

CWP-16005 of 2001

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

CWP-16005 of 2001

Date of decision: 25.11.2024

Er. Jagan Nath Arora

.....Petitioner

Versus

Punjab State Electricity Board (Now PSPCL)

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. V.K. Shukla, Advocate, for the petitioner.
Mr. Rajiv Sharma, Advocate, for the respondent.

NAMIT KUMAR, J. (ORAL)

1. Instant petition has been filed by the petitioner seeking quashing of the order dated 10.01.2000 (Annexure P-3) to the extent that it does not extend the benefit of pay and allowances on account of deemed date of promotion of the petitioner as Assistant Executive Engineer w.e.f. 03.10.1996 and further a writ of mandamus has been sought, directing the respondent to grant the benefit of pay and allowances to the petitioner, along with all consequential benefits, including arrears of salary with 18% interest.

2. The case set up in the present case is that at the time of promotion to the post of Assistant Executive Engineer, the case of the petitioner was deferred on the ground that he has been inflicted the punishment of stoppage of one increment with cumulative effect vide order dated 18.12.1995 and Sh. Ramesh Chand Sharma, person junior to the petitioner, was promoted vide order dated 30.09.1996, who joined on the promoted post on 03.10.1996. The petitioner filed

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departmental appeal dated 15.02.1996 against the said punishment and the Appellate Authority set aside the punishment and letter of warning was issued to the petitioner vide order dated 22.05.1998. Thereafter, the petitioner made representations dated 12.06.1998 and 12.02.1999, seeking promotion w.e.f. 03.10.1996 and on said representations, vide impugned order dated 10.01.2000, petitioner has been granted promotion as Assistant Executive Engineer w.e.f. 03.10.1996, when his junior Sh. Ramesh Chand Sharma was promoted and joined as AEE for the purpose of seniority only. Thereafter, the said order was modified vide order dated 22.02.2002, whereby the petitioner was allowed benefit of deemed pay fixation as Assistant Executive Engineer w.e.f. 03.10.1996 with the stipulation that no arrears on this account shall be admissible to him as per law laid down by the Hon'ble Supreme Court in ***Paluru Ramkrishnaniah v. Union of India, 1990 AIR Supreme Court SC 166.***

3. Written statement on behalf of the respondents has been filed wherein following stand has been taken: -

“1. The case of the petitioner was deferred for promotion as Assistant Executive Engineer because he was inflicted a punishment of stoppage of one increment with cumulative effect vide order dated 18.12.95 and on account of pendency of another Departmental enquiry pending against him. He filed a Departmental appeal and the Appellate Authority set aside the aforesaid order of stoppage of one increment and instead issued a letter of warning vide order dated 22.5.98. The petitioner made a representation that he should be promoted w.e.f. the date

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*his junior Sh.Ramesh Chand Sharma was promoted vide order dated 3-10-96 on the ground that the punishment of stoppage of increment awarded to him had since been set aside and only a warning had been given. His representation was accepted and he was given promotion as Assistant Executive Engineer wef 3.10.96, the date when his junior Sh.Ramesh Chand Sharma was so promoted vide orders dated 10.1.2000 (P- 3) He was, however, denied the back wages for the period of deemed promotion. In view of the judgement of the Hon'ble Supreme court reported as AIR 1990 SC 167. the petitioner is not entitled to the salary because he had not worked against that post, the promotion being only deemed. **He has, however, been given the benefit of deemed pay fixation as Assistant Executive Engineer w.e.f. 3.10.96 without arrears vide orders dated 22.2.2002**, copy enclosed as Annexure R-1, as per the ratio of the aforesaid judgement of the Apex Court. The writ petition is, therefore, not maintainable.*

2. That as per the instructions dated 28.9.95 (Annexure P-4), relied upon by the petitioner, it is clearly laid down in Para 3 that the employee whose promotion is deferred on account of a pending disciplinary case will be entitled to full arrears of pay from his deemed date of promotion, if he is subsequently exonerated completely. The instructions relied upon by the petitioner Annexure P-5 and P-6, only pertain to the grant of deemed promotion of such employees in case they are subsequently exonerated completely. In the present case, the petitioner has not been completely exonerated by the Appellate Authority but was awarded letter of warning while setting aside the order withholding one increment with cumulative effect. Copies of instruction of the answering respondent dated

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2.1.96 and the instructions issued by the Punjab Government dated 8.12.98 and the order adopting aforesaid instructions of the Punjab Government by the answering respondent dated 8.10.2001 are annexed as Annexures R-2, R-3 and R-4 respectively. The petitioner, thus, is not entitled to the arrears claimed by him.”

4. Although the petitioner has been promoted as Assistant Executive Engineer w.e.f. 03.10.1996 and the benefit of pay fixation has also been granted from the said date, however, he has been denied the arrears of the promoted post w.e.f. 03.10.1996.

5. Learned counsel for the petitioner has submitted that the petitioner was wrongly ignored for promotion and person junior to him was promoted and although the said mistake has been rectified by the respondents by promoting the petitioner to the post of Assistant Executive Engineer w.e.f. 03.10.1996, vide order dated 10.01.2000, however, he has been denied the consequential benefits arising out of retrospective promotion.

6. *Per contra*, learned State counsel has argued that since the petitioner has not performed the duties on the promoted post, therefore, he is not entitled for the pay of the promoted post.

7. I have heard learned counsel for the parties and perused the record.

8. The facts are not in dispute that the person junior to the petitioner was promoted as Assistant Executive Engineer, vide order dated 30.09.1996, and the petitioner was ignored for promotion on the ground that he has been inflicted the punishment of stoppage of one

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increment with cumulative effect vide order dated 18.12.1995. Thereafter, vide order dated 10.01.2000, petitioner has been promoted as Assistant Executive Engineer w.e.f. 03.10.1996, the date when person junior to him was promoted. The petitioner was under the currency of punishment when he was denied promotion and person junior to him was promoted. The said major punishment was annulled and warning was issued and in these circumstances, the petitioner has been given promotion with effect from the date person junior to him was promoted. The principle of 'no work no pay' would not be applicable in the present case as the petitioner was willing to work on the promoted post, however, he was not promoted at the relevant point in time.

9. A Division Bench of this Court in ***Satyavir Singh Shekhawat v. State of Haryana and others, 2014(4) SCT 233***, while considering the similar issue has observed as under:-

“9. We find that number of cases are decided by the Apex Court as well as various High Courts and in some cases, relief of arrears of pay is granted, while in some other cases it is denied applying the doctrine of 'No work No pay'. Determination of the circumstances under which an employee should be given the arrears of pay and under what circumstances in which he can be denied this benefit is the task before us which we will endeavour to carry out relying upon the principles laid down in the decided cases.

*10. The first case which needs mention in the chronology of the judgments, we are taking stock of, is the decision of the Supreme Court in **Paluru Ramkrishnaiah & Ors. v. Union of India & Anr. (1989) 2 SCC 541**. The Court in*

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this case held that in case the promotion granted with retrospective effect, back wages for the period for which the person actually did not work in the promotion post is not payable. This view was taken on the basis of the following factual background:-

"16. It may also be noticed that even though the petitioners on their completion of two years' service as Supervisor "A" were not promoted as Chargeman II in or about the year 1966 they chose to wait for about 17 years to file these writ petitions which were filed in 1983, and nearly 2 years even after the decision dated February 2, 1981 in Civil Appeal No.441 of 1981, which indicates that but for the decision in Civil Appeal No.441 of 1981 they would perhaps not have thought of filing these writ petitions inasmuch as in the meantime they had not only been promoted in the normal course as Chargeman II but some of them had been promoted even to higher posts in the hierarchy."

*11. In **Union of India and Ors. v. K.V. Jankiraman & Ors.** 1991(3) S.C.T 317 : (1991) 4 SCC 109, this issue came up for consideration namely whether the Government could deny the benefit of wages for the past period if he was granted promotion subsequently but from back date. Union of India had contended that a person cannot be allowed to draw benefits of a post the duties of which he had not discharged. This contention was negated as not applicable where an employee, who is willing to work, is kept away from work by the authorities for no fault of his. The Supreme Court observed as under:-*

"24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a

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post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension, when, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17 (1) will also be in applicable to such cases."

*12. Issue again came up for consideration before the Supreme Court in the case of **State of A.P. v. K.V.L. Narasimha Rao & Ors., 1999(2) S.C.T. 684 : (1999) 4 SCC 181**. In this case also the court held that back wages are normally to be allowed in case of retrospective promotion. However, in the said case, the Court denied the benefit to the employee noting down the peculiar facts of this case in the following terms:-*

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"5. In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. However, on the reorganisation of States a large number of officers stood allotted from different States to the newly-formed State and their services had to be integrated on various principles and several agencies were involved in the same. The steps to be taken thereto were one of formulation of principles, publication of a provisional inter-State seniority list, inviting objections thereto, consideration of those objections in consultation with the Central Government and acting upon its directions to bring the seniority list in conformity with such directions. This entire exercise involved a good deal of time and gave rise to an extraordinary situation. It is in those circumstances that the rules contained in Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have been framed. As a matter of fact, rules of the erstwhile State regarding seniority are not applicable in the new State as the allottees are governed by the Act and seniority is finalised therein. Even so, we do not see that there is any impediment to frame new rules affecting conditions of service of such allottees but in conformity with the Act. Surely new rules cannot be brushed aside by saying that they are not applicable to cases coming under the Act. There is no contention either in the High Court or before us that they are framed in contravention of the Act. In this background, we fail to see as to why the rules are

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not applicable to the respondents as held by the High Court."

*13. Another judgment which needs to be mentioned is in the case of **State of Haryana & Ors. v. O.P. Gupta & Ors., (1996) 7 SCC 533**. The controversy involved in the said case was whether the employees were entitled to arrears of salary for the period for which they had admittedly not worked, but had been given notional promotion from the deemed date. The matter related to a seniority dispute where fresh seniority list was directed to be prepared in accordance with rules ignoring any inconsistent administrative instructions. The Supreme Court held that entitlement of the employees to work arose only when they were promoted in accordance with rules and the preparation of seniority list was a condition precedent for the exercise. The employees could not be posted in the promotional post till the exercise was carried out and thus, their plea that they were willing to work had no legal foundation. The Court, thus, did not give these employees benefit of arrears of salary for the period they had not worked. The case of **K.V. Jankiraman (supra)** was discussed and distinguished. We may, for our purpose, take note of the following observations in the said judgment:-*

"5. Shri Gupta, learned counsel appearing for the State, contended that the State was prepared to comply with the direction issued by the High Court in the first instance for the preparation of the seniority list but the rival candidates who claimed inter se seniority over the others approached the Division Bench and also this Court for relief; since, ultimately, this Court has decided that seniority has to be prepared strictly in accordance with Rule 9 of

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the Rules, on receipt thereof, the Government has complied with the conditions of the preparation of the seniority list. Accordingly, they have been given the promotion with the deemed dates, though there was no specific direction in that behalf. Others who had joined the service have not claimed, except the respondents, but some of them were not even parties to the earlier writ proceedings or to the appeal in this Court and consequently, they are not entitled to the arrears. It is contended by Shri S.M. Hooda, learned counsel appearing for the respondents that the respondents were willing to work in the respective posts but they were not given the same. To avoid their entitlement, a seniority list was wrongly prepared denying them their entitlement to work in the promotional post; consequently, the respondents are entitled to the arrears of salary and the High Court was right in granting the same."

14. We may also refer to two more judgments having some relevance. These cases are:-

1. Union of India & Ors. v. Rejinder Singh Rawat, (1999) 9 SCC 173.

2. State of Uttaranchal and Another v. Dinesh Kumar Sharma, 2007(1) S.C.T. 393 : 2007 1 SCC 683.

*In the first case mentioned above, namely, **Rejender Singh Rawat (supra)**, the Court granted the relief in the following context:-*

"2. The short question that arises for consideration is whether the High Court was justified in granting relief of payment of back wages to the respondent for the period he has not actually served. There is no dispute that the respondent's case was omitted

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from consideration on the ground that his chest was short by 2 cm. and as such he did not have the necessary physical standard, but, similar departmental candidates were considered and got the relief. The respondent' case was, therefore, appropriately considered by the appropriate authority and by letter dated 21-12-1995, it was conveyed that the respondent would be entitled to the rank of Assistant Sub-Inspector (Clerk/Typist) from 3-8-1992 the date on which panel of 1992 was released, with the further direction that his seniority would be protected on a notional basis, but he would not be entitled to any pay and allowances of Assistant Sub-Inspector (Clerk/Typist) for the back period and would be entitled to the same only from the date he assumes the charge physically.

3. In the teeth of the aforesaid order, the High Court was not justified in granting the payment of back wages for the period for which the appellant has not actually assumed the charge. In the aforesaid premises, we set aside the impugned order of the High Court and allow this appeal. There shall be no order as to costs."

*15. In **Dinesh Kumar Sharma (supra)**, the Supreme Court was concerned with the issue for consideration as to whether seniority should be given to incumbents from the date when promotional fell vacant or from the date of his substantive appointment to the said vacant post. The Court held that the seniority could not be given retrospectively from the date of occurrence of vacancy. This case, therefore, would not provide much assistance in dealing with the issue at hand.*

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16. We find from the aforesaid discussion that at times Supreme Court has granted the relief whereas on some other occasions, the arrears of salary for the period prior to the date of actual assumption of promotional post are denied. However, a closure scrutiny of the facts in each case would clearly reveal a discerning trend and there is no contradiction as far as principle of law laid down in various judgments is concerned.

17. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realising that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see **State of Kerala and Others v. E.K. Bhaskaran Pillai, JT 2007 (6) SC 83; Mohd. Ahmed v. Nizam Sugar Factory and Others – (2004) 11 SCC 210; Nalini Kant Sinha v. State of Bihar and Others – 1993 Supp (4) SCC 748**. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.

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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

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*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 v. 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 misconceived 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

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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."

10. The aforesaid judgment has been followed by this Court in ***CWP No.21473 of 2018 – Sanjeevan Singh v. State of Punjab and others decided on 12.03.2024; CWP No.35402 of 2019 – Baljit Kumar v. State of Punjab and another decided on 26.07.2024 and CWP-412 of 2020 – Khushwant Singh Brar v. State of Punjab and another***

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rendered on 25.10.2024. Further, the judgment in *Sanjeevan Singh’s case (supra)* has been upheld in *LPA No.1910 of 2024 – The Commissioner, Municipal Corporation, S.A.S. Nagar v. Sanjeevan Singh and others decided on 20.08.2024.*

11. Applying the aforesaid principle to the present case, the petitioner cannot be denied the same benefits as have been meted out to his junior who was given promotion w.e.f. 03.10.1996.

12. In view of what has been discussed hereinabove, the present petition is allowed and the respondents are directed to grant arrears of pay of the promoted post of ‘Assistant Executive Engineer’ w.e.f. 03.10.1996 to the petitioner, with all consequential benefits and the same be calculated and released to him within a period of three months from the date of receipt of certified copy of this order.

25.11.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No