

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1061-2024 (O&M)
Date of decision:- 30.04.2024

Punjab State Power Corporation Limited, Patiala
...Appellant(s)

Versus

Sukhpreet Singh and others
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Ms. Avin Kaur Sandhu, Advocate,
 for the appellant.

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G.S. SANDHAWALIA, A.C.J. (ORAL)

CM-2578-LPA-2024

For the reasons mentioned therein, the delay of 63 days in filing
the appeal is condoned.

The application stands disposed of.

LPA-1061-2024

1. The consideration in the present appeal is to the order dated 24.01.2024 passed by the learned Single Judge in CWP-11323-2016.
2. The learned Single Judge while allowing the writ petition had granted the benefit of pay and allowances of the higher post of Accounts Officer from the date the writ petitioners assumed the charge as such with all consequential benefits which were payable within a period of three months. The reliance by the learned Single Judge as such was upon the various judgements of the Apex Court as well as this Court which hold the field. The said judgements read as under:-

“State of Punjab and another Vs. Dharam Pal : 2017(4) S.C.T. 460; Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma : 1998(3) S.C.T. 90; Selva Raj Vs. Lt. Governor of

Island, Port Blair : 1999 (2) S.C.T. 286; ***Smt. P. Grover Vs. State of Haryana*** : 1983(4) SCC 291; ***Pritam Singh Dhaliwal Vs. State of Punjab and another*** : 2004(4) S.C.T. 403; ***Balbir Singh Dalal and others Vs. State of Haryana and another*** : 2002(4) S.C.T. 422 and ***Gurmej Singh Vs. State of Punjab*** : 1995(3) S.C.T. 279.”

3. Learned counsel for the appellant has tried to convince us that the writ petitioners were estopped as such since their posting orders specifically said that they would be working on their own pay scale without any financial benefits and, therefore, having accepted the said posting orders way-back in 2013, they could not agitate for their grievances.

4. We are not convinced with the said argument. It is settled principle that the employer is always in a position of dominance and, therefore, merely because the said incorporation had been made in the order as such would not estop the writ petitioners from seeking their legal rights as such. Having taken the work and the responsibility of a higher post, the model employer should have gracefully acceded to the request and the demand of the higher pay/emoluments for the post which they held charge. It is also not disputed that thereafter they have also earned their promotions to the said post and in such circumstances once having the requisite qualifications also there was no escape for the appellant, but to dole out the necessary financial benefits.

5. The Full Bench judgement of this Court in ***Subhash Chander Vs State of Haryana and others***, 2012(1) RSJ 442 also granted the said benefit as such that if the additional charge is given then the higher pay attached to the higher post for additional work involving higher responsibilities deserves to be paid. The above well settled legal proposition is being consistently followed till date. Reference is made to another judgment of the coordinate Bench in ***Pritam Singh Dhaliwal vs. State of Punjab and another***, (2004) 6 SLR 758

(DB). In the said case, higher pay had been claimed for having performed the duties of Deputy Director of Panchayat/Additional Deputy Commissioner (Development) from time to time pursuant to the orders passed by the Government while holding a lower substantive post i.e. District Development and Panchayat Officer. It was held therein that if a person is asked to perform the duties regularly though in officiating capacity or on current duty charge or as a temporary measure, the said person would be entitled to the higher pay i.e. the pay which is payable while performing the duties in higher/promotional post. In the said case also, the petitioner therein had continued to work on the higher post in officiating capacity till his superannuation.

6. Reference can also be made to the judgement by another coordinate Bench passed in LPA-1491-2016, titled ***State of Haryana vs. Sita Ram***, decided on 27.11.2019, wherein the issue was of holding current duty charge of the post of BDPO in the pay-scale of Social Education and Panchayat Officer. The incumbent in that case continued working as such on the higher post on current duty charge, but was paid the salary of Social Education and Panchayat Officer, his substantive post. After considering and applying the ratio and dictum of the judgments of the Apex Court in ***Arindam Chattopadhyay vs. State of W.B.***, (2013) 4 SCC 152 and ***State of Punjab vs. Dharam Pal***, (2017) 9 SCC 395, the Division Bench declined to exercise jurisdiction against challenge to the writ petition having been allowed, whereby the petitioner therein was held entitled to the salary for the higher post for the period he held current duty charge.

7. It is never the case as such that the writ petitioners were ineligible for promotion to the said post and rather it has been averred that they would be considered for regular promotion as per their eligibility and seniority. In such

circumstances, we are of the considered opinion that the judgement of the learned Single Judge as such does not suffer from any infirmity which would warrant interference.

8. The appeal being meritless, accordingly, stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

30.04.2024
Amodh Sharma

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