



CWP-2056-2021

-1-

216

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

**CWP-2056-2021
Date of Decision: 18.12.2024**

Vijender Kumar Malik

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.P. Dangi, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Mr. Priyavrat Parashar, Advocate,
for respondent No.2-HSVP.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* for directing the respondents to grant the benefit of pay-scale and grade of post of Sub Divisional Engineer w.e.f. 25.01.2012 i.e. the date of assignment of Look After Charge (LAC) of Sub Divisional Engineer instead of date of his regular promotion to the post of Sub Divisional Engineer on 28.10.2020 and to release the consequential benefits thereto along with interest at the rate of 12% per annum.

2. Learned counsel for the petitioner submitted that the petitioner was working as Junior Engineer in the respondent-Department and while he was working in the aforesaid Department as Junior Engineer, it was decided by the respondent vide Annexure P-1 that considering the qualification of the petitioner, he should be given the looking after charge of the post of Sub



Divisional Engineer (Civil), which is a higher post and consequent upon the same, vide Annexure P-2, the petitioner was directed to be given a Current Duty Charge of the post of Sub Divisional Engineer (Civil) on 10.04.2012. He further submitted that thereafter, the petitioner has been working on Current Duty Charge basis on the higher post i.e. Sub Divisional Engineer (Civil) and has also been discharging the function of Junior Engineer thereafter till the time when he was regularly promoted to the post of Sub Divisional Engineer (Civil) on 28.10.2020 and he has already retired. He also submitted that since the petitioner has been working on the aforesaid post and discharging his duties on a higher post on Current Duty Charge basis, he was entitled for the grant of difference of salary because he was entitled for the salary of the post of Sub Divisional Engineer (Civil) because he actually worked on the aforesaid post to which there is no dispute.

3. Learned counsel for the petitioner has referred to a number of judgments passed by Hon'ble Supreme Court as well as by this Court in **"Smt. P. Grover Vs. State of Haryana and another"**, (1983) 4 SCC 291, **"Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and others"**, (1998) 5 SCC 87, CWP-21358-2008 titled as **"Subhash Chander Vs. State of Haryana and others"** decided on 20.12.2011 and CWP-6723-2004 titled as **"Pritam Singh Dhaliwal Vs. State of Punjab and another"**, decided on 23.08.2004, to substantiate his case.

4. On the other hand, Mr. Priyavrat Parashar, learned counsel for respondent No.2-HSVP submitted that the petitioner was granted the aforesaid Current Duty Charge vide Annexure P-2 and he had been discharging his duties on a higher post i.e. Sub Divisional Engineer (Civil)



till the time, he was actually promoted on the aforesaid post i.e. on 28.10.2020. He has however two fold objections. Firstly, that in the aforesaid order (Annexure P-2) it has been so provided that the petitioner will work in his own pay-scale and will not claim any extra remuneration and secondly, in the year 2016, the Haryana Civil Services Rules were come into force w.e.f. 01.01.2016 and in which there is a specific provision which is at Rule 76 which provides that no additional pay shall be admissible for holding, independently or in addition to own duties, Current Duty Charge of another post(s) of the same or higher grade pay regardless of the duration and submitted that in view of the aforesaid provision the petitioner is not entitled for grant of salary on the higher post. In addition to the above, he also submitted that since the cause of action of the petitioner arose in the year 2012, the present petition is also hit by the bar of delay as well.

5. I have heard the learned counsels for the parties.

6. It is an admitted position that vide Annexure P-2, the petitioner who was otherwise working as Junior Engineer, was given Current Duty Charge for the post of Sub Divisional Engineer (Civil) which is a higher post and admittedly he had been discharging his duties on the post of Sub Division Engineer (Civil) till the time he was regularly promoted on the aforesaid post i.e. Sub Divisional Engineer (Civil) on 28.10.2020, regarding which, no dispute has been raised by the learned counsel for the respondents.

7. The law with regard to grant of benefit of salary for the post on which an employee has worked on higher post is no longer *res integra*. This Court is of the considered view that the prayer of the petitioner is squarely covered by judgment of Full Bench of this Court in ***Subhash Chander's***



case (supra) and the aforesaid judgment passed by Hon'ble Supreme Court in *Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and others' case (supra)*. The relevant portion of the aforesaid judgment passed by Hon'ble Supreme Court in *Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and others' case (supra)* is reproduced as under:-

“7. Learned counsel for the appellant has placed reliance on Shreedaran Chandra Ghosh v. State of Assam & Ors. (1996) 10 SCC 567, as also on State of Haryana v. S.M. Sharma & Ors., JT 1993 (3) SC 740, to contend that since the respondent was promoted on the basis of stop-gap arrangement, he could not claim promotion as a matter of right nor could he claim salary for the post of Junior Engineer-I as he was given only current duty charge of the post. Both the contentions cannot be accepted. The Tribunal has already held that the respondent having been promoted as Junior Engineer I, though in stop-gap arrangement, was continued on that post, and therefore, he has a right to be considered for regular promotion. Having regard to the facts of this case, there is no reason to differ with the Tribunal.

8. 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.”

8. So far as the objection raised by the learned counsel for respondent No.2 that in the order dated 10.04.2012 (Annexure P-2) it has been so provided that the petitioner will not claim any extra remuneration and will work on his own pay-scale is concerned, the same cannot be given effect to in view of the aforesaid settled law in this regard and therefore, the aforesaid cause is not enforceable being against the law.

9. So far as other objection with regard to the delay raised by the learned counsel for respondent No.2 is concerned, it cannot be said that the cause of action which arose in the year 2012 has crystalised on that date itself because it is a case of recurring cause of action i.e. *de die in diem*. Every day when the petitioner has worked on a higher post, a fresh cause of action arose in his favour. So far as the third objection raised by the learned counsel for respondent No.2 with regard to coming into force of the Haryana



CWP-2056-2021

-6-

Civil Services Rules w.e.f. 01.01.2016 whereby a specific provision has been incorporated in the aforesaid Rule that the employee, who has been working on Current Duty Charge, no extra remuneration will be paid is concerned, the argument raised by the learned counsel for respondent No.2 has some force. Once the Statutory Rule has come into force w.e.f. 01.01.2016 where a specific bar has been created, then if an employee has worked on Current Duty Charge after coming into force of the aforesaid Rule, then certainly the employee is not entitled for grant of extra remuneration for the time when he worked on a higher post especially in absence of any challenge to the aforesaid Rule. It is a settled law that the Statutory Rules which are enforced are presumed to be Constitutionally valid unless they are struck down. Those Rules are stated to be still in force.

10. The aforesaid Statutory Rule is prospective in nature and therefore petitioner will be entitled for the benefit from the date of his starting working on higher post till the enforcement of the above Rules.

11. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The respondents are directed to calculate the difference of salary of the petitioner from the time when the petitioner joined the Current Duty Charge in pursuance of Annexure P-2 till 01.01.2016 and pay the same to the petitioner within a period of 3 months from today. However, there shall be no order on interest or as to costs.

18.12.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No