

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

CWP-3202-2004 (O&M)
Date of Decision: 06.09.2024

Vijay Gaur

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vivek Singla, Advocate for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

AMAN CHAUDHARY, J.

1. The petitioner is aggrieved against the stipulation in Annexure P-4, whereby he has been denied arrears from the date of retrospective promotion.

2. The chargesheets issued to the petitioner in the year 1985, while working as Deputy Superintendent, Jail, for which he was placed on suspension w.e.f. 04.01.1985, were dropped on 21.04.2000, whereafter he was reinstated in service vide order dated 05.08.2002 and his period of suspension was ordered to be treated as on duty, for all intents and purposes.

3. The CWP-1976-2002, *inter alia* seeking promotion from the date that of his juniors in the wake of closure of the chargesheets, was disposed of on 26.08.2002 based on the statement made by the learned State counsel that his case for promotion was under consideration. He was subsequently granted promotion on 06.11.2002 to the post of Superintendent Jail w.e.f. 16.10.1992, the date of his junior, Sh. Mohinder Singh Kaushik, *albeit* recording therein

that no arrears would be paid to him on the principle of no work no pay, impugned herein to that extent.

4. In **Kailash Chander Sharma vs. State of Haryana and others**¹, against which no challenge has been made, this Court held the petitioner therein entitled to consequential benefit of actual arrears of salary/wages since the disciplinary proceedings were dropped, by observing that, “Under such circumstances and by applying the dictum laid down by the Hon'ble Supreme Court in *State of Haryana v. OP Gupta*, *State of Kerala and others v. E.K. Bhaskaran Pillai* and *The Commissioner, Karnataka Housing Board v. C. Muddaiah* (supra), the petitioner cannot be denied the consequential benefit of actual arrears/salary for the period in question. It is not the case where the petitioner had declined to work on the promoted post, rather he was denied the opportunity to occupy the promotional posts on account of pendency of departmental proceedings and which were also dragged and delayed for no fault of his. The principle of 'no work no pay' would have no applicability in the peculiar facts and circumstances of the present case.”

5. In **O.P. Kathuria vs. State of Haryana**², wherein directions were issued for granting arrears of the difference in pay till date of actual promotion of the petitioner therein, after chargesheet was dropped and promotion granted retrospectively, against which LPA³ filed by the State was withdrawn.

6. A worthwhile reference can also be made to the case of **Sanjeevan Singh vs. State of Punjab and others**⁴, against which LPA⁵ was dismissed, wherein despite retrospective promotion to the post of Inspector

¹ 2015 (2) SCT 130.

² 2018 (1) SCT 580.

³ LPA-1453-2017, decided on 25.10.2017.

⁴ CWP-21473-2018, decided on 12.03.2024.

⁵ LPA-1910-2024, decided on 20.08.2024.

due to pending enquiries, his arrears were withheld, however, this Court while relying on judgment of the Division Bench in **Satyavir Singh Shekhawat vs State of Haryana and others**⁶, held that denial of arrears while granting deemed promotion on the principle of 'No Work No Pay' will not be appropriate in the event that inquiries against an employee were dropped as the net effect is of him being absolved from the charges.

7. When an employee is completely exonerated, meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even that of censure, he, on his promotion granted thereafter, has to be given the benefit of the salary of the higher post with the other benefits from the date on which he would have normally been but for the disciplinary/criminal proceedings was held in **Union of India vs. K.V. Jankiraman**⁷, the poignant observations preceding the above conclusion read thus:

“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 inapplicable to such cases.”

8. Evidently, consequent to the dropping of charges, which resulted in the exoneration of the petitioner, he was legitimately entitled to the full restoration of his status, inclusive of arrears, from the deemed date of his promotion, which could not have been denied by pressing into service principle of 'no work no pay', as he was precluded from performing his duties owing to the pendency of disciplinary proceedings. Thus, the act of non-grant

⁶ LPA-1018-2012, decided on 02.11.2012.

⁷ 1991 (4) SCC 109.

thereof is undoubtedly not only inequitable, but also unjust.

9. As a natural corollary of the afore, the present petition deserves to be and is hereby allowed. The order dated 06.11.2002, insofar as the clause whereby arrears have been denied, is set aside. The respondents are directed to release the benefit of pay and allowances from the date of promotion of the petitioner, along with interest @ 6 % p.a., within a period of two months.

(AMAN CHAUDHARY)
JUDGE

06.09.2024

Hemant

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