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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14067-1998 (O&M)
Date of decision: 16.09.2024

VED PAL SINGH

...Petitioner

VERSUS

THE HARYANA STATE CO-OPERATIVE APEX BANK LTD.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

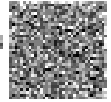
Present:- Mr. R. K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner.

Mr. Ashwani Verma, Advocate for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned orders Annexure P-4, Annexure P-6 and Annexure P-7 with a further prayer to direct the respondent to grant arrears of salary to the petitioner from the date his junior was promoted as Manager.

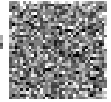
2. Learned Senior Advocate appearing on behalf of the petitioner submitted that the petitioner was working as Assistant Manager and on 17.03.1993, he was ignored for promotion and his junior was promoted to the post of Manager. He further submitted that the reason as to why the petitioner was ignored was that there were some disciplinary proceedings pending against him and those disciplinary proceedings culminated into dropping of charge-



sheet and in reply to the present writ petition, it has been so stated by the respondent-Bank that the charge-sheet against the petitioner was dropped but at the same time it has also been stated that warning was issued to him but there is no such order placed on the record by the respondent-Bank. He further submitted that once the charge-sheet was dropped then the petitioner was thereafter granted retrospective deemed date of promotion with effect from 17.03.1993 as Manager i.e. the date on which his junior was promoted to the post of Manager but he has not been granted the difference of salary and regarding which he is entitled for the same.

3. Learned Senior Advocate appearing on behalf of the petitioner referred to a Division Bench judgment of this Court in **LPA-1018-2012**, titled as **Satyavir Singh Shekhawat versus State of Haryana and others**, decided on **02.11.2012**, which was also upheld by Hon'ble Supreme Court, wherein the entire law starting from the judgment passed by Hon'ble Supreme Court in **Union of India and others versus K. V. Jankiraman and others, (1991) 4 SCC 109** has been discussed in detail and submitted that in view of the settled law, when the charge-sheet against the petitioner has been dropped and his junior has been promoted and he has also been given deemed date of promotion then he is also entitled for the difference of salary. He also submitted that the present case is squarely covered by the aforesaid judgments not only on the point of law but even the facts of the present case are similar in nature.

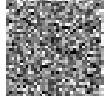
4. On the other hand, learned counsel for the respondent while referring to the reply filed on behalf of the respondent-Bank submitted that it is not in dispute that the petitioner was not promoted on 17.03.1993 to the post of



Manager when his junior was promoted to the post of Manager but thereafter, as per the reply, at that point of time he was not promoted because there were adverse ACRs against him and thereafter on 30.10.1993 and 25.07.1995, the petitioner was again considered but he was not promoted because of the pendency of disciplinary proceedings against him. He further submitted that as per the reply, the charge-sheet against the petitioner was dropped but warning was issued to him. During the course of arguments, this Court had raised a specific query to the learned counsel for the respondent-Bank as to how two things could go together i.e. dropping of the charge-sheet and issuance of warning, to which he could not offer any justification because there was no document placed on the record but it is an admitted position that the charge-sheet against the petitioner was dropped. He also submitted that since the petitioner did not work on the aforesaid post, then the principle of '*No Work No Pay*' will apply to the petitioner and therefore, he is not entitled for grant of any monetary benefits although he has been promoted to the post of Manager with effect from 17.03.1993 i.e. when his junior was promoted and the petitioner was granted all the benefits with regard to the deemed date of promotion except for the monetary benefits.

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

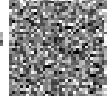
6. The only issue involved in the present case is that when an employee, who is senior is not promoted because of pendency of disciplinary proceedings against him and thereafter, he is exonerated or disciplinary proceedings against him are dropped then as to whether he is entitled for grant of monetary benefits i.e. difference of pay from the date when he is granted



promotion or not. A Division Bench of this Court in Satyavir Singh Shekhawat's case (supra) had an occasion to deal with the aforesaid proposition of law, wherein the facts of the case were also similar in nature. Paras No.18 and 19 of the aforesaid judgment passed by a Division Bench of this Court are reproduced as under:-

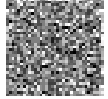
“18. In those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of the higher post for the relevant period, in such circumstances, would amount to hostile discrimination.

19. Keeping in view the principles we have formulated above which are culled out above from the catena of judgments, we have to find the outcome to the present case. The facts of the case have already been noticed above. It is clear there from that the appellant was not promoted earlier, when his juniors were promoted because of the departmental enquiries pending against him. No doubt, these enquiry proceedings have been dropped on the ground of delay. We were shown the original record containing this decision. The reason given is that there is a 14 years delay in conducting the enquiry which would act to the prejudice of the appellant if the inquiries continue. Once that fact is accepted by the Department itself and on that basis the enquiries were dropped, the net effect thereof would be that the appellant was exonerated of the charges. As no penalty has emanated from these charge-sheets, it is for this reason the respondents have themselves given him the promotion from



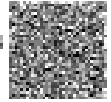
*back date. In such circumstances, denial of actual salary and grant of only deemed promotion on the principle of 'no work no pay' may not be appropriate. Admittedly, the juniors who were granted the benefit of promotion received the salary and if the appellant is deprived thereof, it would amount to hostile discrimination qua him. We are, therefore, of the opinion that the principle of 'no work no pay' cannot be made applicable in the instant case and the appellant would be entitled to salary. There is a Division Bench judgment of this Court in case **Vidya Parkash Harnal Vs. State of Haryana 1995(3) S.C.T. 785** which is squarely applicable in the present case. The Court negated the argument predicated on the basis of principle of 'no work no pay' which is to the following effect:-*

"7. Similarly, the argument that the petitioner was not entitled to the grant of emoluments on the principle of 'No work No pay' is apparently mis-conceived and based upon wrong notions of law. If a civil servant is not offered the work to which he was legally entitled, he cannot be deprived of the wages for the post to which he subsequently is held entitled to. Permitting such a course to be adopted would be encouraging the imposition of double penalty, that is, firstly by declining the civil servant his right of promotion and secondly by depriving him of the emoluments to which he would have been entitled to upon promotion which subsequently is considered in his favour. Deprivation to work against the post to which a civil servant is entitled on promotion is always at the risk and responsibility of the State and cannot be made a basis for depriving such a civil servant of the emoluments to which he was entitled, had he been promoted in



accordance with the rules at the time when he became eligible for such promotion. The Courts cannot ignore the magnitude of the sufferings and the pains to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this age of skyrocketing prices and non availability of essential requirements of livelihood. The Court cannot shut its eyes and forget the holocaust of economic deprivation to the petitioner and his dependants. Such a deprivation might have upset the career of the dependants, depriving the society of the services of such youth and budding dependants or children of the petitioner. The executive once being satisfied that a civil servant was entitled to the promotion with retrospective effect cannot deprive him of the benefits of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons. The order impugned in this case by which the petitioner/appellant was deprived of his right to claim back wages is admittedly non-speaking without assigning any justification or cogent and specific reasons. "

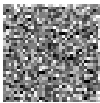
We thus allow this appeal and set aside the impugned order. Accordingly, the writ petition filed by the petitioner stands allowed. As a consequence, the appellant shall be entitled to the arrears of pay and allowances as well from 05.07.1994 to 31.01.2006 as Divisional Employment Officer and from 01.02.2006 to 09.04.2008 as Deputy Director (Employment). The arrears shall be calculated and paid to him within a period of one month from today. "



7. In the present case, the petitioner was ignored for being promoted to the post of Manager on 17.03.1993, when his junior was promoted and regarding the same there is no dispute. Thereafter, disciplinary proceedings against the petitioner were dropped and he was granted retrospective deemed date of promotion with effect from 17.03.1993, when his junior was promoted to the post of Manager but he has not been granted any monetary benefits of difference of salary. There is nothing on the record to show as to why the petitioner could be denied the aforesaid benefits. Rather on the other hand, the law is well settled now. A perusal of the aforesaid judgment passed by a Division Bench of this Court in **Satyavir Singh Shekhawat's case (supra)** would show that the principle of 'No Work No Pay' is not an absolute principle and is subject to exceptions. Where an employee is wrongfully kept away from discharging his duties then he is entitled for payment of arrears of salary during which he was kept away from work due to no fault of his.

8. In addition to above, Hon'ble Supreme Court in **The Commissioner, Karnataka Housing Board versus C. Muddaiah, (2007) 7 SCC 689** and another judgment of this Court in **Gowramma C. (Dead) by LRs versus Manager (Personnel) Hindustan Aeronautical Ltd. And another, (2022) 11 SCC 794** also held that when an employee is kept away from discharging his duties without his fault, then in that situation, the principle of 'No Work No Pay' will not apply.

9. After hearing learned counsel for the parties, this Court is of the considered view that the present writ petition deserved to be allowed. Rather the present case is covered in favour of the petitioner by way of a judgment passed



by a Division Bench judgment of this Court in Satyavir Singh Shekhawat's case (supra).

10. Consequently, the present writ petition is allowed. It is therefore directed that the respondent-Bank shall calculate the difference of salary/monetary benefits which accrue to the petitioner with effect from 17.03.1993 and pay the same to him, within a period of three months from today, alongwith interest @ 6% per annum (simple).

16.09.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No