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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18220-2007
Date of Decision: 05.03.2024

PREM CHAND BHARDWAJ AND OTHERS

Vs.
STATE OF HARYANA AND OTHERS

...Petitioners

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Bakshi, Advocate for the petitioners.

Mr. Harish Nain, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioners is that while framing the Haryana Transport Department (Group-B) Service Rules 1992, the petitioners who are/were working on the post of Junior Auditors and Accountants, were not made eligible to the post of Superintendent, which was arbitrary in nature. The challenge is to the said Rule on the ground that the post of Junior Auditors and Accountants should also be included in the feeder cadre for promotion to the post of Superintendent.
2. The further grievance being raised by the petitioners is that though they are posted as Assistant Accountants or Statistical Assistants but they have been given the current duty charge of the post of Superintendent and were actually discharging the duties of the said post hence, the respondents are under obligation to grant the petitioners the benefit of pay of the post of Superintendent for the period, the petitioners had discharged the duty on the said post of Superintendent.

3. In reply to the writ petition, the State has mentioned that though, as per the 1992 Rules, post of Junior Auditors and Accountants were not mentioned in the feeder category for promotion to the post of Superintendent but as representations were received, the same were forwarded with comments that the 1992 Rules be amended accordingly and the State in its wisdom, though amended the Rules, but the same were made applicable prospectively hence, the petitioners were not eligible at a particular given point of time while in service for promotion to the post of Superintendent, and the petitioners had already retired by the time the 1992 Rules were amended so as to include the post of Junior Auditors and Accountants in the feeder cadre for promotion to the post of Superintendent.

4. Learned State counsel further submits that as the petitioners have already discharged the duties of Superintendent on the current charge basis, they are not entitled for the salary for the said post.

5. I have heard counsel for the parties and have gone through the record with their able assistance.

6. The framing of the Rules and the description of the posts to be included in the feeder cadre for promotion is within the domain of the employer and the Court will have no jurisdiction to interfere so as to impose its opinion as to whether or not, a particular category should have been a part of the feeder cadre for promotion to the post of Superintendent. Though, the respondent/State forwarded the claim of the petitioners for including the post of Junior Auditors and Accountants in the feeder cadre for promotion to the post of Superintendent, but, State in its wisdom even while amending the 1992 Rules, gave prospective effect only to the amended Rules. The said

amendment is not under challenge in the present petition. Hence, keeping in view the facts and circumstances of the present case as, the prescription of posts to be included in the feeder cadre for further promotion is within the domain of the State, and at the relevant point of time, the petitioners could not have been granted promotion to the post of Superintendent being working on the post not included in the feeder category, hence no order can be passed by this Court by fictionally treating the petitioners in the feeder cadre for promotion to the post of Superintendent.

7. With regard to the claim of the petitioners for grant of salary for the period they had discharged the duties of the post of Superintendent on the current charge basis, the same has merit. Once the respondent directed the petitioners to discharge the duties of the post of Superintendent, which they discharged, the respondents are under obligation to grant them the salary for the post of which they discharged the duties. As per the settled principle of law, the employees are entitled for the perks of the post of which, they have been asked to discharge the duties and upon direction, the duties of a particular post have been discharged. Hence, the said proposition of law is covered by the Full Bench Judgment of this Court in **CWP No. 21358 of 2008 decided on 20.12.2011 titled as Subhash Chander Vs. State of Haryana and others**. The relevant paragraph No. 17 of the said judgment is reproduced as under:

“17. In view of the above, the question posed in para no. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in

higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.

8. Keeping in view the above, the claim of the petitioners for the grant of salary for the post of Superintendent for the period they had discharged the duties of the said post on current duty charge is allowed. The respondents are directed to grant the petitioners the said benefits of pay for the period in question.

9. As, the petitioners have discharged the duties on the post of Superintendent, the petitioners will also be entitled for the interest @ 6% per annum on the arrears of salary for which they will be found entitled for, keeping in view the judgment of Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, wherein it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be

denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

10. Keeping in view the above, the claim qua the grant of benefit of promotion to the post of Superintendent, is declined but with regard to the grant of pay for the period the petitioners had discharged the duties of Superintendent, they are held entitled for the pay for the post of Superintendent. Let the present order be complied within a period of 06 weeks from the date of receipt of the certified copy of the order.

11. The claim of petitioner Nos.1 and 3 to 8 with regard to the salary is allowed. With regard to the claim of petitioner No.2, learned counsel for the petitioners submits that he had already filed the petition being CWP No. 16315 of 2006 for claim of the salary for the post of Superintendent for the period he had discharged the duty hence the said petitioner will be governed by the decision in the said present petition.

(HARSIMRAN SINGH SETHI)
(JUDGE)

05.03.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No