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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4533-2019(O&M)
Date of decision: 19.03.2024

Mahabir Singh Tanwar

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Petitioner in person.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Mr. Sanjiv Gupta, Advocate, for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 05.02.2019 (Annexure P-6) vide which the claim of the petitioner has been rejected in an illegal and arbitrary manner.
2. Petitioner appearing in person submitted that he was working as a Manager in the respondent-Bank and vide order Annexure P-1, he was granted current duty charge on 20.08.2009 by way of posting as officiating CEO which is equivalent to the post of District Manager and there is a higher pay scale of the aforesaid post of District Manager/CEO. Thereafter, vide Annexure P-2, he was again granted the aforesaid posting of CEO on 10.08.2015. He continued to discharge the duties on the higher post of CEO which was having a higher pay

scale. However, the aforesaid charge was taken away from him and he was posted as Manager. Thereafter, he filed a writ petition before this Court and an interim order was passed in the aforesaid writ petition whereby he again continued to work and discharge the duties of CEO till the time he was actually promoted as District Manager on 31.08.2016. Thereafter, he filed a representation to the respondent-Bank vide Annexure P-3 in the year 2018 that he should be paid the difference of salary because he had discharged the duties on a higher post. He retired on attaining the age of superannuation on 30.04.2019. He submitted that on the aforesaid representation (Annexure P-3) no action was taken by the respondent-Bank and therefore, he was constrained to file a writ petition before this Court bearing CWP No.25997 of 2018 which was disposed of by a Co-ordinate Bench of this Court vide Annexure P-4 and a direction was issued to the respondents to decide the representation dated 30.07.2018. In pursuance of the aforesaid order passed by a Co-ordinate Bench of this Court, the impugned order (Annexure P-6) has been passed.

3. The petitioner appearing in person further submitted that a perusal of the aforesaid impugned order would show that it is not in dispute that the petitioner was granted current duty charge which has been so reflected in the order itself but the only reason for declining the benefit of the difference of salary for the time during which he had actually discharged the duties on a higher post was that it was on the request of the petitioner that he was granted the aforesaid current duty charge and there was no administrative requirement and therefore, he cannot plead for extra remuneration. Another reason which was given in the impugned order was that he had challenged the action of the Bank after a period of 9 years before he was going to retire and in this way because of the delay, he is not entitled for the aforesaid benefit. He submitted

that both the reasons which have been given in the impugned order are perverse and against the settled law. He also relied upon a judgment of the Hon'ble Supreme Court in Smt. P. Grover versus State of Haryana and another, 1983 (4) SCC 291 and a Full Bench judgment of this Court in Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207 in this regard.

3. On the other hand, Mr. Sanjiv Gupta, learned counsel appearing on behalf of the respondent-Bank submitted that the present petition is hit by delay and laches because the petitioner was granted the current duty charge /officiating post in the year 2009 and he has filed the present petition in the year 2019. He also submitted that since the petitioner himself requested to do the duties on the higher post and he was given the aforesaid benefit on his own pay scales now he cannot claim the benefit on that account. He submitted that even after he was promoted in the year 2016 as District Manager, his salary has not been re-fixed by passing any order.

4. I have heard the learned counsel for the parties.

5. A persual of Annexures P-1 and P-2 whereby the petitioner was posted as Officiating CEO would show that there is no such condition in the aforesaid orders to show that he was to officiate as CEO in his own pay scale. The fact that the aforesaid post of CEO where the petitioner was officiating is a higher post and has a higher pay scale is not in dispute. It is also not in dispute that the aforesaid duties of the petitioner at officiating post was in the nature of a current duty charge because the same is so reflected in the impugned order. The only dispute which needs consideration in the present case is whether the petitioner was entitled for the grant of difference of salary for the period he actually worked on a higher post having a higher pay scale or not. The only justification which has been given by the learned counsel for the respondent-

Bank and in terms of the impugned order is that the petitioner had on his own requested for the aforesaid posting and it was not a result of administrative requirement. Such a reasoning given by the respondent-Bank is not sustainable in view of the fact that there is no law to support the same. It is insignificant and irrelevant as to whether the petitioner has discharged the duties on his own request or because of the administrative requirement because the fact remains that the petitioner had actually discharged the duties on a higher post in a higher pay scale and therefore that itself entitles the petitioner for the higher pay scale of the higher post on which he discharged the duties. So far as the delay aspect is concerned, the argument raised by the learned counsel for the respondent-Bank is also not sustainable in this regard in view of the fact that earlier the petitioner had filed a petition before this Court in CWP No.25997 of 2018 which was disposed of by a Co-ordinate Bench of this Court vide Annexure P-4 on 09.10.2018 with a direction to respondent to pass an order and impugned order (Annexure P-6) has been passed on 05.02.2019 which is under challenge in the present case and in fact the present petition has been filed after about a week of the passing of the aforesaid order and therefore by no stretch of imagination it can be said that the present petition is hit by delay and laches. The argument raised by the learned counsel for the respondent-Bank that the relevant period is starting from 2009 also pales into insignificance once the challenge in the present petition is to the order of the year 2019 itself when the petition was filed and therefore, such a plea of delay and laches is misconceived. The law with regard to as to whether an employee who discharges his duties on higher post is entitled for the salary of that post or not is no longer *res intergra*.

6. The Hon'ble Supreme Court in Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87 held 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 that 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.”

7. A Full Bench of this Court in Subhash Chander’s case (supra) also considered this issue and it was held that a person who is given a current duty charge is entitled to the pay and salary for the time he had discharged his duties.
8. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 05.02.2019 (Annexure P-6) is hereby set aside. The respondents are directed to pay the petitioner the difference of salary for the period he actually discharged his duties on current duty charge/officiating post after calculating the same alongwith interest @ 6% per annum (Simple) within a period of three months from today. In case the aforesaid amount is not paid within a period of three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum.
9. The second prayer of the petitioner is that the petitioner after he was promoted to the post of District Manager in the year 2016, his salary was not re-fixed. The respondent-Bank is also directed to pass an order with regard to fixing of the salary of the petitioner after he was promoted and to pay him all the consequential benefits within a period of three months from today alongwith interest @ 6% per annum (simple).