

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28926-2018 (O&M)

Decided on 23.11.2023

Suresh Kumar Bansal

... Petitioner

VS.

Haryana Tourism Corporation Ltd.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanjiv Gupta KKR, Advocate and
Mr. Nand Ram Purohit, Advocate for the petitioner

Mr. Gaurav Jindal, Addl. AG Haryana

Sandeep Moudgil, J.

The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of mandamus directing the respondent-Corporation to grant various service benefits based on length of service spent by the petitioner on current duty charge w.e.f. 15.07.2013 as SDE (Civil), for all intents and purposes.

Learned counsel for the petitioner submitted that the petitioner was appointed as Junior Engineer (Civil) on 27.06.1988 and joined on 05.07.1988 and as per the gradation list dated 20.03.2006, the name of the petitioner figured at Sr.No.3 and thereafter, vide order dated 15.07.2013, the petitioner was given current duty charge (CDC) with immediate effect. He further submitted that when the petitioner, though statedly eligible, was not promoted and instead was given CDC, he made a representation dated 09.05.2015 in continuation of the earlier representation dated 02.05.2011 for consideration of his claim for promotion as SDE (Civil) w.e.f. 25.10.2010 but to no effect.

It is argued that the petitioner had been assigned CDC w.e.f. 15.07.2013 whereas he had been performed the duties as such as SDE (Civil) since last so many years as the post of SDE was lying vacant since 01.06.2014. He further asserted that the respondent hurriedly promoted one AN Dua, as SDE (Civil) on 25.10.2010 which was later on set aside on the representation made by petitioner on 02.05.2011, however, AN Dua allegedly continued to draw salary and emoluments as SDE till 06.05.2015. Reliance has been placed on **Raghunath Prasad vs. Secretary, Home, Govt. Bihar 1988 AIR SC 1033 and Dr. Mrs. OZ Hussain vs. UOI 1990 AIR SC 311.**

Written statement has been filed by the respondent on 11.09.2019 wherein it has been averred that as per the order dated 15.07.2013 (Annexure P-4) the petitioner was given the Current Duty Charge of S.D.E (C) with immediate effect 'without any type of benefit' which he accepted and did not press his claim till he filed the present writ petition and therefore the petitioner would be bound by the terms of the order and moreover it is settled law that if the order of current duty charge in express terms conveys the condition, then the same condition cannot be overlooked and that the service rendered on current duty charge of the said post cannot be considered for purposes of fixation of seniority as no one has a right to ask for or stick to a current duty charge.

It is further argued that the petitioner was given the CDC against the post meant for Direct Recruitment and not against the post meant for promotion quota and that against the two posts meant for promotion quota, two officials namely, V K Thakur and Giri Raj Sharma are already working and thus the posts are already filled.

Heard learned counsel for the parties and gone through the record.

In **State of Punjab & Anr. Vs. Dharam Pal, 2017 (II) ILR - CUT-728 (S.C.)**, the respondent was appointed as a Clerk on 22.05.1970 and promoted to the post of Sr. Asst. on 22.09.1980. He was given the officiating charge of the Superintendent Grade-II vide order Dt. 09.12.2004 and there after he was directed to function as Superintendent Grade I vide Government Order Dt. 26.05.2007 and superannuated from service on 31.03.2008. He approached the High Court for grant of benefit of pay scale for the posts of Superintendent Grade II and Superintendent Grade I which was allowed. The Supreme Court dismissed the appeal filed by the State of Punjab holding that if a person is promoted to the higher post or put to officiate on that post with an agreement that he would not claim higher salary or other attendant benefits, it would be contrary to law and also against public policy and since the respondent was relieved from the substantive post and worked in the higher posts and Rules do not prohibit grant of pay scale, the view expressed by the High Court is absolute impeccable. Similar views were reiterated by a Division Bench of this Court in **Balbir Singh Dalal & Ors. Vs. State of Haryana & Ors., (CWP No.10152 of 2000)** decided on 09.05.2002, where it was held that once a rule grants benefit to an employee, it cannot be taken away by administrative authority except in consonance with the Rules.

Further, a Full Bench of this Court in **Subhash Chander vs. State of Haryana & Ors. (CWP-21358-2008) decided on 20.12.2011**, framed the question as to “whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale

without being substantively appointed to such post” and held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade.

Admittedly, the petitioner was given current duty charge as SDE (Civil) with immediate effect i.e. 15.07.2013 though without any type of benefit. This also cannot be denied that even prior to assignment of CDC to the petitioner, he was already made to discharge his duties as SDE (Civil) in his own pay-scale but was formally given CDC only on 15.07.2013. The legal position as to the admissibility of service benefits on assignment of CDC cannot be denied inasmuch as it is well settled that if a person is asked to perform duties regularly though in officiating capacity or on current duty charge person would be entitled to higher pay. Moreover, as per Finance Department instructions No.6/102/2020-4PR(FD) dated 06.01.2023 regarding pay fixation on assigning the current duty charge, it has been clarified as under:-

“The matter has been considered in the Finance Department at length keeping in view the above facts and it is clarified that where an employee, who is otherwise fit for promotion, is given full-fledged charge of the promotional post in the hierarchy against the vacant post, his pay will be fixed considering the pay scale/pay structure of promotional post for the period holding CDC as per applicable rules/instructions. Accordingly, only difference of pay for 02 posts while holding CDC shall be payable...”

It has come on record that the petitioner was given the charge of the post of SDE (Civil) on much before he was formally assigned CDC on the

said post. He has since retired from service w.e.f. 30.04.2020. The aforesaid charge was given to him against a vacant post without requiring him to work as Junior Engineer in addition. In other words, it was not an additional charge but was an independent charge of the post of SDE. Thus he would be entitled to higher pay scale of the post of SDE because the post of SDE has to be considered involving assumption of duties and responsibilities of greater importance than those attaching to the post of Junior Engineer. The petitioner also fulfilled the conditions being in the line of promotion because he was senior most Junior Engineer and would have been promoted on the basis of his seniority. Merely because he has been given officiating charge of the higher post without regular promotion, would not result into deprivation of higher salary and other incidental benefits from the date he has assumed the charge.

For the reasons aforestated, this writ petition is allowed and the respondent is directed to treat current duty charge period of the petitioner as SDE (Civil) w.e.f. 15.07.2013 for the purpose of seniority, promotion, higher pay scale i.e. 9300-34800+5400 GP including increments and other retiral and pensionary benefits on the principle of *quantum meruit*. Let the necessary benefits be calculated and arrears thereof, be paid to the petitioner along with interest @ 6% p.a. within a period of two months from the date of receipt of certified copy of this order.

Ordered accordingly.

23.11.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No