



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

CWP-4666 of 2022

Reserved on: 08.08.2024

Pronounced on: 21.08.2024

Smt. Rama Rani

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Akshit Dhiman, Advocate,
for the petitioner.

Ms. Saguna Arora, AAG, Punjab.

Mr. Aditya Pratap Duggal, Advocate,
for respondent No.3.

NAMIT KUMAR, J.

1. The petitioner has filed the present writ petition claiming the following reliefs: -

“(i) Civil Writ Petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari quashing the impugned order dated 22.10.2021 (Annexure P-17) whereby respondent No.2 while rejecting the claim of the petitioner for promotion to the post of Senior Assistant has not only mislead the petitioner but also this Hon’ble Court by stating that the post of Senior Assistant can be filled up only from Clerks and is governed by the general rules namely Punjab Civil Services (General & Common Conditions of Service) Rule 2015 which hold the field only if



there are no departmental rules whereas the Trust Employees are governed by their own Statutory Recruitment Rules namely, Punjab Trust Services (Recruitment and Conditions) Rules, 2015 notified on 30th September, 2015 (Annexure P-8).

- (ii) To issue writ of mandamus directing the respondents to consider the petitioner for promotion to the post of Senior Assistant w.e.f. the date when her juniors were promoted as such vide orders dated 09.10.2018 (Annexure P-10) and even another counterpart Ms. Harpreet who has been promoted as Senior Assistant vide orders dated 14.10.2020 (Annexure P-12) pursuant to the directions issued by this Court and the petitioner being fully eligible in terms of the Punjab Trust Services (Recruitment and Conditions) Rules, 2015 (Annexure P-8).
- (iii) To further direct the respondents to retrospectively promote the petitioner as Senior Assistant w.e.f. 09.10.2018 all consequential benefits including seniority, pay fixation, increments etc.”

2. The brief facts as have been pleaded in the petition are that the petitioner was appointed as Steno-typist on 19.08.1987 in the Improvement Trust Cadre and for the last more than 30 years, she is working on the same post, without any promotion, despite availability of promotional post of Senior Assistant. With a view to merge various clerical posts carrying identical pay scales, respondent No.1 vide notification dated 10.03.1999, merged all employees serving in the Improvement Trust such as Junior Assistant, Senior Assistant, Clerk, Clerk-cum-typist, Bill Distributer, Steno-typist and Junior Scale



Clerks” and in pursuance thereto, final joint seniority list was issued vide letter dated 30.07.2013 and in the said seniority list name of the petitioner was shown at serial No.54. Thereafter, a letter dated 29.01.2016 was issued by respondent No.2, whereby it was stated that matter regarding designating Clerks/Senior Clerks/Steno-typists as Junior Assistants is under consideration and information was sought regarding any vigilance case or inquiry pending against employees mentioned from serial No.29 to 87 in the seniority list dated 30.07.2013. Consequently, vide letter dated 04.02.2016, Executive Officer, Improvement Trust, Ropar, informed respondent No.2 that there is no vigilance complaint or vigilance inquiry pending against the petitioner. Thereafter, vide order dated 03.01.2017, respondent No.2 designated various Clerks/Senior Clerks/Steno-typists/Junior Scale Stenographers as Junior Assistants, including the petitioner whose name has been mentioned at serial No.14 and consequently, petitioner was designated as Junior Assistant w.e.f. 01.05.2014, vide order dated 03.01.2017. However, the said order dated 03.01.2017 was withdrawn by respondent No.2 vide order dated 04.09.2018, and reverted petitioner to her original cadre of Steno-typist. Thereafter, vide order dated 09.10.2018, respondent No.2 promoted Clerks/Junior Assistants as Senior Assistants who were junior to the petitioner having been appointed 5/6 years after the recruitment of the petitioner, without considering her claim. Thereafter, one Ms. Harpreet Kaur who was appointed as Steno-typist on 01.10.1982 in the Trust Cadre and her name figured at serial No.24 in the joint seniority list dated 30.07.2013,



filed CWP No.7410 of 2020 before this Court, claiming promotion to the post of Senior Assistant. Vide order dated 14.10.2020, she was promoted as Senior Assistant w.e.f. 10.05.2015 (notionally) i.e. when her junior Ms. Suresh Bala (seniority No.28) was promoted. CWP No.7410 of 2020 filed by her was rendered infructuous and the same was disposed of as such vide order dated 12.01.2021. Petitioner submitted representation dated 26.10.2018, claiming promotion to the post of Senior Assistant, followed by subsequent representations dated 28.10.2020 and 18.11.2020. These representations were followed by legal notice dated 10.06.2021 and 09.08.2021 and since no action was taken by the respondents even on the legal notice(s), therefore, the petitioner approached this Court by way of CWP-17649 of 2021, which was disposed of by this Court vide order dated 09.09.2021 with a direction to decide her legal notice within a period of four months. Respondent No.2 rejected the claim of the petitioner vide impugned order dated 22.10.2021 (Annexure P-17) on the ground that as per Personnel Department, Punjab, notification dated 15.03.2015 only a Clerk can be considered for promotion to the post of Senior Assistant whereas the petitioner was a Steno-typist.

3. On issuance of notice of motion, reply by way of affidavit of Harpreet Singh Atwal, Deputy Secretary, Government of Punjab, Department of Local Government, Punjab, on behalf of respondents No.1 and 2, has been filed wherein it has been stated as under: -

“3. That in this regard, it is respectfully submitted that vide order dated 9.10.2018 (P-10), some Clerks and Junior Assistant working in the various Town



Improvement Trusts were promoted to the post of Senior Assistants. Prior to promotion of the petitioner to the post of Senior Assistant, the petitioner was working in the cadre of Steno-typists. As per provisions contained in the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, only Clerks, who have an experience of five years (Now four years), could be promoted to the post of Senior Assistant. As per provisions contained in Rule 20 of the said Rules of 1994, the provisions of the aforesaid rules shall have effect notwithstanding anything to the contrary contained in any Rule for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. Therefore, the respondents presumed bonafidely that as per the aforesaid provisions, only Clerks/Junior Assistants are eligible to be promoted to the post of Senior Assistant. However, upon re-consideration of the matter, it was found that as the recruitment and other conditions of service of persons appointed to the various posts in the Town Improvement Trusts are being governed and regulated by different sets of rules, therefore, vide order dated 03.07.2024, the petitioner has been promoted to the post of Senior Assistant with effect from 09.10.2018 on notional basis, the date from which some junior persons working to the post of Clerks in terms of length of service had been so promoted. Vide the said order dated 3.7.2024, the petitioner was promoted on notional basis because the petitioner had not actually worked to the post of Senior Assistant. Hence, the petitioner was granted notional promotion. The Document is annexed as Annexure R1/1-T.

4. That it is further respectfully submitted that the petitioner is not entitled to the arrears of pay on account of her notional promotion. It is well settled legal principal



of "No Work No Pay" is very simple. "When a person is employed, it is expected that the work assigned will be carried out. When this work is not done, the employee is not eligible for payment of any salary". As per the above said principle that when a person has not worked on a post, he/she is not entitled for the salary or any other consequential benefits, except the fixation of notional pay only. The rule of "NO WORK NO PAY" does not allow any person to get such benefits. Moreover, as per settled principles of law, even at the time of promotions from back date, promotions are always given notionally without any monetary benefits, except fixation of pay. Therefore, this principle of "No Work No pay" is fully applicable on the petitioner's case as she was notionally promoted from the due dates when juniors were promoted. As the petitioner has not rendered any service on the concerned post, therefore, the petitioner is not entitled for any arrears of salary or any financial benefits.

4. Learned counsel for the petitioner has contended that although during the pendency of the present petition, petitioner has been promoted to the post of Senior Assistant w.e.f. 09.10.2018 i.e. the date when person junior to her was promoted, however, said promotion has been ordered on notional basis, denying the pay and allowances of the promoted post and the petitioner cannot be made to suffer for the lapse committed by the respondents for not promoting the petitioner on 09.10.2018, when the person junior to her was promoted.

5. *Per contra*, learned State counsel has tried to justify the notional promotion granted to the petitioner by stating that since the petitioner has not worked during this period, therefore, she has been denied the arrears of pay of the promoted post.



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

7. The undisputed facts are that the petitioner was initially appointed as Steno-typist on 19.08.1987 and thereafter vide notification dated 10.03.1999, various clerical posts carrying identical pay scales were merged into common cadre known as “Punjab Service of Trust Clerks” and in pursuance thereto final joint seniority list dated 30.07.2013 was circulated wherein petitioner figured at serial No.54. Thereafter, petitioner was designated as Junior Assistant vide order dated 03.01.2017 w.e.f. 01.05.2014, however, the said order was withdrawn by the respondents vide order dated 04.09.2018 and reverted back the petitioner to her original cadre of Steno-typist and in the interregnum, promoted various persons junior to the petitioner to the post of Senior Assistant. During the pendency of the present writ petition, petitioner has also been granted notional promotion to the post of Senior Assistant w.e.f. 09.10.2018, the date when Smt. Shashi Bala, who was junior to the petitioner was promoted, denying the pay and allowances of the promoted post.

8. The only claim of the petitioner which survives is as to whether she is entitled to pay and allowances of the post of Senior Assistant with effect from 09.10.2018 when her junior was promoted.

9. Similar question arose before a Division Bench of this Court in ***Satyavir Singh Shekhawat v. State of Haryana and others***, **2014(4) SCT 233**, wherein it has been held 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 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 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:-*

"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 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 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 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's 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.

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.

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 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.***

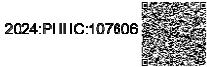


The Courts cannot ignore the magnitude of the sufferings and the pains to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this age of skyrocketing prices and non availability of essential requirements of livelihood. The Court cannot shut its eyes 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 in **CWP-21473**

of 2018 – Sanjeevan Singh v. State of Punjab and others decided on



12.03.2024 and CWP-35402 of 2019 – Baljit Kumar v. State of Punjab and another decided on 26.07.2024.

11. Applying the abovesaid principles of law to the present case, petitioner cannot be denied the same benefit as has been meted out to her junior and consequently, she is entitled to the pay and allowances of the promoted post of Senior Assistant w.e.f. 09.10.2018 when her junior, namely, Shashi Bala was promoted.

12. In view of what has been discussed hereinabove, the present petition is disposed of with a direction to the respondents to grant pay and allowances of the post of Senior Assistant w.e.f. 09.10.2018, with all consequential benefits to the petitioner. Necessary benefits shall be calculated and released within a period of three months from the date of receipt of certified copy of this order.

21.08.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No