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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9966-1997
Date of decision: 06.11.2024

HARNAM SINGH AND OTHERS

...Petitioner(s)

VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY AND ANOTHER
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ashish Bansal, Advocate as Legal Aid Counsel
for the petitioners.

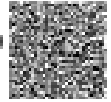
Mr. Arvind Seth, Advocate
for respondent No.1-HUDA.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

JASGURPREET SINGH PURI, J. (Oral)

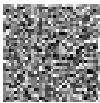
1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing respondent No.1-HUDA to provide the pay scale of the higher post of Accounts Officer to the petitioners during the period they discharged their duties on current duty charge basis and also for regularizing their promotion in the light of amended regulations.

2. Learned counsel for the petitioner submitted that it is a case where the petitioners were earlier appointed as Accounts Assistants and they were promoted to the post of Accountants in the year 1986. He further submitted that thereafter, the petitioners were granted current duty charge for the post of



Accounts Officer, which is a higher post and they discharged their duties on the higher post i.e. Accounts Officer from the year 1991 onwards till the year 1999 and thereafter, in the year 1999, they were regularly promoted to the post of Accounts Officers except for one petitioner, who was promoted in the year 2000 and in this way they have discharged the duties on current duty charge basis on a higher post of Accounts Officer and worked on that post till the time they were actually promoted on regular basis. He further submitted that the petitioners were entitled for grant of difference of salary and in this regard, the present writ petition was filed in the year 1997 and at that point of time they were still discharging their duties on a higher post of Accounts Officer on current duty charge basis.

3. Learned counsel for the petitioner referred to the judgment passed by Hon'ble Supreme Court in **Smt. P. Grover versus State of Haryana and another, (1983) 4 SCC 291**, a Division Bench judgment of this Court in **Balbir Singh Dalal versus State of Haryana, 2002 (4) SCT 422**, judgments passed by a Coordinate Bench of this Court in **P. D. Kaushik versus State of Haryana and others, CWP-16541-2015** and **Nihal Singh versus State of Haryana and others, CWP-7642-2018** and also another judgment of Hon'ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87**. He further referred to a Full Bench judgment of this Court in **Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207**, wherein similar issue was considered and it was held that a person who is given a current duty charge is entitled for the pay and salary for the time he had discharged his duties on that post.

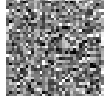


4. Learned counsel for the petitioner also submitted that it is now a settled law that any employee who works on a higher post on ad-hoc/current duty charge basis, he is entitled for grant of salary for the post on which he has worked and there is no justification for denial of the same in view of the settled law.

5. On the other hand, learned counsel for respondent No.1-HUDA submitted that he has instructions to state that there is no dispute with regard to the fact that the petitioners were granted current duty charge on the higher post of Accounts Officer in the year 1991 and thereafter, they were regularly promoted in the year 1999 except for one petitioner, who was promoted in the year 2000. He has provided a chart of the dates in this regard and the same is taken on record. The chart which has been prepared by the respondent No.1-HUDA and supplied to this Court today is reproduced as under:-

Subject:- CWP No.9966 of 1997 titled as Harnam Singh and others Vs HUDA (Now HSVP) and anr.

Petitioner's	Date of CDC of Accounts Officer	Date of Regular Promotion of Accounts Officer	Remarks
Harnam Singh S/o Sh. Dayal Singh	04.12.1991	22.10.1999	30.06.2003 (Retd.)
Sham Sunder Khurana S/o Sh. Ram Lal Khurana	04.12.1991	22.10.1999	Retired as Sr. Accounts Officer on 30.04.2013
Raghubir Singh Kaushik S/o Sh. Saheb Ram Kaushik	04.12.1991	2000	Retired as Sr. Accounts Officer on 31.03.2010
Radhey Shyam Goel S/o Sh. Kishori Lal	14.05.1991	18.11.1999	Retired as Chief Accounts Officer on 30.06.2014
R. K. Verma S/o Sh. Ram Singh	04.12.1991	22.10.1999	Retired as Accounts Officer on 30.04.2010



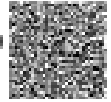
6. Learned counsel for respondent No.1-HUDA also submitted that even though the petitioners have worked on a higher post of Accounts Officer and discharged their duties as such, they are not entitled for the grant of difference of salary in view of the fact that as per Rule 76 of the Haryana Civil Services (Pay) Rules, 2016, it has been so provided that *no additional pay shall be admissible for holding, independently or in addition to own duties, current duty charge of another post(s) of the same or higher grade pay regardless of the duration.*

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

8. It is not in dispute in the present case that the petitioners, who were working as Accounts Officers were granted current duty charge to work on a higher post i.e. Accounts Officer from the year 1991 onwards till the year 1999 except for one petitioner, namely, Raghubir Singh Kaushik, who worked till the year 2000 as per the aforesaid chart supplied to this Court by the learned counsel for respondent No.1-HUDA. The law in this regard is also not *res integra*.

9. Hon'ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others (supra)** 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 the

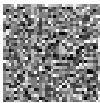


post. Both the contentions cannot be accepted. The Tribunal has already held that the respondent having been promoted as Junior Engineer I, though in stop-gap arrangement, was continued on that post, and therefore, he has a right to be considered for regular promotion. Having regard to the facts of this 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.”

10. The only plea taken by the learned counsel for respondent No.1-

HUDA is that in view of Rule 76 of the Haryana Civil Services (Pay) Rules,



2016, the petitioners are not entitled for grant of any additional pay. However, the aforesaid Rule 76 has been incorporated and has come into force in the year 2016, which cannot apply retrospectively. The subject matter of the present case pertains to the year from 1991 to 1999 and therefore, by no stretch of imagination the aforesaid Rule 76 can be made applicable to the present case. On the other hand, the case of the petitioners is squarely covered by the aforesaid judgments as relied upon by the learned counsel for the petitioners and the settled law.

11. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The respondent No.1-HUDA is directed to calculate the arrears of difference of salary/pay of the petitioners for the time period when they started discharging the duties of Accounts Officer till the time they were regularly promoted to the post of Accounts Officer (as per the chart reproduced above) and pay the same to them, within a period of four months from today, along with interest @ 6% per annum (simple). In case the aforesaid amount is not paid to the petitioners within a period of aforesaid four months, then the petitioners shall be entitled for future rate of interest @ 9% per annum (simple).

12. However, there shall be no order as to costs.

(JASGURPREET SINGH PURI)
JUDGE

06.11.2024
Chetan Thakur

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