.1/86 by respondent No.1 vide appointment letter dated 19.01.1987 (Annexure P-1) and was posted as Secretary at Municipal

Committee, Hodal (Faridabad). There are two categories of Secretaries having different pay scales and are governed under the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 1982 (hereinafter called the Service Rules). One of the categories is called as Secretary, Municipal Council (earlier known as Secretary, Municipal Committee-A Class) and the other category is called as Secretary, Municipal Committee (earlier known as Secretary, Municipal Committee, B&C Class). The post of Secretary, Municipal Council is to be filled up 50% by way of promotion from and amongst Secretaries, Municipal Committee on the basis of seniority-cum-merit and remaining 50% posts of Secretary, Municipal Council are to be filled up by way of direct recruitment. There are about 24 posts of Secretaries, Municipal Council in the State of Haryana and many Secretaries, Municipal Committee are working against the posts of Secretaries, Municipal Committee in their own pay scales. The pay scale of Secretary, Municipal Committee is Rs.5500-9000 w.e.f. 1.1.1996 whereas the pay scale of Secretary, Municipal Council is Rs.6500-9900. Now, the pay scale of Secretary, Municipal Council is revised to Rs.9300-34800 + 4000 (Grade Pay) w.e.f. 1.1.2006. Similarly, the pay scale of the Secretary, Municipal Committee is revised as Rs.9300-34500+3600 (Grade Pay) w.e.f. 1.1.2006.

3. The petitioner was also given charge of the higher post of Secretary, Municipal Council in the year 2002 against vacant post vide order dated 11.10.2002 (Annexure P-2) and posted as Secretary, Municipal Council at Municipal Council, Bhiwani. It is pertinent to mention it here that the respondent no.1 has given charge of the higher post of Secretary,

Municipal Council to four other persons including one Sh. Inderjit Singh by the aforesaid order dated 11.10.2002, who were also working as Secretary, Municipal Committee like the petitioner and they were also handed over higher duties of the higher post of Secretary, Municipal Council against vacant posts. The petitioner has been discharging his duties sincerely, faithfully and to the entire satisfaction of his superiors and no adverse entry has ever been conveyed to the petitioner; rather all the confidential reports of the petitioner were very good and excellent during his working on the higher post of Secretary, Municipal Council. Accordingly, the aforesaid charge of higher post of Secretary, Municipal Council was continued through various posting orders Annexures P-3 to P-8 till the date of his retirement i.e. 31.8.2016 Annexure P-9. There are number of posts of Secretaries, Municipal Council lying vacant and junior persons than the petitioner are working by way of current duty charge which is higher in status but the posts are not being filled up by way of promotion in accordance with the Service Rules.

4. Learned counsel for the petitioner has contended that the post of Secretary, Municipal Council is higher post being the promotional post, therefore, the petitioner is entitled to higher pay scale for the period he worked as a Secretary, Municipal Council. In support thereof, he placed reliance upon the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules 2010. It is submitted on behalf of the petitioner that the petitioner has been working on the higher post of Secretary, Municipal Council since 11.10.2002 with no complaint whatsoever from any quarters.

5. Learned counsel for the petitioner has placed reliance upon the decision of Full Bench of this Court rendered in the case of “Subhash Chander Vs. State of Haryana and others”; 2012 (1) SLR 207 and the bench concluded that:-

“ he is entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be refixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of the arrears shall be made within three months with all consequential benefits.”

6.. Learned counsel for the respondents has contended that the petitioner is not entitled to claim the benefit of pay scale of Secretary, Municipal Council w.e.f. 11.10.2002 till 31.08.2016, as he has been given the charge of Municipal Council against the post of direct recruitment and not against the promotional quota. As per service Rules, out of total sanctioned posts, 50% are to be filled by direct recruitment and 50% by way of promotion. It is submitted on behalf of the respondents that the petitioner was given the charge in his own pay scale for the smooth working of the Municipal Council. The assertion is that as per instructions dated 24.07.2007 issued by the Government of Haryana, assigning of current duty charge may be allowed in cases of extreme administrative exigency and only senior most persons in the cadre, who are fit for promotion to higher post in all respects, would be assigned the current duty charge. A latest instruction was also issued in this regard on 02.11.2016 wherein, it has been mentioned that on appointment in addition to ordinary duties as a temporary measure, to hold full charge of the duties of one or

more posts of identical or higher pay structure in the same department in the same cadre/line of promotion, no additional or high pay shall be admissible and such charge should be given to the senior most officer who is otherwise fit for promotion. Moreover, without inspecting the original file, it cannot be verified whether the petitioner was given the charge of post of Secretary, Municipal Council after getting approval from the competent authority. Whereas, as per the instructions/rules as mentioned above, the petitioner could not be given the charge of Secretary, Municipal Council because he was not senior most. Thus, he cannot claim the pay scale of Secretary, Municipal Council.

7. After hearing learned counsel for the respective parties and perusing the record, the following questions of law are being framed:-

(i) Whether the petitioner is entitled for the payment of the salary to the post of Secretary, Municipal Council w.e.f. 11.10.2002 to 31.08.2016;

(ii) Whether the petitioner's salary last pay drawn by him is to be taken on the post of Secretary, Municipal Committee, on which he had been given current duty charge w.e.f. 11.10.2002 til the date of his superannuation, vide order dated 11.10.2002 (Annexure P-2);

8. Before advertng to the facts of the case, it would be apposite to reproduce Rule 4.13 of the Punjab Civil Service Rules, Vol. I and II (as applicable to Haryana), which reads thus:-

4.13 (1) Subject to the provisions of rules 4.22 and 4.23, 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 of those

enumerated in the schedule to this rule or unless the officiating appointment involves the assumption of duties and responsibility of greater importance than those attaching to the post, other than a tenure post on which he holds a lien or would hold a lien had his lien not been suspended.

Xx	xx	xx	xx
xx	xx	xx	xx

(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.

Xx	xx	xx	xx
xx	xx	xx	xx

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":

xx	xx	xx	xx
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(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.

Xx	xx	xx	xx
xx	xx	xx	xx
xx	xx	xx	xx
xx	xx	xx	xx
xx	xx	xx	xx

(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."

9. A close examination of Rule 4.13 of the Rules would show 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.

10. It has come on record that the petitioner was given the charge of the post of Secretary, Municipal Council on 11.10.2002 (Annexure P-2). The afore-said charge was given to him against a vacant post without requiring him to work as Secretary, Municipal Committee in addition. In other words, it was not additional charge but was an independent charge of the post of Secretary, Municipal Council. Therefore, it is evident that within the principle emerging from Rule 4.13 of the Rules, he would be entitled to higher pay scale of the post of Secretary, Municipal Council because the post of Secretary, Municipal Council has to be considered involving assumption of duties and responsibilities of greater importance than those attaching to the post of Secretary, Municipal Committee on which the petitioner had held the lien. The petitioner also fulfilled the conditions being in the line of promotion because he was the senior most and would have been promoted on the basis of seniority. Merely because he has been given officiating charge of the higher post without regular promotion, would not result into deprivation of higher salary from the date he has assumed the charge.

11. To support the afore-said observation, reliance can be placed

upon the judgment of the Apex Court in the case of **“Ramakant Shripad Sinai Advalpalkar vs. Union of India; 1991 (Suppl. 2) SCC 733**, wherein it has been held that where a fortuitous officiating promotion is given to an employee working in the lower cadre on account of administrative exigency resulting in vacancy of a higher post. For illustration, if the post of Sub Division Officer is a feeder cadre for promotion to the post of Assistant Executive Engineer then on vacancy caused by retirement, death or promotion etc. the promotion of the Sub Division Officer available at the station on the post of Assistant Executive Engineer would not earn him higher pay scale because it is a fortuitous circumstance unless he is senior enough to stake his claim for regular promotion.

12. In view of above, the question No.1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibilities of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher graded. Thus, the petitioner is held entitled to the higher pay scale from the date he assumed the charge of the post of Secretary, Municipal Council with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Council.

13. As far as the second question is concerned, the petitioner is entitled for arrears as per the judgment in the case of **“State of Haryana vs. Harbans Lal; 2013 (1) SCT 86**.

14. In view of above, the present petition is allowed and

respondents are directed to pay the salary of the higher post of Secretary, Municipal Council w.e.f. 11.10.2002 to 31.08.2016 with further direction to give the arrears of pension to the petitioner along-with interest @ 9% per annum till the date of its actual realization.

(SANDEEP MOUDGIL)
JUDGE

25th JULY, 2023
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|---------------------------------|----------|
| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |