

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-15356-1996
Date of Decision : 18.01.2024

Narinderpal SinghPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Prateek Mahajan, Advocate with
Mr. Daanish Mahajan, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has approached this Court by filing the present writ petition under Articles 226/227 of the Constitution of India impugning the order dated 14.08.1996 (Annexure P-7), issued by respondent No.3, cancelling the resolution passed by the Governing Body of the District Rural Development Agency, Amritsar (hereinafter referred to as 'DRDA') whereby decision was taken to release the pay scale of the post of Accountant to the petitioner and the condition mentioned in order dated 20.05.1992 (Annexure P-3), whereby the petitioner was posted against vacant post of Accountant in DRDA in his own pay scale of Clerk. Further a writ of mandamus has been sought for directing the respondents to release the pay and allowances of the post of Accountant on which the petitioner is working since 20.05.1992.

2. Brief facts leading to the filing of the present petition as have been pleaded in the writ petition are that initially the petitioner was appointed as Clerk on 05.09.1986 in the DRDA, Amritsar against leave vacancy from 05.09.1986 till 31.01.1987 and thereafter, he was again appointed as Clerk on regular basis on 24.04.1987. It has further been pleaded that although the petitioner was appointed as Clerk, however, he was performing the duties of Accountant though posted as Accounts Clerk since the date of his appointment. It has further been submitted that the regular post of Accountant became available in DRDA, Amritsar in year 1991 on repatriation of Sh. Avtar Singh, Accountant, to his parent department as he was working on deputation. In accordance with the DRDA Employees Regulations, 1991, Clerks with five years experience are eligible for promotion to the post of Accountant and 2/3rd post of Accountants are required to be filled by promotion and there are total 03 posts of Accountants in DRDA, Amritsar and only one other person was holding the post who was directly appointed to the said post. It has further been pleaded that the process of making regular promotions to the post of Accountant was in process and the petitioner was also eligible for regular promotion. However, vide order dated 20.05.1992 (Annexure P-3), the petitioner was posted against vacant post of Accountant, in his own pay scale of Clerk. Since the pay scale of the post of Accountant was not granted to the petitioner, he submitted representation for claiming the pay scale for the post of Accountant and the said representation was considered by the Governing Body of DRDA, Amritsar in its meeting held on 29.06.1993 and the Governing

Body fully agreed with the demand of the petitioner for granting regular pay scale and vide letter dated 24.06.1993 forwarded the case of the petitioner to respondent No.3-Joint Development Commissioner (IRD), Punjab for sanction, being the appropriate authority. It was also submitted in the said letter that the work and conduct of the petitioner during this period remained extremely satisfied and, therefore, the necessary approval for granting regular pay scale be granted. Since no decision was taken on the said letter dated 24.06.1993, the petitioner again submitted representation dated 04.04.1996 and the matter was again put up before the Governing Body, DRDA, Amritsar and the Governing Body in its meeting held on 12.06.1996 resolved to grant the pay scale of Accountant to the petitioner, subject to the decision of the Court in a case filed by Sh. Bhuri Singh, Junior Assistant for promotion to the post of Senior Accountant. It was further decided that the scale may be given to the petitioner w.e.f. the date of meeting i.e. 12.06.1996. However, the decision taken in the said resolution has been cancelled by respondent No.3-Joint Development Commissioner (IRD), Punjab vide impugned order dated 14.08.1996 which has been challenged in the present writ petition.

3. Separate written statements have been filed on behalf of respondents No.1 and 3 and respondent No.2 wherein the facts have not been disputed, however, it has been stated that the petitioner is not entitled for pay scale of the post of Accountant as respondent No.3-Joint Development Commissioner (IRD), Punjab requested the Additional Deputy Commissioner (Development), Amritsar to send a

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panel of eligible employees for promotion to the vacant post of Senior Assistant (Accounts)/Accountant and according to DRDA Employees Regulations, 1991, respondent No.3-Joint Development Commissioner (IRD), Punjab is the appointing authority in respect of appointments of the DRDAs. The Additional Deputy Commissioner (Development), Amritsar instead of sending a panel of eligible employees, form a Committee for screening of eligible employees and prepared a panel of the employees namely Smt. Mariyam Masih, Senior Clerk, Sh. Bhuri Singh, Senior Clerk and Sh. Narinderpal Singh, Accounts Clerk (petitioner). In this panel Smt. Mariyam Masih, Senior Clerk was senior most but she gave in writing to the Additional Deputy Commissioner (Development), Amritsar that she is not willing to get the promotion of Accountant. Sh. Bhuri Singh, Senior Clerk was second most senior in the panel and Sh. Narinderpal Singh, Accounts Clerk (the petitioner) was junior most at Sr. No.3. The Committee chaired by the Deputy Commissioner-cum-Chairman interviewed Bhuri Singh and Narinderpal Singh and they were awarded 4 and 8 marks, respectively, out of total 10 marks on the basis of interview. The Additional Deputy Commissioner (Development), Amritsar forwarded a panel consisting the name of Bhuri Singh and Narinderpal Singh for promotion to the post of Accountant and suggested to select anyone of these 02 candidates after considering the recommendation of the Committee; Annual Confidential Reports, Educational Qualification and length of service and since the Additional Deputy Commissioner (Development), Amritsar was only supposed to send the panel of eligible employees for

promotion to the post of Accountant, therefore, the DRDA, Amritsar should not have formed a Committee for screening/interviewing the candidates mentioned in the panel.

4. Learned counsel for the petitioner submits that the petitioner was fully eligible for promotion to the post of Accountant and his name was also recommended by the Committee for regular promotion as well. However, in the meanwhile, the petitioner was posted against the post of Accountant vide order dated 20.05.1992 but in his own pay scale of Clerk. The said condition “in his own pay scale of Clerk” is against the law laid down by the Hon’ble Supreme Court in *State of Punjab and another Vs. Dharam Pal : 2017(4) S.C.T. 460; Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma : 1998(3) S.C.T. 90; Selva Raj Vs. Lt. Governor of Island, Port Blair : 1999 (2) S.C.T. 286; Smt. P. Grover Vs. State of Haryana : 1983(4) SCC 291* and law laid down by this Court in *Pritam Singh Dhaliwal Vs. State of Punjab and another : 2004(4) S.C.T. 403; Balbir Singh Dalal and others Vs. State of Haryana and another : 2002(4) S.C.T. 422 and Gurmej Singh Vs. State of Punjab : 1995(3) S.C.T. 279*. Therefore, the petitioner is entitled for pay scale of the post of Accountant. He further submits that during the pendency of the present writ petition, the petitioner has also been promoted on regular basis on 07.12.2006, therefore, he is entitled for the pay scale of post of Accountant from 20.05.1992 to 06.12.2006.

5. Per contra, learned State counsel, while referring to the averments made in the written statement, submits that since the

petitioner was only posted against the post of Accountant in his own pay scale of Clerk, therefore, he is not entitled for the pay scale of the said post.

6. I have heard learned counsel for the parties and perused the relevant documents.

7. As per DRDA Employees Regulations, 1991, the criteria for appointment of Accountants in DRDA is as under :-

Sr. No.	Name of the Post	Mode of Recruitment	Educational qualification or Experience required.
1 to 5	xxx	xxx	xxx
6.	Accountants	<u>2/3rd by promotion</u>	<u>From amongst the Clerks with minimum 5 years experience in the Agency.</u>
		1/3rd by direct recruitment	Having degree in B.Com
		Note:	Both the categories of Accountants shall be required to clear the prescribed test conducted by the Rural Development and Panchayats Department within a period of 1 year from the date of joining as Accountant.
7 to 15	xxx	xxx	Xxx

8. Admittedly, the petitioner was fully eligible for promotion to the post of Accountant and his name was also recommended by the Committee for regular promotion. However, in the integrum the petitioner was posted against the vacant post of Accountant vide order dated 20.05.1992, but in his own pay scale of Clerk. Once the petitioner has performed the duties of the post of Accountant, he cannot be denied the pay scale of the said post.

9. The Hon'ble Supreme Court in its judgment passed in **Smt. P. Grover's case (supra)** has held that the officer promoted to higher post on acting basis is entitled to salary of such higher post. The relevant para of the said judgment reads as under :-

“3. We mentioned that she was promoted as an acting District Education officer with effect from July 19, 1976. The order of promotion contained a super-added condition that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order extending her services recited that she was an acting District Education Officer, but contained a super-added condition that her pay would not be more than the maximum of the Principal's grade. Smt. Grover claims that having been promoted as District Education officer, she was entitled to the pay of a District Education officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Art. 136 of the Constitution. The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt. P. Grover after she was promoted to act as District Education officer. All that was said in the counter-affidavit was that there were no Class-I post available and therefore, she was not entitled to be paid the salary of District Education officer. We are unable to understand the reason given in the counter- affidavit. She was promoted to the post of District Education officer, a Class-I post, on an acting basis. Our attention was not invited to any rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled to be paid the salary of a District Education officer from the date she was promoted to the post, that is, July 19, 1976, until she retired from service on

August 31, 1980. The appeal is accordingly allowed with costs."

10. To the same effect is the judgment of the Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma : 1998 AIR (SC) 2909***. In the said case the employee was promoted as Junior Engineer-I in stop-gap arrangement and he had given the undertaking 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 said argument was rejected by Hon'ble Supreme Court and it was held that the Government being model employer cannot be permitted to make such an argument.

11. Similarly in the case of ***Selva Raj Vs. Lt. Governor of Island, Port Blair : 1999(2) S.C.T. 286*** the employee looked after the duties of higher post and he worked though temporarily and in an officiating capacity, however, it was held that he was entitled to draw salary attached to the higher post during the time he actually worked on that post. To the same effect are the judgments passed in ***State of Punjab and another Vs. Dharam Pal : 2017 AIR SC 4438; Gurmej Singh Vs. State of Punjab : 1995 (3) S.C.T. 279; Balbir Singh Dalal and others Vs. State of Haryana and another : 2002(4) S.C.T. 422*** and ***Pritam Singh Dhaliwal Vs. State of Punjab and another : 2004(6) SLR 758***.

12. In view of the above and the law laid down in the abovesaid judgments, the present petition is allowed and the respondents are directed to release the pay and allowances of the post of

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Accountant (on which the petitioner is working since 20.05.1992) to the petitioner from 20.05.1992 to 06.12.2006, within a period of three months from the date of receipt of certified copy of this order.

18.01.2024

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No