



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 06.05.2024
Pronounced on: 15.05.2024

1. RSA No.2309 of 1999 (O&M)

State of Haryana and others
.....Appellants
Versus
Gurbachan Singh and another
.....Respondents

2. RSA No.3905 of 1999 (O&M)

Gurbachan Singh
.....Appellant
Versus
State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Saurabh Mohunta, D.A.G., Haryana
for the appellants (in RSA-2309-1999)
and for respondents No.1 to 3 (in RSA-3905-1999)

Mr. R.K. Malik, Senior Advocate with
Mr. Ankur Sheoran, Advocate
for the appellant (in RSA-3905-1999)
and for respondent No.1 (in RSA-2309-1999)

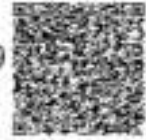
NAMIT KUMAR J. (Oral)

CM-4085-C-1999 IN RSA-2309-1999

This is an application filed under Section 5 of the Indian
Limitation Act for condonation of delay of 88 days in filing the appeal.

Notice in the application was issued on 11.08.1999 and
reply thereto has been filed by respondent No.1.

In view of the averments set out in the application, which is
supported by an affidavit, the same is allowed and delay of 88 days in
filing the appeal is condoned.



RSA No.2309 and 3905 of 1999 (O&M)

1. This judgment shall dispose of two cross-appeals i.e. RSA Nos.2309 and 3905 of 1999, as common questions of law and facts are involved for adjudication.

2. The appeal i.e. RSA No.2309 of 1999, titled as “*State of Haryana and others vs Gurbachan Singh and another*”, has been preferred by the State of Haryana, against the judgment and decree dated 16.08.1997, passed by the learned Civil Judge (Jr. Division), Sirsa, whereby the suit was decreed and the judgment and decree dated 09.01.1999, passed by the learned District Judge, Sirsa, whereby the judgment and decree passed by the learned trial Court was modified and the appeal of the defendant/appellant was allowed to the extent that the plaintiff/respondent shall not be entitled to receive arrears of pay, etc. on account of his notional promotion to the post of Workshop Instructor w.e.f. 01.07.1991. The second appeal i.e. RSA No.3905 of 1999, titled as “*Gurbachan Singh vs State of Haryana and others*”, has been preferred by the plaintiff/appellant impugning the judgment and decree dated 09.01.1999, passed by the learned District Judge, Sirsa, whereby he has been deprived of the arrears of pay etc. on account of his promotion to the post of Workshop Instructor w.e.f. 01.07.1991. For brevity, facts are being culled out from RSA No.3905 of 1999.

3. The brief facts of the case are that the plaintiff/appellant was appointed as Laboratory Attendant in December, 1981. He was matriculate and has passed 02 years diploma course in Fitter Trade. The plaintiff claimed to be eligible for promotion as Workshop Instructor on



the basis of his qualification and experience whereas defendant No.4 – Jai Parkash, who came to be recruited as Electrician in the year 1983, was promoted as Workshop Instructor vide order dated 07.01.1991, ignoring the claim of the plaintiff. The plaintiff challenged his promotion with further declaration that he is entitled to be promoted w.e.f. 07.01.1991 i.e. the date when defendant No.4 – Jai Parkash, was promoted. It was also alleged in the suit that Sh. R.S. Mehta, the then, Principal, was inimical towards the plaintiff/appellant, therefore, he was ignored.

4. The learned trial Court vide judgment and decree dated 16.08.1997, decreed the suit of the plaintiff – Gurbachan Singh, by recording the following findings:-

“8. Having been given anxious consideration to the arguments of learned counsel for both the parties and after meticulous examination of evidence available on this point on file I have come to the conclusion that it is undisputed fact that plaintiff is senior in length of service to defendant No.4. It has been proved vide Ex.P1 that for the post of Workshop Instructor the requisite qualifications were matric plus two years experience in respective trade of I.T.I. which the plaintiff was fulfilled at the time of impugned order and this fact has been proved vide Exs. P7 and P5. The alleged five years experience has not been proved by the defendants on file. The draft rules have not been implemented so far according to which that experience of five years is required for the post of Workshop Instructor. The whole action taken against the plaintiff seems to be arbitrary as no opportunity of being heard were provided to him nor any option was obtained



*from the plaintiff by the defendant. In this direction we may also rely upon **SLJ 1988 (3) Page 101** titled as **Desolea Rama Rao & another Vs. State of Andhra Pradesh & others** in which Hon'ble Apex Court of India (S.C.) laid down as under:-*

“Seniority of direct recruits and promotee Assistant Engineer-Criteria for fixation of inter se seniority of the- If there be a rule indicating the manner in which such seniority has to be fixed, that is binding in the absence of such a rule, length of service is the basis for fixing the.”

As I have already discussed that no rule has been placed on file by the defendants relating to the promotion, therefore, the above cited authority is fully applicable to the facts and circumstances of the case in hand. In view of my discussion this issue is decided in favour of the plaintiff and against the defendants. Further, the plaintiff is entitled to the promotion w.e.f. 7.1.1991 from the date on which he was arbitrarily discriminated and was not promoted to the post of Workshop Instructor.”

XXXX XXXX XXXX XXXX
13. RELIEF

The net result of my aforesaid discussion is that suit of the plaintiff has succeed and the same is decreed with no order as to costs. Further, the order in question dated 7.1.1991 is hereby set-aside and the defendants are directed to promote the plaintiff to post of Workshop Instructor w.e.f. 7.1.1991 and to release all the arrears arising from such promotion within the period of six months from the date of receipt of this judgment. Decree-sheet be prepared accordingly and file be consigned to the record-room after due compliance.”

5. The said judgment and decree dated 16.08.1997, passed by the learned trial Court was challenged by the defendant i.e. State of



Haryana, before the learned Lower Appellate Court by filing an appeal which has partly been accepted vide judgment and decree dated 09.01.1999, by holding that the plaintiff is entitled to be promoted w.e.f. 07.01.1991, however, he was entitled for promotion notionally to the post of Workshop Instructor w.e.f. 07.01.1991, therefore, he is not entitled to receive arrears of pay on account of his notional promotion. The operative part of the said judgment and decree passed by the learned Lower Appellate Court, reads as under:-

“12. On careful consideration of the rival submissions I do not find any force in the arguments of the learned Govt. Pleader that the plaintiff do not possess the requisite qualification and experience for promotion to the higher post. It is well settled that the draft rules, which have not been enforced cannot be relied upon. Moreover, there is nothing on the record to show that the authorities had clear intention to enforce those rules in the near future. In fact, the draft rules cannot be treated to be the rules made under Article 309 of the Constitution and cannot exclude the operation of any administrative instructions on the subject covered by the draft rules. In the instant case, the Director Technical Education, Haryana, vide letter Ex.P1 dated 13th March, 1990, had clearly directed the various institutes to recommend the names of the subordinate employees for promotion to the Workshop Instructor having following qualifications:-

“Matric or its equivalent. ITI Certificate in the respective trade with 2 years experience or ITI Certificate in respective trade with CTI with one year experience or IInd class diploma in Mechanical/Electrician/Production/Auto or its equivalent, with one year experience in the trade.



Note: Experience should be from a recognised Govt. or Private Institute or Industry of repute Hindi upto Matric.”

*There is no dispute that the plaintiff is a Matriculate and also holds ITI Certificate in Fitter Trade. The certificates to this effect are Ex.P7 and Ex.P8. It is also clear from the documents Ex.P16 to Ex.P18 that the Laboratory Attendants who are Matriculate will fall under Class III category and not under Class IV category. Admittedly the plaintiff was appointed in the year 1981 and defendant No.4 Jai Parkash was appointed in the year 1983. Accordingly, the plaintiff was senior in length of service to defendant No.4 and was also having two year ITI Diploma in Fitter Trade. In these circumstances, he clearly fulfilled the requisite qualification and experience for promotion to the post of Workshop Instructor as per the administrative instructions issued vide letter Ex.P1. These instructions would be applicable in the plaintiff's case as draft rules relied by the defendants have not yet been enforced because there is nothing on record to show that the draft rules were enforced when defendant No.4, junior to the plaintiff, was promoted. The Hon'ble Supreme Court in the case of **Vimal Kumari versus State of Haryana and others, 1998 (2) RSJ 322** has clearly held as under: -*

“In the absence of any decision of the State Government that so long as the Draft Rules were not notified, the service conditions of the appellant or the respondent and their other colleagues would be regulated by the "Draft Rules" prepared in 1983, it was not open either to Government or to any other authority, nor was it open to the High Court, while disposing of the writ petition, to invoke any of the provisions of those Rules particularly as the Government has not come out with any explanation why the Rules though prepared in 1983 have not

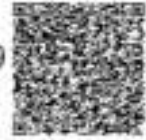


been notified for the long period of more than a decade. The delay, or rather inaction, is startling."

In this view of the matter, the plaintiff, who was senior to defendant No.4 in length of service, should have been promoted to the post of Workshop Instructor on the date person junior to him was promoted. Therefore, the plaintiff shall be deemed to have been promoted to the post of Workshop Instructor from the date defendant No.4 was promoted. Consequently, the findings arrived at by learned trial court on issue No.1 and 2 are affirmed.

*13. However, the findings of the trial court directing defendants No.1 and 2 to release the arrears of pay arising from such promotion w.e.f. 1.7.1991, cannot sustain in view of the decision of Hon'ble Apex Court in Paluru Ramkrishaniah's case (supra) and another recent judgment of Hon'ble Supreme Court in the case of **State of Haryana and others versus O.P. Gupta etc. 1996(2) RSJ 194**, wherein the Hon'ble Supreme Court has considered their earlier decision reported as **AIR 1991 SC 2010 (Union of India Vs. K.V. Jankiraman)** and also Paluru Ramakrishnaiah's case and **Virender Kumar vs. Avinash Chandra Chadha's case (1990 (3) SCC 482)**, and has observed that the payment of arrears of salary do not arise where the employees have not worked during that period, but they had been given notional promotion. The said findings of the trial court are accordingly reversed."*

6. Learned senior counsel for the plaintiff/appellant (in RSA-3905-1999) submitted that both the Courts below have recorded a finding of fact that the plaintiff/appellant was arbitrarily discriminated when his junior was promoted as Workshop Instructor w.e.f. 07.01.1991, and consequently, the learned trial Court has rightly



decreed the suit of the plaintiff to the effect that he is entitled to be considered for promotion w.e.f. 07.01.1991, when his junior was promoted as Workshop Instructor and also directed to release all arrears arising from such promotion but however, the learned Lower Appellate Court has wrongly modified the judgment and decree of the learned trial Court with regard to grant of arrears of pay.

7. On the other hand, learned counsel for the State submitted that both the judgments and decrees passed by learned Courts below suffer from infirmity as according to Haryana Technical Education Department, Technical Field Staff (Group-C) Service Rules, 1998, promotion to the post of Workshop Instructor entails 05 years experience in the respective trade whereas the plaintiff was a Laboratory Attendant which is totally different from an Electrician to be promoted as Workshop Instructor.

8. I have heard learned counsel for the parties and perused the record.

9. In the present case (RSA No.3905 of 1999) operation of the impugned judgment was stayed vide order dated 11.08.1999 and later on, matter was admitted on 04.10.2000.

10. Admittedly, both the learned Courts below have recorded a finding of fact that the plaintiff is senior to defendant No.4 – Jai Parkash as the plaintiff joined the service in the year 1981 and whereas defendant No. 4 joined the services in the year 1983. It has also been recorded by both the learned Courts below that the plaintiff was arbitrarily discriminated when his junior was promoted as Workshop



Instructor w.e.f. 07.01.1991. The reliance placed by learned counsel for the State on 'Haryana Technical Education Department, Technical Field Staff (Group-C) Service Rules, 1998', is totally mis-conceived as the position is to be seen as on 07.01.1991, when his junior defendant No.4 was promoted to the post of Workshop Instructor. It has been recorded by both the learned Courts below that as per letter dated 13.03.1990 (Ex.P-1), it was clearly directed by the Director, Technical Education, Haryana, to various Institutes to recommend the names of subordinate employees for promotion to the post of Workshop Instructor having requisite qualification as mentioned in the said letter. Concededly, the plaintiff/appellant is a matriculate and also holds I.T.I. certificate in Fitter Trade as per documents (Ex.P-7 and Ex.P-8). It is also clear from the documents (Ex.P-16 to Ex.P-18), that Laboratory Attendants, who are matriculate will fall under Class III category and not under Class IV category and the plaintiff/appellant being senior to defendant No.4, fulfilled the requisite qualification and experience for promotion to the post of Workshop Instructor as per Administrative Instructions Ex.P-1 and these Instructions are applicable to the plaintiff's case and the draft rules relied by the defendants were not enforced and finally the same have been finalized in the year 1998.

11. In this view of the matter, there is no infirmity or illegality in the findings recorded by both the learned Courts below with regard to the entitlement of the plaintiff/appellant for promotion to the post of Workshop Instructor w.e.f. 07.01.1991 and the same is upheld to the extent indicated above.



12. The second question as to whether the plaintiff – Gurbachan Singh, is entitled for arrears of pay with effect from the said date, it is observed that the learned Lower Appellate Court, has relied upon the judgment of the Hon'ble Supreme Court ***“Paluru Ramkrishanian and others vs Union of India and another”***, AIR 1990 (SC) 166, while observing that the payments of arrears of salary do not arise where the employees have not worked for that period. The said judgment is not applicable on the facts of the present case. The similar matter was considered by the Division Bench of this Court in ***“Prem Chand Versus State of Haryana etc.”***, 1993 (2) RSJ, 475 and above decision of the Hon'ble Supreme Court was also considered. The operative part of the said judgment reads as under:-

*"2. The State Counsel has relied upon the decision of the Supreme Court in **Paluru Ramkrishanian and others v. Union of India and another**, AIR 1990 (SC) 166. On going through the judgment we find that limited relief in that case was granted keeping in view the fact that there was delay of 17 years in approaching the Court and further Madhya Pradesh High Court earlier had granted limited relief in Appeal No. 441 of 1991. It was on that basis that the Supreme Court also granted limited relief. Principle of 'No work-No pay' cannot be attracted to the case in hand as due promotion was not allowed to the petitioner at the relevant time when person junior to him was promoted and the petitioner cannot be made to suffer on account of inaction on the part of the respondents. May be on account of adverse remarks the petitioner was not promptly promoted and it was on expunction of the same that he was promoted subsequently. Be that as it may, the relief even then cannot be denied to the petitioner finding that there was no justification for not fixing the petitioner in the promotional post. In Sikandar Lal's case (supra) reliance was placed on earlier three decisions of this Court wherein the principles of 'No work-No pay' was not applied in such*



circumstances. The facts of the present case more or less are similar as that of Sikandar Lal's case.

3. *For the reasons recorded above this writ petition is allowed with the direction to the respondents to pay arrears of pay and allowances from the date of promotion within a period of 3 months, There will be no order as to costs."*

13. Similar controversy has been considered by the Division Bench of this Court in **LPA No. 1018 of 2012** titled as ***"Satyavir Singh Shekhawat Vs. State of Haryana and others"***, wherein it has been held that when junior was promoted, senior has right of promotion from the date his junior has been promoted and is entitled for all benefits from the date his junior has been promoted. The relevant portion from the said judgment, reads as under:-

*"17. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see **State of Kerala and Others Vs. E.K. Bhaskaran Pillai JT 2007 (6) SC 83; Mohd. Ahmed v. Nizam Sugar Factory and Others (2004) 11 SCC 210; Nalini Kant Sinha v. State of Bihar and Others 1993 Supp (4) SCC 748**. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have*



been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.

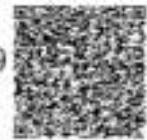
18. In those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of the higher post for the relevant period, in such circumstances, would amount to hostile discrimination.

19. Keeping in view the principles we have formulated above which are culled out above from the catena of judgments, we have to find the outcome to the present case. The facts of the case have already been noticed above. It is clear there from that the appellant was not promoted earlier, when his juniors were promoted because of the departmental enquiries pending against him. No doubt, these enquiry proceedings have been dropped on the ground of delay. We were shown the original record containing this decision. The reason given is that there is a 14 years delay in conducting the enquiry which would act to the prejudice of the appellant if the inquiries continue. Once that fact is accepted by the Department itself and on that basis the enquiries were dropped, the net effect thereof would be that the appellant was exonerated of the charges. As no penalty has emanated from these charge-sheets, it is for this reason the respondents have themselves given him the promotion from back date. In such circumstances, denial of actual salary and grant of only deemed promotion



*on the principle of 'no work no pay' may not be appropriate. Admittedly, the juniors who were granted the benefit of promotion received the salary and if the appellant is deprived thereof, it would amount to hostile discrimination qua him. We are, therefore, of the opinion that the principle of 'no work no pay' cannot be made applicable in the instant case and the appellant would be entitled to salary. There is a Division Bench judgment of this Court in case **Vidya Parkash Harnal Vs. State of Haryana 1995(3) S.C.T. 785** which is squarely applicable in the present case. The Court negated the argument predicated on the basis of principle of 'no work no pay' which is to the following effect:-*

"7. Similarly, the argument that the petitioner was not entitled to the grant of emoluments on the principle of 'No work No pay' is apparently misconceived and based upon wrong notions of law. If a civil servant is not offered the work to which he was legally entitled, he cannot be deprived of the wages for the post to which he subsequently is held entitled to. Permitting such a course to be adopted would be encouraging the imposition of double penalty, that is, firstly by declining the civil servant his right of promotion and secondly by depriving him of the emoluments to which he would have been entitled to upon promotion which subsequently is considered in his favour. Deprivation to work against the post to which a civil servant is entitled on promotion is always at the risk and responsibility of the State and cannot be made a basis for depriving such a civil servant of the emoluments to which he was entitled, had he been promoted in accordance with the rules at the time when he became eligible for such promotion. The Courts cannot ignore the magnitude of the sufferings and the pains to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this age of skyrocketing prices and non availability of essential requirements of livelihood. The Court cannot shut its



eyes and forget the holocaust of economic deprivation to the petitioner and his dependants. Such a deprivation might have upset the career of the dependants, depriving the society of the services of such youth and budding dependants or children of the petitioner. The executive once being satisfied that a civil servant was entitled to the promotion with retrospective effect cannot deprive him of the benefits of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons. The order impugned in this case by which the petitioner/appellant was deprived of his right to claim back wages is admittedly non-speaking without assigning any justification or cogent and specific reasons.”

14. In this view of the matter, the appeal i.e. RSA No.2309 of 1999, filed by State of Haryana, is hereby dismissed and the second appeal i.e. RSA No.3905 of 1999, filed by plaintiff/appellant – Gurbachan Singh, is allowed and the judgment and decree dated 09.01.1999, passed by the learned Lower Appellate Court, denying arrears of pay to the plaintiff/appellant is set-aside and the judgment and decree dated 16.08.1997, passed by the learned trial Court is restored.

15. All the pending miscellaneous applications, if any, are also disposed of.

15.05.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No