

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:135730



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CWP No. 12450 of 2022 (O&M)

DATE OF DECISION: 16th October, 2024

Ram Chander (since deceased) through his Legal Heir Sunita

.....PETITIONER

VERSUS

State of Haryana and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI.

Present: Mr. Kushagra Mahajan, Advocate for the petitioner.
Mr. Kapil Bansal, DAG Haryana.
Mr. R.D. Bawa, Advocate for respondents No. 2 and 3.

JASGURPREET SINGH PURI, J (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *Certiorari* for quashing of the order dated 14.12.2021 (Annexure P-8).

2. Learned counsel appearing on behalf of petitioner submitted that the petitioner was working as Peon-cum-Chowkidar, with the respondent-Corporation and vide Annexure-P3 dated 07.11.2012, he was given officiating charge of Tubewell Operator and he continued to work on the post till the time of his retirement which was a higher post but he had not been granted the pay scale for the post he worked despite the fact that he had discharged the duties on the aforesaid post. He also submitted that a direction may be issued to the respondent to grant salary to the petitioner after calculating the same along with interest and also direct the respondent to refix the pensionary benefits accordingly.

3. Mr. R.D. Bawa, learned counsel for respondents No. 2 and 3 submitted that so far at the factual position is concerned, it is correct that the

petitioner was given officiating charge of Tubewell operator which is a higher

post and vide Annexure P-3 he continued to work on the aforesaid post and discharged the duties of the aforesaid post till the time of his retirement on 31.1.2020. However, so far as second prayer of the petitioner for refixation of pension is concerned the same is inadmissible and even otherwise, the petitioner has filed a representation and the same will be decided in accordance with law.

4. A Full Bench judgment of this Court in ***Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207***; a judgment of Hon'ble Supreme Court in ***Smt. P. Grover versus State of Haryana and another, (1983) 4 SCC 291*** and ***Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87*** and judgments passed by a Coordinate Bench of this Court in ***P. D. Kaushik versus State of Haryana and others, CWP-16541-2015*** and ***Nihal Singh versus State of Haryana and others, CWP-7642-2018*** wherein it is held that once an employee is made to work and discharge his duties on the higher post then he is entitled for the salary of the higher post.

5. Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, case (supra)*** 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 duty charge of the 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.”

6. I have heard learned counsel for parties.
7. So far as the factual aspect is concerned, both the learned counsel for the parties are *ad-idem* that the petitioner was given the duty of additional charge which is stated to be on higher post vide Annexure P3 and he worked on that post till the time he retired. Whether the petitioner is to be granted the salary for the time he discharged his duty on higher post is no longer *res-integra*.
8. In view of aforesaid position, the present petition is partly allowed. The petitioner shall be entitled for the difference of salary from the time he was given the officiating charge of Tubewell operator to period for which he discharged his duties. The respondents are directed to calculate the difference of salary and pay to the petitioner within a period of three months from today along with 6% interest (simple). So far as the second prayer is concerned, the petitioner shall be at liberty to move appropriate representation to the respondent if not already filed and in case he chooses to file any representation , the same shall be decided accordingly in accordance with law within a period of three months.

(JASGURPREET SINGH PURI)
JUDGE

16th October, 2024
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Whether speaking/reasoned	Yes
Whether reportable	No