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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-21076-2023 (O&M)
Date of Decision:31.10.2023

DAVINDER KUMAR KAUSHIK

.....Petitioner

V/s.

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Ashok Bhardwaj, Advocate with
Mr. Rohit Duggal, Advocate, for the petitioner.

Mr.Paramjit Batta, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner has come before this Court claiming fixation of salary on the post of Assistant Registrar as he submits that he was holding the post of Assistant Registrar since 2016 till he attained superannuation, and therefore, he was entitled to be fixed in the higher pay scale of Assistant Registrar in terms of Rule 4.13 of the Punjab Civil Service Rules.

2. Learned counsel for the petitioner submits that the post of Assistant Registrar was created in the office of the Advocate General on 04.12.2016 and the petitioner, who working as Superintendent Grade-I, was asked to look after the work of the Assistant Registrar also vide order dated 23.12.2016 and till he retired, he worked substantively on the post of Assistant Registrar, therefore, he is entitled to receive the salary. The office of the Advocate General also recommended for conducting of a regular DPC for the said post which was, however, not done.

3. Learned counsel for the petitioner further relies on the circular issued on 20.07.2011 in support of his contentions and has also relied on judgment passed by the co-ordinate Bench of this Court in the case of Karamjit Singh and others Vs. State of Punjab, CWP-28399-2013 decided on 17.09.2018 as well as on the judgment passed in the case of R.K. Rampal and Another Vs. State of Punjab, CWP-22569-2010 decided on 08.03.2017. He has also referred to the Full Bench judgment passed in the case of Subhash Chander Vs. State of Haryana and Others; 2012(1)SCT 603.

4. I have carefully considered the submissions of learned counsel for the petitioner and it would be apposite to find that Rule 4.13 operates in a field subject to provision of Rule 4.22 to 4.24. While principally, substantive pay of a Government employee would be in the time-scale of the post on which he holds the lien and there are certain exceptions carved out under the Punjab Civil Service Rules. When a Government employee is appointed to officiate on a higher post, which involves greater responsibility and duties, then the substantive post shall be entitled to receive the salary of the higher post, but 4.23 defines the meaning of the word officiating, which means that when a Government employee holds charge of the current duty of a post after being relieved of that of the substantive post, he officiates on that post. However, in terms of Rule 4.24, if he continues to hold current duty charge of his own substantive post as well as that of the another post, he does not officiate on the another post, and therefore, he is not entitled to the additional remuneration.

5. The Full Bench, after having considered the provision at length, has observed as under:-

“10. A perusal of the Rule 4.13 of the Rules would show that if officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post on which an employee holds a lien or would have held a lien had his lien has not been suspended then he would draw pay higher than his substantive post in respect of a permanent post. Sub-Rule 2 of Rule 4.13 of the Rules makes it abundantly clear that the officiating appointment on a post is not to be regarded assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post on which he holds lien. In other words, if the officiation is on a post carrying the same pay scale then it would not be considered to have duties and responsibilities of greater importance than attaching to the post, an employee is holding on a substantive basis. A perusal of the clause 2 of Note 4 makes it further clear that a fortuitous officiating promotion of someone junior in a cadre to a Government employee who is out of the regular line would not earn him the right to draw pay higher than his substantive pay. This provision takes care of an eventuality when on account of administrative exigency, the higher post falls vacant and the employee available in the feeder cadre at station may not be the senior most but he is asked to officiate on the vacancy caused on account of administrative exigency like retirement, death or promotion it would not then ensure the benefit of such a junior employee. However, if the officiating promotion exceeds three months then the officer concerned may be granted the pay of higher post, which is further mandated by clause 5 (iv) of Note 4.

11. XXXXX

12. *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. A post is regarded to involve assumption of duties and responsibilities of greater importance if it carries higher pay scale than the one on which he holds the lien. In the present case, the pay scale of the post of Accountant is lower than that of the post of the Secretary.*

13. *It has come on record that the petitioner-Subhash Chander was given the charge of the post of Secretary of Municipal Committee, Ratia on*

02.11.1996/11.12.1996 (P-1). The aforesaid charge was given to him against a vacant post without requiring him to work as Accountant in addition. In other words, it was not additional charge but was an independent charge of the post of Secretary. 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 because the post of Secretary has to be considered involving assumption of duties and responsibilities of greater importance than those attaching to the post of Accountant on which the petitioner had held the lien. The petitioner also fulfilled the conditions being in the line of promotion because he was senior most Accountant 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 from the date he has assumed the charge.”

6. Thus, from the facts as noticed above, the present case is different from that of Subhash Chander (Supra). In the present case, the orders passed are to give additional work of the higher post while continuing the petitioner on the post of Superintendent Grade-I without there being any change in his designation. Therefore, he would not be treated to be officiating as Assistant Registrar, but is only looking after the work of the Assistant Registrar and would not be entitled to salary of the said higher post.

7. It is also noticed that while giving him the additional work of Assistant Registrar, the then Advocate General has made it conditional to the effect that the petitioner would not claim seniority or monetary benefit for the same. Thus, it is apparent that the order of looking after the work of the post of Assistant Registrar was merely a fortitious circumstance which did not take into consideration the *inter se* seniority of officials or the service record of the petitioner. Hence, he cannot be considered to be entitled for higher pay than the pay admissible on the substantive post which he continued to hold till his retirement.

8. Accordingly, the Writ Petition fails and is **dismissed**.

9. All pending applications filed in this Writ Petition shall also stand dismissed accordingly.

October 31, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>