

2024:PHHC:099235-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CACP No. 4 of 2024 (O & M)
in COCP No. 114 of 2022
Reserved on: 24.07.2024
Pronounced on: 02.08.2024

MOHAMMAD SHAYIN AND ANR.Appellants

Versus

NAND KISHORE AND ANR.Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Puneet Jindal, Advocate with
Ms. Malvi Aggarwal, Advocate
for the appellants.

Mr. A.S.Talwar, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

1. The instant appeal has been directed against the order dated 12.02.2024 and subsequent order dated 12.03.2024, as passed by the learned Contempt Bench of this Court in COCP No. 114 of 2022.

Brief facts of the case.

2. The present respondents had instituted CWP No. 18198 of 1997, thus challenging therein the promotions of respondents No. 4 to 8. The said respondents were vide order dated 17.06.1997 thus promoted as Assistant Engineer(s). Through an order made on 22.07.2015 (Annexure A-1) by this Court, upon the writ petition

(supra), the same became allowed. The operative part of the said verdict

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is extracted hereinafter.

“ In the circumstances, the petition is allowed. The impugned orders are quashed and the respondents are directed to consider matter of the impugned promotion afresh in the light of the law laid down by the Hon'ble Supreme Court within a period of three months from the date of receipt of a certified copy of this order.”

3. Feeling aggrieved from the order (supra), the respondents thereagainst filed LPA No. 37 of 2016. The said LPA was tagged alongwith LPA No. 1515 of 2015 and connected matters and was decided vide common judgment dated 09.08.2018 (Annexure P-1). The operative part of the said verdict is extracted hereinafter.

As a result of the foregoing discussion, we pass the following order:-

- i) For the purpose of accelerated 12 ½% promotion to the post of Assistant Engineer as per amended Regulation 9(1)(b)(ii) of Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1965, as applicable to Haryana State Electricity Board, service of 5 years has to be counted from the date when Engineering Subordinate acquires A.M.I.E./B.E. Qualification.*
- ii) The ranking list shall be prepared for every year as on 1st January of every year in terms of clause 2 of Guidelines dated 20.10.1993 (Annexure P6).*
- iii) The promotions shall be made strictly in accordance with the said ranking list.*
- iv) The department shall prepare such list within 3 months from the date of receipt of a certified copy of the order and the follow up action shall be taken by undoing the wrong promotions made and making promotions in terms of finding recorded above.*
- v) Order dated 16.3.2016 and 30.5.2016 passed by*

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Single Bench are set aside and order dated 22.7.2015 is upheld with above noted modifications.

vi) All the contrary orders, guidelines or instructions so far as contrary to this judgment are quashed. All the LPAs are accordingly disposed of.”

4. After passing of the afore order, the department-appellants herein passed order dated 09.02.2024 (Annexures R-4 and R-5), whereby the respondents herein were given ante dated promotions, respectively as Assistant Engineer, as Assistant Executive Engineer and as Executive Engineer, but with notional fixation of pay, and, without payment of any arrears, thus on the principle of 'no work no pay'.

5. Feeling dis-satisfied from the order dated 09.02.2024 passed by the Department, the respondents herein preferred COCP No.114 of 2022 claiming therein relief, that thereby the order dated 09.08.2018 (Annexure P-1) passed by the Division Bench of this Court in LPA No.1515 of 2015 and connected matters, thus has not been complied in letter and spirit. The learned Contempt Court passed the hereinafter extracted order on 12.02.2024 on the contempt petition (supra).

“The counsel for the petitioner has produced order dated 09.02.2024 whereby petitioner No 2-Ravinder Singh Saroha, who is still in service, has been granted deemed date of promotion as Executive Engineer w.e.f. 11.04.2013. However, the arrears arising on account of re-fixation of the pay of the petitioner No.2 for the intervening posts and periods have been denied to him on the basis of no work no pay. However, the concept of no work no pay is not applicable to a person who is already in service and who has performed his duties assigned to

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him, while contesting litigation for further promotion, in which he has already succeeded. Even the writ court has not granted any liberty to the respondents to fix the pay only on notional basis and to deny the consequent arrears.

In view of the above, order dated 09.02.2024 passed by the respondents does not reflect complete compliance of the order passed by the write court.

The counsel for the respondents has sought time to pass necessary orders regarding payment of the arrears of the salary.

Adjourned to 12.03.2024.

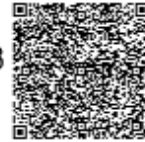
Compliance report by the respondents be filed well before the next date of hearing. It is clarified that the court will not accept any justification for non-compliance, even if the same is based on some perceived true facts. It is also clarified that even if some appeal is pending anywhere, that shall also not be taken as a justification for non-compliance, unless operation of the order is stayed by the Appellate Court.

It is further ordered that if the order is not complied with, the respondents shall remain personally present before this Court on the next date of hearing, to receive further orders in the contempt proceedings.”

6. The respondents-appellants herein filed LPA No. 655 of 2024 against the order dated 12.02.2024 passed by the learned Single Judge. The said LPA vide order dated 07.03.2024 became dismissed as withdrawn. The operative part of the verdict (Supra) is extracted hereinafter.

'Learned Senior counsel appearing for the appellants submits that the statement recorded on behalf of the appellants in the impugned order with regard to learned counsel appearing for the appellants seeking time to pass

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necessary orders regarding payment of arrears of salary to the respondents was without any authority from the appellants and that in any case there being no direction for payment of arrears of differential salary to the respondents in the judgment dated 09.08.2018 passed in LPA-1515-2015, there could be no violation for non-payment thereof but this fact could not be brought to the notice of the learned Single Judge at the time of passing of the impugned order.

2. In the light of the above, learned Senior counsel appearing for the appellants seeks to withdraw the present appeal with liberty to seek review/recalling of the impugned order through filing of an appropriate application before the learned Single Judge.

3. Dismissed as withdrawn with liberty as prayed for.

4. It is clarified that in case the application, the liberty for which has been sought and got through the instant order, is filed and is rejected by the learned Single Judge, it shall not preclude the appellant to challenge the impugned order and such rejection, in accordance with law.”

7. In view of the liberty granted by the Division Bench of this Court, the appellants herein preferred RA-CR-50-2024 before the learned Single Judge for reviewing/recalling of the interim order dated 12.02.2024 passed by the Contempt Court in COCP No. 114-2022. The said review application vide order dated 12.03.2024 rather became dismissed by the learned Single Judge.

8. The order dated 12.02.2024 and order dated 12.03.2024, passed by the learned Single Judge (Contempt Court) has caused pain to the appellants herein and has led them to file thereagainst the instant appeal before this Court.

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Submissions of the learned counsel for the appellants.

9. The learned counsel for the appellants submit that the order dated 12.02.2024 and subsequent order dated 12.03.2024, as passed by the learned Contempt Court, is beyond the scope of its jurisdiction, as the learned Single Judge rather has suo motu granted a relief relating to arrears of salary becoming accorded to the respondents (appellants in the contempt petition), on the ground that the said promotions were made ante dated. In other words, the learned counsel for the appellants submits that despite no relief becoming granted to the respondents in CWP No. 18198 of 1997, besides in LPA No. 1515 of 2015, as appertaining to the arrears of salary, relating to the tenure of the ante dated promotions, as became assigned to the writ petitioners-respondents herein, yet the said relief becoming untenably accorded through the makings of the impugned orders by the learned Contempt Court.

Inferences of this Court.

10. After having heard the learned counsel for the parties at contest, this Court is of the view that the instant appeal requires being allowed and the order(s), impugned before this Court rather are required to be quashed and set aside, on the hereinafter grounds.

a) The relief as became granted to the writ petitioners-respondents herein through a verdict drawn on CWP No. 18198 of 1997, relief whereof becomes extracted hereinabove, does not make a categorical diktat upon the respondent-Department to, after considering the writ petitioners-respondents herein, for promotion to the

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promotional post, to imperatively also assign to them the benefit of arrears of salary. If assumingly, the promotion to the promotional post became declared to be ante dated, yet when a plain reading of the order (supra), thus with candour speaks that the respondents-Department were directed to consider afresh the matter of the impugned promotion, thus in the light of the law declared by the Hon'ble Supreme Court. Further, since the relief (supra) as became granted to the writ petitioners, also became but with some modifications, hence upheld by this Court while drawing a decision, thus on the LPA (supra). Therefore, as such, when the relief (supra) as became granted to the writ petitioners concerned, thus naturally acquired binding and conclusive effect. Necessarily, in pursuance to the said conclusive and binding verdict wherebys the above extracted relief became accorded to the writ petitioners, hence the respondent Department after considering the writ petitioners claim for being considered for promotion to the promotional posts concerned, thus passed orders (Annexures R-4 and R-5), wherebys though ante dated promotions were accorded to the writ petitioners, but yet only with notional fixation of pay and but without payments of any apposite arrears. Imperatively the above apposite denials became founded on the principle of '*no work no pay.*'

b) Conspicuously for the reasons to be assigned hereinafter, the adoptions of the above principle by the respondent-Department, thus for declining the above consequential reliefs to the writ petitioners, rather was a well informed denial. However, the learned Contempt Court, has even beyond the scope of the relief

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granted to the writ petitioners, respectively through a decision becoming made on the writ petition (*supra*) besides through a concurrent thereto decision made on the LPA, rather has inaptly discountenanced the application of the said principle to the writ petitioners. Resultantly the said discountenancings became ill founded on the ground, that the principle of *no work no pay*, is not applicable to persons, who are already in service and who performed the assigned duties, while contesting litigation for further promotion which he/they have already succeeded.

c) The secondary ground which became taken by the learned Contempt Court to grant the relief of arrears of salary to the writ petitioners-respondents herein became hinged on the ground, that the Writ Court has not granted any liberty to the respondents, to fix the pay only on notional basis and to deny the consequent arrears.

d) As above stated the said assigning of reliefs, but is made on ill-informed reasons. Firstly, on the ground that it was completely inapt for the learned Contempt Court to assume, thus even without any tangible evidence existing on record, that the concept of *no work no pay* is inapplicable, to persons already in service and/or qua any person performing the duties of promotional posts. Moreover, imperatively no evidence existed on record rather displaying that on the principle of equal pay for equal work, thus the respondents became entitled to all apposite consequential thereto benefits. Since, only when such evidence existed on record, thereupon, alone the said relief was required to be assigned. However, if it was not existing, which in fact

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does not exist on record, thereupon, in the learned Contempt Court rather unilaterally proceeding to, but obviously without any evidentiary material, thus granting the said relief, hence has committed a gross jurisdictional error.

e) Even otherwise the ante dated promotion(s), assigned to the writ petitioners, were only notional and unless consequential reliefs of releases to them of arrears of salary appertaining to the promotional posts rather became granted, thereupon the Contempt Court became disempowered to grant the said relief. The said relief could not be assigned by the Contempt Court, thus to the writ petitioners, especially reiteratedly when for reasons stated (*supra*), there being no evidence supportive that they have performed the duties and functions on the promotional posts. The rule of *no work no pay*, is a solemn principle, which bars an employee to claim salaries appertaining to any substantive post, even when he has not performed the work against the said post. If the said norm is violated, thereupon the unperformed work against the substantive promotional post rather would get ill rewarded. Resultantly therebys the higher responsibilities attaching the higher promotional post, even when remain evidently unperformed, would be deemed to be discharged by the employee concerned, which may entail further ill consequences upon the health of public service.

f) Be that as it may, even if binding and conclusive relief, as became granted by this Court to the writ petitioners-respondents herein, thus did not grant liberty to the respondents-

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Department to fix the pay only on notional basis and/or to deny the consequent arrears, yet the said omission in the binding and conclusive relief granted to the writ petitioners but could not be construed to be leveraging any jurisdiction in the learned Contempt Court rather to proceed to assign the said relief.

g) The reasons for forming the above conclusions becomes filliped from the factum that, the learned Contempt Court has remained unmindful of the factum, that the operative portion of the relief granted to the writ petitioners-respondents herein, rather became not cast in a peremptory diktat, but was merely a consideration order upon the Department concerned, to consider the case of the writ petitioners for promotion to the promotional posts, thus strictly in the light of the declaration of law made by the Apex Court. If so, therebys but liberty became preserved in the Department concerned, to consider the case of the writ petitioners-respondents herein, for promotion to the promotional post. Conspicuously, the said consideration order, did become passed by the Department, thus through the makings of Annexures R-4 and R-5, whereby, ante dated promotions became granted to the writ petitioners-respondents herein. Now unless the Apex Court had made a declaration of law that if the respondent Department is directed to consider the case of the aggrieved for promotion to the promotional post, and, if the said claim is favourably considered, thereupon an imperative necessity becomes cast upon the Department to after granting ante timed promotions to the aspirants, to also grant consequential relief of arrears of salary, thereupon there was no such

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mandatory obligation cast upon the respondent-Department nor the learned Contempt Court could ill conceive, that for the said omission in the operative part of the relief granted to the writ petitioners-respondents herein, there was yet preservation of latitude, to the Department to release the consequential arrears of salary nor the learned Contempt Court could proceed to do so dehors any apposite relief becoming assigned to the respondents.

FINAL ORDER OF THIS COURT.

11. In aftermath, the impugned orders suffer from a gross legal fallacy, inasmuch as, thereby the principle of *no work no pay* which has been untenably departed from, despite no evidence existing before the learned contempt Court, rather displaying that it was inapplicable to the writ petitioners-respondents herein, besides contrarily when the principle of equal pay for equal work may be applicable, but yet only with supportive evidence being adduced, evidence whereof remained unadduced. Therefore, the impugned orders are quashed and set aside but with liberty to the writ petitioners-respondents herein to avail remedies for claiming the benefit of the principle of equal pay for equal work, during the tenure of theirs being declared to become entitled to ante timed promotions, thus to the respective promotional posts.

12. No order as to costs. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

02.08.2024

KAVNEET SINGH
2024.08.08 18:03
I attest to the accuracy and
integrity of this document

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