

CWP- 9741-2021 (O&M)

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2024:PHHC:046342

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-9741-2021 (O&M)

Date of Decision:01.04.2024

Surinder Parkash Dhiman and others

.....Petitioners

Versus

Uttar Haryana Bijli Vitran Nigam Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S.P. Arora, Advocate and
Mr.Himanshu Arora, Advocate for the petitioner.

Mr. Jagbir Malik, Advocate for respondent.

JASGURPREET SINGH PURI J.(Oral)

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* directing the respondent to grant the pay scales of Assistant Engineer to the petitioners w.e.f. 05.09.2008 when they were given the Current Duty Charge of the post of Assistant Engineer, till the dates of their retirement.

2.. The present writ petition has been filed by the three petitioners who were working as Junior Engineer-1 in the office of respondent-Uttar Haryana Bijli Vitran Nigam Limited (hereinafter to be referred to as 'Nigam').

3. The learned counsel for the petitioners submitted that it is a case where all the three petitioners were working as Junior Engineers-1 were granted Current Duty Charge (CDC) to the post of Assistant

Engineers and SDO on different occasions vide orders dated 05.09.2008 (Annexure P-1), 18.09.2008 (Annexure P-2), 17.07.2010 (Annexure P-3), 08.04.2013 (Annexure P-4) and 08.04.2013 (Annexure P-4A). He further submitted that the petitioners were given the Current Duty Charge by the orders passed by the respondent-Nigam themselves of their own and after passing of the orders of granting of CDC to the post of Assistant Engineer/SDO all the petitioners discharged the duties on the aforesaid post diligently and rather they discharged the duties on different relevant periods and retired as such by discharging the duties of aforesaid SDO/AE while being on the CDC. He further submitted that in the year 2016 the Haryana Civil Services (Pension) Rules, 2016 (hereinafter to be referred to 'Rules 2016') came into force by which it has been incorporated that when an employee is given CDC then he will not be entitled for the financial benefits but so far as the present petitioners are concerned all of them retired prior to the aforesaid Rules 2016 coming into force and therefore the aforesaid Rules are not applicable to the present petitioners. However, one of the petitioners namely Budhi Chand Sharma, retired on 29.02.2016 and the 2016 Rules came into force w.e.f. 01.01.2016 and for the aforesaid period of two months, he may not be entitled for the pay scale.

4. Learned counsel further submitted that law with regard to the grant of financial benefits of the pay-scale on which an employee is working on CDC is no longer res-integra. He also referred to a judgment of the Hon'ble Supreme Court in ***P. Grover Vs. State of Haryana (1983 (4) SCC 291***) and another judgment decided by Division Bench of this Court in ***Balbir Singh Dalal V. State of Haryana 2002 (4) SCT 422*** in this regard.

He further referred to a judgment of the Hon'ble Supreme Court in *Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87* and a Full Bench judgment of this court in *Subhash Chander Vs. State of Haryana and others 2012 (1) SLR 207* and another judgement passed by a Division Bench of this Court in *State of Haryana Vs. Sita Ram* passed in *LPA No.1491 of 2016* to contend that it is now a settled law if an employee is officiating on a higher post and discharges his duties diligently on that post and even in the official capacity then he will be entitled for grant of salary for the aforesaid higher post on which he was discharging his duties and as such all the three petitioners are entitled for the grant of pay-scale/salary for time during which they had discharged the duties on the aforesaid AE/SDO post.

5. On the other hand, Mr. Jagbir Malik, learned counsel for the respondent submitted that so far as the aforesaid proposition of law as so referred by learned counsel for the petitioner, is concerned, the same is not in dispute. He has, however, opposed the prayer of the petitioners on two grounds; firstly the present petition has been filed straightaway by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ in the nature of *Mandamus* without even filing a representation or demand notice and therefore a writ in the nature of *mandamus* will not be maintainable; secondly various CDC were given to the petitioners at different points of time from the year 2008 onwards and the the present petition has been filed in the year 2021 and therefore there is an inordinate delay in filing of the present petition and therefore the prayer of the petitioners is hit by the doctrine of delay and

laches. He also referred to a judgement of Coordinate Bench of this Court in the case of *Suraj Bhan Vs. State of Haryana and another 1995(3) SCT 166* to contend that a writ of mandamus could not lie unless a demand has been raised in this regard. He also referred to another judgment of Coordinate Bench of this Court in the case of *Gajinder Singh Vs. State of Punjab and another 2021 (1) PLR 523* to contend that when there is an inordinate delay then the writ petition would not be maintainable

6. I have heard learned counsel for the parties.

7. The facts of the present case are not in dispute. Admittedly all the three petitioners have been granted the Current Duty Charge/Officiating Charge to the post of Assistant Engineer/Sub Divisional Officer by way of orders passed by the respondent on different points of time from the year 2008 onwards. They worked and discharged their duties on the higher posts on different periods regarding which no dispute has been raised by learned counsel for the respondent. The proposition of law as so enunciated by the aforesaid judgements that when an employee has discharged his duties on higher post on CDC/Officiating basis then financial benefits/salary is to be paid is also not disputed by learned counsel for the respondent as the law is well settled.

8. However, only two objections have been raised by learned counsel for the respondent which can be dealt with separately. So far as the first objection raised by learned counsel for the respondent that the petitioners did not file any demand notice/legal notice or any representation and straightaway approached this Court by filing a writ

under Article 226 of the Constitution of India in such a case a writ of *mandamus* is not maintainable, is concerned, this Court is of the considered view that it is a case where the petitioners are demanding the salary for the period during which they discharged their duties on a particular post. It is correct that the proposition of law with regard to the fact that writ of mandamus will not lie unless a representation or demand notice is made, is well settled. Ordinarily, a writ of mandamus will not lie unless there is a demand or representation preferred by an employee and it is only after the aforesaid notices given to the State or an instrumentality of the State then a writ of mandamus can lie seeking a direction to the State or its instrumentality to pass an order or there can be judicial review of an administrative action in this regard for taking corrective measures by way of interference under Article 226 of the Constitution of India. However, the aforesaid proposition of law does not operate in a straight jacket formula and it is not an absolute law. In a case where the prayer is for grant of salary it has to be seen from a different perspective.

9. Salary of an employee is his Right to Property which is a Constitutional Right guaranteed under Article 300-A of the Constitution of India. Although after 44th Amendment to the Constitution of India, Right to Property is no longer a Fundamental Right under Part-III of the Constitution of India but certainly it is a Constitutional Right under Article 300-A of the Constitution of India. Under Article 300-A of the Constitution of India no person can be deprived of his Right to Property except with the authority of law. The petitioners are claiming salary for a post on which they have worked. Therefore, rather it was the duty of the respondent-Nigam to have granted the benefit of the salary to the

petitioners in view of the settled law. It is not a case that such kind of issue or a proposition of law has cropped up for the first time in the present petition. There are number of cases against the present respondent-Nigam and a number of cases have been decided in this regard on the same proposition of law. One such judgment is also annexed alongwith the present petition at Annexure P-5 bearing No. CWP-3234-2017 which was filed in the year 2017 and decided in the year 2020. The respondent-Nigam is supposed to know the law of the land and to uphold the rule of law. When an employee has approached this Court by filing a writ petition under Article 226 of the Constitution of India then such kind of objection would not be sustainable because the petitioners are seeking to enforce not only their Constitutional Rights but also the rights which are settled not only by different judgments of this Court but by a number of judgments passed by Hon'ble Supreme Court as aforementioned. The respondent-Nigam have already granted the benefits of salary in such like situation when their employees have worked on the higher post, which the learned counsel for the respondent-Nigam has not disputed. The benefits have been granted by way of various judgments passed by this Court. Therefore, on the aforesaid proposition of law, the respondent-Nigam was supposed to know and should have granted the benefit of salary to the petitioners instead of waiting for the petitioners to have approached this Court by which directions were sought to be issued. A Coordinate Bench of this Court in ***Satbir Singh Vs. State of Haryana, 2002 (2) S.C.T. 354*** observed that when similarly situated persons have been granted relief by an order of a Court then it is not necessary for the other similarly situated persons to approach this Court independently so as

to increase the litigation. Even otherwise also the learned counsel for the petitioners has stated that there is a litigation policy of the State Government which is so mentioned in para No.15 of the writ petition that in such like situation the Heads of the Departments, are supposed to look at the grievances of the employees and litigation is to be reduced.

10. The maxim *interest reipublicae ut sit finis litium* which means that it is in the interest of public good and the State to put an end to litigation, is fully applicable to the facts and circumstances of the present case. Once the petitioners have discharged their duties on a higher post and there is a settled law even in the knowledge of the respondent-Nigam that they are required to be paid the salary for the same then the objection taken by learned counsel for the respondent cannot be sustained and therefore it is rejected.

11. So far as the second objection raised by learned counsel for the respondent that there is a delay in filing the present writ petition, is concerned, this Court is of the considered view that considering the fact that the prayer made in the present petition is for the grant of salary/pay scale which is a Constitutional Right to Property and therefore the doctrine of delay and laches will not be applicable in the present case. In the cases pertaining to the grant of salary, it is a case of *de die in diem* i.e. recurring cause of action which arises everyday. In the written statement filed by the respondent-Nigam it has been so objected to that even the suit for recovery etc.will not be maintainable after a period of three years. Such an objection is also an unsustainable objection in view of the fact that when prayer is for grant of salary then a writ under Article 226 of the Constitution of India, can be preferred.

12. A reference made by learned counsel for the respondent to the judgment of Coordinate Bench of this Court in ***Suraj Bhan's case (supra)*** that writ in the nature of mandamus cannot lie unless a demand notice is given, is distinguishable from the present case. In the aforesaid case the matter was pertaining to equal pay for equal work for which the rights are to be pleaded that how the petitioners are entitled for the equal pay for equal work and that they worked on the basis of their performance and discharged their duties on different posts for which an adjudication is required. However, in the present case the prayer is for grant of salary/pay scale and therefore the aforesaid judgement is totally distinguishable from the facts and circumstances of the present case. Another judgement which has been relied by learned counsel for the respondent in ***Gajender Singh's case (supra)*** to contend that the delay will be fatal, is also distinguishable from the facts and circumstances of the present case. In the aforesaid case the petitioners were claiming the benefit of increment after about 12 years. However, in the present case, the petitioners are claiming salary of the pay-scale of post on which they have worked. Therefore, this Court is of the considered view that the aforesaid judgement is also distinguishable from the facts and circumstances of the present case especially when the petitioners are seeking enforcement of a Constitutional Right and also in pursuance of the settled law.

13. Apart from the above such kind of prayer is not a new prayer which has been made for the first time in this petition so as to require any fresh adjudication on the point of law. Once the point of law is already settled and the respondent is well within the knowledge of the same and

also granted benefit to other employees on the same proposition of law then non-suiting the petitioners on the ground of delay and laches will not be in the interest of justice and rather non interference under Article 226 of the Constitution of India will amount to gross abuse of the process of law.

14 In view of the above, the present petition is allowed. The respondent-Nigam is directed to calculate the pay/salary of the petitioners for the periods they have discharged the duties on higher post i.e.on the post of AE/SDO at different points of time and to pay them the arrears of the same alongwith interest of @6% per annum within a period of three months from today. In case the aforesaid amount/arrear is not paid to the petitioners within the aforesaid time frame then the petitioners shall be entitled for future rate of interest @9% per annum.

(JASGURPREET SINGH PURI)
JUDGE

01.04.2024
shweta

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