

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11619-2021 (O&M)

Date of Decision: 29.02.2024

Madan Lal

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Pankaj Sharma, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Rajesh Gaur, Advocate, for respondents No.2 & 3.

Mr. Sanjiv Jindal, Advocate, for respondent No.4.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 03.11.2020 (Annexure P-19) passed by respondent No.2 whereby the claim of the petitioner for promotion to the post of Driver from Godown Attendant-cum-Watchman (GACW) has been rejected.

2. The brief facts of the present case are that the petitioner was appointed as Godown Attendant-cum-Watchman in the respondent-Corporation on 10.05.1984 vide Annexure P-1. Thereafter, he was also confirmed on the aforesaid post. However, in the year 2003, the Ware

Housing Corporation did not have adequate drivers, the respondent-Corporation decided to utilize the services of the petitioner as a driver without any extra remuneration for performing the duties of a driver. The aforesaid is so reflected in Annexure P-3 dated 08.04.2003. Thereafter, the petitioner kept on discharging the duties of a driver and not that of the Godown Attendant-cum-Watchman. The petitioner since was discharging the duties of a driver by the orders passed by the respondent-Corporation, he made a request to the Secretary, Ware Housing Corporation on 12.03.2008 vide Annexure P-6 for appointing him to the post of driver. However, no action was taken on the aforesaid request. However, vide Annexure P-7 dated 31.10.2008, it has been stated in the letter written by the District Manager to the Manager (Personnel), Haryana Ware Housing Corporation that the petitioner has performed the duties of a driver w.e.f. April, 2003 to October, 2006 and he has performed the duties of driver very well and the work of the petitioner has been noticed to be satisfactory and he is performing his duties sincerely and he is an experienced driver. So keeping in view the aforesaid, it was so requested by the District Manager that the Corporation be allowed to utilise the services of the petitioner as driver and sanction of Rs. 400/- per month as an officiating allowance till a regular arrangement is made by Head Office. Vide Annexure P-8 dated 10.12.2008, the aforesaid permission was granted to utilize the services of the petitioner as driver till regular arrangement is made and was allowed an allowance of Rs. 400/- per month for performing the duties of driver. The petitioner kept on discharging the duties of driver. Thereafter on 30.05.2012 vide Annexure P-11 it was so ordered by the Managing Director that the petitioner is deputed to work as driver at District Office Kaithal in addition to his own

duties without any remuneration as per his consent and this will be subject to furnishing of an affidavit to the effect that he will not claim regular appointment on the post of driver or knock the door of the Court for the same. Alongwith the aforesaid letter Annexure P-11 issued by the Managing Director, the affidavit so furnished by the petitioner on 06.06.2012 has also been appended with the petition.

3. Thereafter vide Annexure P-12, the petitioner was however promoted to the post of Godown Keeper but since the petitioner was discharging the duties of a driver and he had foregone the promotion to the post of Godown Keeper in this regard. However, so far as his duties are concerned, he kept on discharging the duties of a driver, even after foregoing the promotion.

4. In the meantime, there was more person respondent No.4 who was also working as Godown Attendant-cum-Watchman and was also discharging the duties of a driver since adequate number of drivers were not available with the respondent-Corporation but the aforesaid Lal Singh respondent No.4 is junior to the petitioner since the petitioner was appointed as a Godown Attendant-cum-Watchman in the year 1984 and respondent No.4 was appointed as a Godown Attendant-cum-Watchman in the year 1988 but the Board of Directors thought it fit to make a special case for respondent No.4 and notwithstanding the fact that under the service rule there was no channel of promotion from the post of Godown Attendant-cum-Watchman to the post of driver but as a matter of a special measure and by relaxation of the rules the Board of Directors decided to promote respondent No.4 as a driver against a vacant post by relaxation of the rules and as a special measure. The aforesaid decision of the Board of Directors

had taken place in the year 1998. However, so far as the present petitioner is concerned, he kept on discharging the duties of a driver till the date he retired on 30.11.2021.

5. Before the retirement of the petitioner, he filed the present writ petition with a grievance that his junior respondent No.4 was granted promotion to the post of driver because he was working on the post of driver but the petitioner being senior was wrongfully ignored and rather relaxation ought to have been granted to the petitioner because he has rather more experienced and he was senior to the aforesaid Lal Singh.

6. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was senior the aforesaid Lal Singh and the petitioner was also diligently and with responsibility discharging the duties of driver and rather this has been so stated in the aforesaid letter which was the inter-departmental communication and rather the petitioner ought to have been promoted to the post of a driver but he was wrongfully ignored and respondent No.4 was promoted to the post of driver by relaxation of rules by the Board of Directors. He also submitted that there is no dispute with regard to the fact that right from the year 2003 when he was granted the duties of a driver on 08.04.2003 till the time of his retirement, he has been discharging the duties of a driver.

7. He has however submitted now since the aforesaid Lal Singh was promoted to the post of driver even by relaxation of rules by the Board of Directors but the same decision was taken by the Board of Directors in the year 1998 and now about 25 years have elapsed that now the petitioner would restrict claim not to seek parity with that of the aforesaid Lal Singh nor he has challenged the promotion order of respondent No.4 but he is

restricting his claim in the present petition only to the extent that since he has discharged the duties of a driver on the orders of the respondent-Board and it is an undisputed position with regard to the same, then he should be paid the salary of that of a driver and he even at the time of superannuation, was working as a driver but his last pay drawn was on the post of Godown Attendant-cum-Watchman. He further submitted that the mere fact that the petitioner had foregone his promotion to the post of Godown Keeper would not disentitle the petitioner for taking the benefit of the post of driver for the purpose of arrears of salary because after he has foregone his promotion, the respondents themselves have reverted the petitioner vide Annexure P-14 and therefore, it was by the orders of the respondent-Corporation that the petitioner was reverted to the post of Godown Keeper and he has retired as Godown Attendant-cum-Watchman.

8. Learned counsel further submitted that since he had worked on the post of driver and discharged his duties on the orders of the respondent-Corporation, he is entitled for the salary of the post of driver and the arrears of salary with regard to the difference of pay may be disbursed to the petitioner and after fixing the aforesaid pay of a driver for the petitioner, his consequential benefits after retirement may also be refixed accordingly and he is also entitled for interest on the aforesaid arrears and the consequential benefits as well. He also relied upon a judgment of the Hon'ble Supreme Court in **Smt. P. Grover versus State of Haryana and another, (1983) SCC 4 291** and a Full Bench judgment of this Court in **Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207** in this regard to contend that once the petitioner has worked and discharged his duties on the orders of the respondent-Corporation to the post of driver, then he was required to

be paid the salary for the aforesaid post notwithstanding the fact that the post of driver was not a promotional post but taking into consideration the fact that the aforesaid Lal Singh was ultimately promoted by the Board of Directors.

9. On the other hand, learned counsel appearing on behalf of the respondent-Corporation submitted that the petitioner was not entitled for the grant of arrears of salary because of the fact that when he was directed to discharge the duties of driver, then it was subject to the condition that he will not be paid any extra remuneration and learned counsel has also referred Annexure -P-11 in this regard. He also submitted that vide Annexure P-11, the Managing Director had also directed that the petitioner will do his duties of driver without any remuneration as per his consent and this will be subject to furnishing of an affidavit to the effect that he will not claim regular appointment on the post of driver or knock the door of the Court for the same. He submitted that even though the petitioner has not pressed with regard to his claim for being promoted to the post of driver at par with the aforesaid Lal Singh but the petitioner was even otherwise also not entitled for promotion to the post of driver because so far as Lal Singh is concerned, it was only a special measure by relaxation of rules and the petitioner could not have claimed as a matter of right for being promoted to the post of driver.

10. I have heard the learned counsel for the parties.

11. The issue involved in the present case is as to whether the petitioner was entitled for the grant of salary of a driver to which he worked from the year 2003 onwards till the time he superannuated in the year 2021.

It is undisputed that the petitioner actually worked on the post of driver and

he discharged his duties for the aforesaid period. Although prayer in the petition was made that he be directed to be promoted to the post of driver at par with that of Lal Singh-respondent No.4 but during the course of arguments, the learned counsel for the petitioner has restricted the scope of the present petition only to the extent that he be given the benefit of the difference of salary by fixing his pay to the post of driver because he has actually discharged the duties of a driver till the time of his superannuation. The law with regard to the aforesaid proposition of law is no longer *res intergra*.

12. The Hon'ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87** held 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 that 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.”

13. A Full Bench of this Court in **Subhash Chander's case (supra)** also considered this issue and it was held that a person who is given a current duty charge is entitled for the pay and salary for the time he had discharged his duties.

14. An argument has been raised by the learned counsel for the respondent-Corporation that since the petitioner had although discharged the duties of a driver for the aforesaid period but as per the different orders passed by the respondent-Corporation, he was to discharge the duties without any extra remuneration. The aforesaid argument does not stand legal

scrutiny in view of the aforesaid law laid down by the Hon'ble Supreme Court and a Full Bench of this Court. Once an employee has discharged a duty even as a temporary stop gap arrangement, even then he is entitled for the salary of that post.

15. In view of the aforesaid position, the petitioner is entitled for the grant of salary for the post of driver from the period which he has discharged the duties.

16. At this stage, learned counsel for the respondent-Corporation has raised another plea by stating that in case the arrears are to be granted to the petitioner regarding his salary, then in any case the same may be restricted to be 38 months prior to the filing of the present petition. The aforesaid submission made by the learned counsel for the respondent-Corporation is unfounded and unsustainable. The petitioner is claiming salary and salary is a part of right to property under Article 300A of the Constitution of India. For grant of salary, a person cannot be non-suited on the ground of delay. Once the Corporation had assigned the duties to the petitioner for discharging the duties of a driver, then rather it was the duty of the Corporation to have paid him and now the Corporation cannot turn around and say that his arrears should be restricted to 38 months prior to filing of present petition because the arrears would be in the nature of right to property which is a Constitutional right of the petitioner.

17. The aforesaid restriction to 38 months preceding filing of petition applies when it is a case of no pay for no work or when retrospective promotion etc. is granted. Such period cannot be restricted in a case like the present case where an employee has actually worked on a particular post.

18. The aforesaid objection taken by the learned counsel for the

Corporation can also be considered in the light of another document which has been attached with the present petition which would shock the conscience of the Court. Annexure P-11 which is passed by the Managing Director is reproduced as under:-

“OFFICE ORDER

*Sh. Madan Lal, GACW, Kaithal is here by deputed to work as Driver at Distt. Office, kaithal in addition to his own duty without any remuneration as per his consent dated 30.04.2012 forwarded by the Distt. Manager, Kaithal vide his letter no. HWC/DM/KLE/517 dated 5.5.2012. **This will be subject to furnishing of an affidavit to the effect that he will not claim regular appointment on the post of Driver or knock the door of the court for the same.**”*

(emphasis supplied)

The affidavit which was furnished by the petitioner in consequence of the aforesaid Annexure P-11 is also reproduced as under:-

“AFFIDAVIT

I Madan Lal S/o Sh. Sultan Singh working as GACW, at District office Haryana State Ware Housing Corporation, Kaithal is hereby solemnly affirm and declare as under:-

- 1. That I am a regular employee of Haryana State Ware Housing Corporation and presently posted at District Office, HSWC, Kaithal.*
- 2. That I will not claim regular appointment on the post of Driver in the Corporation.*
- 3. That I will not knock the door of the court if I have been working as Driver in the Corporation.”*

(emphasis supplied)

19. A perusal of the order passed by the Managing Director would show that the petitioner was deputed to work as a driver without any

remuneration and this was subject to furnishing of an affidavit to the effect that he will not claim regular appointment on the post of driver or knock the door of the Court for the same. A perusal of the aforesaid affidavit would show that after six days the aforesaid affidavit was furnished by the petitioner. It is very surprising and very strange to note that a condition has been imposed upon the petitioner that he will not knock the door of the Court. This goes to shake the basic essence of jurisprudence and such kind of conditions are absolutely *non est*, contrary to public policy and *void ab initio*. The Managing Director of a Corporation has imposed a condition by which a restraint has been put to the petitioner not to knock the door of the Court. Such kind of practice and the order passed by the Managing Director is totally deprecated and condemned. No such condition can be imposed upon anybody that he will not knock the door of the Court. Therefore, this Court is of the view that the respondent-Corporation should be fastened with costs.

20. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The respondents are directed to calculate the arrears of salary of the petitioner for the period he actually worked on the post of driver and pay him the arrears of salary alongwith interest @ 6% per annum. His pensionary/retiral benefits and consequential benefits shall also be fixed on the basis of his last pay drawn and difference of arrears of the same shall also be paid to him alongwith interest @ 6% per annum. The arrears and all the monetary benefits shall be paid to the petitioner within a period of three months from today. In case the aforesaid amount is not paid within a period of three month, then the petitioner shall be entitled for future rate of interest @ 9% per annum. The respondent-Corporation shall also pay

costs of Rs. 25,000/- to the petitioner within the aforesaid period of three months.

29.02.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking

:

Yes/No

Whether reportable

:

Yes/No