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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-37845-2018

Date of decision : 09.03.2023

Ravinder Bhushan

..... Petitioner

versus

Punjab Water Supply and Sewerage Board

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Dhiraj Chawla, Advocate
for the petitioner.

Mr. Arjun Dev, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

Present writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing the order dated 10.12.2018 (Annexure P-8), whereby the claim of the petitioner for salary of higher officiating post of Sub Divisional Engineer has been rejected.

2. Petitioner is currently working as Circle Head Draftsman w.e.f. 23.01.1999. Vide order dated 10.01.2006 (Annexure P-1), petitioner has been asked to perform duties of Sub Divisional Engineer in his own pay scale against direct recruitment quota with the condition that the current duty charge will be withdrawn upon joining of direct recruits.

3. Learned counsel for the petitioner submits that once the petitioner has been asked to render duties of a higher post, the salary attached to the said higher post cannot be denied.

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4. Reliance is being placed upon the judgment passed by the Apex Court in **P. Grover Vs. State of Haryana and another 1983 AIR (SC) 1060** to claim that the doctrine of *quantum meruit* would be attracted and the petitioner shall be entitled for the pay and perks attached to the higher post. Further reliance is being placed upon the judgment passed by the Apex Court in **The State of Punjab and another Vs. Dharam Pal in Civil Appeal No. 1549 of 2011** decided on 05.09.2017.

5. Per contra learned counsel for the respondent submits that the order dated 10.12.2018 clearly laid down a condition that the petitioner has no right to claim the benefits for the period of current duty charge on the sole ground as he accepted the condition imposed in the office order and never opposed to join duty as Sub Divisional Engineer. Resultantly, the petitioner cannot claim the same.

6. I have heard learned counsel for the parties and have gone through the record of the case.

7. The issue involved is: whether the condition of 'not entitled to pay and allowances attached to higher post' imposed in the order whereby the petitioner was saddled with the responsibility to discharge duties of higher post can have an effect to reject the claim of the petitioner for higher allowance for discharging higher responsibilities?

8. There is no denial to the fact that the petitioner was holding higher post and was performing the duties of higher responsibilities attached to the said post. The pay and allowance admissible to a post are governed by the rules. As per the rules, higher pay and allowance is admissible to the post of Sub Divisional Engineer.

9. The issue has been dealt with by the Apex Court in the case of **The State of Punjab and another Vs. Dharam Pal's case (supra)** wherein the Apex Court held as under:-

“After so stating, the Court proceeded to opine thus:

"Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872."

[Emphasis added)

The principle postulated in the said case is of immense significance, for it refers to concept of public policy and the conception of unconscionability of contract.

22. *In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit*

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gets support from the principles laid down in Smt. P. Grover (supra) and Hari Om Sharma (supra). As far as the authority in A. Francis (supra) is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma (supra) and resultantly we hold that the view expressed by the High Court is absolute impeccable.”

10. In view of the aforesaid settled proposition of law the question/issue formulated *ibid* is answered in favour of the petitioner. He is held entitled for the pay and allowances attached to the post of Sub Divisional Engineer for the time he discharged duties of the said post. The condition imposed in the impugned order is held to be unjust and illegal. Respondent is directed to release the benefits to the petitioner along with interest @ 6% per annum calculated for the period from which the petitioner became entitled till the date of actual realization within a period of 12 weeks from the date of receipt of certified copy of this order.

11. The petition stands allowed.

(PANKAJ JAIN)
JUDGE

09.03.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No