



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-6946-2023(O&M)
Date of Decision:16.12.2024

Narinder Singh Rajan @ Narinder Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Suresh Kumar Kaushik, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Amit Rao, Advocate for
Mr. Anurag Goyal, Advocate for respondent No.2.

JASGURPREET SINGH PURI J.(Oral)

CM-19750-CWP-2024

Present application has been filed for placing on record replication/counter-affidavit.

Application is allowed as prayed for subject to all just exceptions.

The accompanying replication/counter-affidavit to reply dated 28.03.2024 filed by respondent No.2-University, is taken on record.

Main case

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* for directing the respondents to pay/give the pension and other financial benefits



to the petitioner as per his last post i.e. Assistant Registrar instead of Superintendent in the University alongwith all consequential benefits.

2. Short reply filed on behalf of respondent No.1 is taken on record.

3. While giving the brief facts of the present case, learned counsel for the petitioner submitted that the petitioner was working as a Superintendent at respondent No. 2-Maharishi Dayanand University and he was granted promotion on adhoc basis vide order dated 08.02.2017 (Annexure P-1). He submitted that the aforesaid order was passed by the respondent-University in anticipation of the approval of Executive Council and promoted the petitioner to the post of Assistant Registrar with immediate effect in the pay-scale of Rs.15600-39100+5400 Grade Pay on adhoc basis till the post of Assistant Registrar/Deputy Registrar meant for direct quota are filled up through open selection. He submitted that thereafter the petitioner immediately joined the aforesaid post and started discharging his duties on the post of Assistant Registrar and he worked on the aforesaid post till the time of his superannuation on attaining the age of 58 years on 31.03.2017. Learned counsel for the petitioner submitted that the grievance of the petitioner is that after his retirement he was not granted pensionary/retiral benefits based on the post of Assistant Registrar. Instead, these benefits were granted based on the post of Superintendent. Furthermore, he has not been paid the salary for the post of Assistant Registrar for the period from his promotion on 08.02.2017 until his retirement on 31.03.2017. He was paid salary only for the post of Superintendent, and there is no justification with regard to the same. He submitted that once the petitioner was promoted vide Annexure P-1 on



08.02.2017 and admittedly continued to discharge his duties on the post of Assistant Registrar till his retirement then there was no justification for the respondent-University to not grant him salary for the aforesaid post. Moreover, the retiral/pensionary benefits should have been fixed based on the last pay drawn on the post of Assistant Registrar. Therefore, the action of the respondent is completely perverse and contrary to the law. The petitioner seeks directions against the respondent-University, not only for the payment of salary for the said post but also for the re-fixation of his pensionary/retiral benefits, along with the arrears and interest.

4. On the other hand, learned counsel appearing on behalf of the respondent-University while referring to the reply filed by the respondent-University, submitted that there is no dispute that the petitioner stood promoted vide Annexure P-1 on 08.02.2017 and he discharged duties on the post of Assistant Registrar till the date of his retirement i.e. 31.03.2017. He, however, submitted that when the case of the petitioner was sent for fixation of retiral/pensionary benefits, then an audit objection was raised in this regard. While referring to the reply, he submitted that there is a provision under Section 9(f) of the M.D. University, Rohtak Act, which has been reproduced in the reply, wherein it has been so provided that the University shall not create any teaching and non-teaching posts or revise the pay scales of the teaching and non-teaching employees without obtaining the prior approval of the Government. While elaborating on his arguments, he submitted that upon perusal of the order at Annexure P-1, it is clear that the petitioner was promoted on adhoc basis till the posts of Assistant Registrar/Deputy Registrar,



meant for the direct quota, are filled through open selection. He further submitted that as per the existing rules, which were prevalent at the time of the promotion of the petitioner and retirement of the petitioner, there was a quota of 75% promotion to the post of Assistant Registrar and 25% promotion by way of direct recruitment. Since the candidates for direct appointment to the post of Assistant Registrar/Deputy Registrar were not available, the petitioner was promoted in excess of his quota and for which the objection was raised by audit department and therefore the petitioner has not been granted the salary for the aforesaid post and retiral benefits have not been fixed on the basis of the post of Assistant Registrar.

5. He further submitted that after the petitioner's retirement, a resolution of the Executive Council was passed on 30.03.2018, by which an amendment was to be made in clause 13.3 of the Service and Conduct Rules for Non-Teaching employees of the respondent-University, changing the ratio from 75% posts meant for promotion quota to 100%. This was sent to the Government for approval, but the decision has not yet been taken by the Government, and therefore, the amendment has not been implemented as of now. He also submitted that so far as the stand of the respondent-University is concerned, rather the respondent-University itself has so reiterated that for the purpose of internal service conditions, the respondent-University being an autonomous body, the State of Haryana, had got no role to play in this regard but since the matter pertains to the financial implications, the matter was sent to the State Government for its approval. He further submitted that the only reason as to why the petitioner has not been granted salary for the aforesaid



post and his retiral/pensionary benefits have not been fixed for the aforesaid post of Assistant Registrar is that although he was promoted to the aforesaid post but at that point of time, he was promoted in excess of the quota meant for the promotees and he was adjusted in the quota meant for the direct recruitment and an audit objection was raised in this regard.

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

7. The core issued involved in the present case is as to whether the petitioner who was admittedly promoted to the post of Assistant Registrar vide Annexure P-1 in the pay scale of Assistant Registrar and thereafter he discharged his duties on the aforesaid post till his retirement was entitled for the grant of salary for the aforesaid post and also for fixation of retiral/pensionary benefits for the aforesaid post or not. The promotion order dated 08.02.2017 (Annexure P-1) is reproduced as under:-

“Annexure P-1

MAHARSHI DAYANAND UNIVERSITY, ROHTAK

(A State University established under Haryana Act No. XXV of 1975)

NAAC Accredited 'A' Grade

No.EN-11/2017/M-58 Vol.IX/1610

Dated: 8/2/17

To

*Narinder Singh Rajan, Superintendent,
P&S Cell.
M. D. University, Rohtak*

Sub: Promotion to the post of Assistant Registrar

Dear Sir,



The Vice-Chancellor, on the recommendations of the Departmental Promotion Committee made in its meeting held on 08.02.2017 and in anticipation of the approval of the Executive Council, has been pleased to promote you to the post of Assistant Registrar with immediate effect in the pay scale of Rs. 15600-39100+5400/- Grade Pay on adhoc basis till the post of Assistant Registrar/Deputy Registrar meant for direct quota are filled up through open selection.

If your work and conduct are not found satisfactory, you will be reverted to your substantive post of Superintendent.

If you accept the above offer, you may submit your joining report to the Registrar.

***Assistant Registrar (Estt.NT)
for REGISTRAR***

Endst. No. EN-11/2017/M.58 Vol.IX/

Dated:

Copy of the above is forwarded to the following for information and necessary action:-

- 1. Finance Officer, M. D. University, Rohtak.*
- 2. Director, University Computer Centre, M. D. University, Rohtak.*
- 3. Deputy Registrar, P&S Cell, M. D. University, Rohtak.*
- 4. OSD to Vice-Chancellor and P.A. to Registrar (for kind information of the Vice-Chancellor/ Registrar), M.D.U., Rohtak.*

***Assistant Registrar (Estt.NT)
for REGISTRAR***

8. A bare perusal of the aforesaid would show that the aforesaid order is in fact an order of promotion and the same has been passed by the Vice Chancellor of the University on the recommendation of the Departmental



Promotion Committee and it has been done in anticipation of the approval of the Executive Council and it has been so ordered that the petitioner be promoted to the post of Assistant Registrar with immediate effect and the pay-scale of the post of Assistant Registrar has been granted to the petitioner. Although at that point of time, as per the respondent-University, there was a vacancy in existence but the same was meant for the quota of direct recruitment but the petitioner was promoted because no person was available against the quota meant for direct recruitment. The fact and tenor of the order would show that it is not a case that the petitioner has not been promoted but it is a case that he has been promoted in excess of the quota but what would be effect of the same when a person has been promoted in excess of his quota on his right to claim the salary and fixation of benefits is the core issue which is to be considered by this Court.

9. It is a settled law by Hon'ble Supreme Court in ***Smt. P. Grover Vs. State of Haryana and another***", (1983) 4 SCC 291, ***Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and others***", (1998) 5 SCC 87 and a Full Bench of this Court in ***CWP No. 21358 of 2008*** titled as ***"Subhash Chander Vs. State of Haryana and others"*** decided on **20.12.2011** that if an employee has discharged his duties and worked on that post, he cannot be deprived of the financial benefits that would accrue to him, especially when he has admittedly worked on that particular post. The mere fact that an employee was promoted against the quota meant for direct recruitment and retired from the said post



does not disentitle him for the aforesaid benefit. The petitioner also actually worked on the post of Assistant Registrar till the time of his retirement.

10. Relevant portion of the aforesaid judgment in the case of ***Hari Om Sharma (supra)*** is reproduced 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.”

11. So far as the right of the petitioner to receive the salary for the period, he had worked as Assistant Registrar after he was promoted vide Annexure P-1 till the time of his retirement is concerned, the petitioner would certainly be entitled for the grant of salary for the aforesaid post and the respondent-University could not have denied salary to the petitioner for the time during which he admittedly worked on the aforesaid post.

12. So far as the second issue pertaining to the grant of pensionary benefits/retiral benefits to the post of Assistant Registrar is concerned, it cannot be said that the petitioner was never promoted. The only issue raised by the respondent-University is that the audit department has raised an objection. The learned counsel for the respondent-University has referred to para No. 4 of the reply filed by the respondent-University, wherein it has been stated that in the year 2018, a resolution was passed by the Executive Council of the University regarding the change of the 75% promotion quota for promotion to the post of Assistant Registrar to 100% quota. The aforesaid resolution even if not approved by the State of Haryana, would not have any effect upon the rights of the petitioner because the petitioner stood already retired in the year 2017 which was prior to the aforesaid resolution of the year 2018 and therefore even if any amendment had been carried out at all could not have any retrospective effect. A perusal of the reply filed by the State of

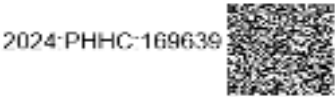


Haryana would show that they have only taken up a stand that subject matter of the present case pertains to the University and the State of Haryana has no role to play at all and therefore they have neither justified nor they have supported the petitioner in this regard.

13. From the aforesaid, it is very clear that the petitioner stood promoted although in excess of his quota but he discharged his duties as Assistant Registrar and from the same post he retired ultimately and he cannot be denied the benefit of salary of the post of Assistant Registrar and at the time of retirement, the pay he received, as the last pay drawn, should be the basis for calculating his retiral benefits. Rather the stand taken by the respondent-University would show that the respondent-University's stand was in support of the petitioner but it has raised a technical objection, stating that the audit has raised an objection in this regard. This Court is of the considered view that any objection which is taken by the audit department itself cannot become a ground for denial unless the respondent-University is able to justify as to why the petitioner has not been granted the benefit of fixation of retiral benefits/pensionary benefits to the post of Assistant Registrar. In this way, it is very clear that the petitioner has been wrongfully denied the aforesaid benefit of fixation of pay to the post of Assistant Registrar at the time of fixation of his pensionary/retiral benefits.

14. In view of the aforesaid facts and circumstances, the present petition is allowed.

15. The respondent No.2 is directed to pay the difference of salary of the post of Superintendent and that of Assistant Registrar from the date of



joining of the petitioner on the post of Assistant Registrar in pursuance of Annexure P-1 till the date of his retirement alongwith interest @6% per annum (simple). The respondent-University is further directed to refix the pensionary/retiral benefits of the petitioner on the basis of his last pay drawn as Assistant Registrar and thereafter to calculate the arrears and to pay to the petitioner alongwith interest @6% per annum (simple). The aforesaid amount on both the heads shall be paid to the petitioner within a period of three months from today.

16. In case the aforesaid benefits is not paid within the stipulated time frame then the petitioner shall be entitled for future rate of interest @9% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

16.12.2024
shweta

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