

2. The instant petition has been filed by the petitioners seeking a writ of mandamus for directing the respondents to consider and grant regular promotions/regularization on the post of Drivers in terms of the different resolutions passed by the Municipal Corporation, Ludhiana from time to time including resolution No.297 dated 18.03.2016 (Annexure P-17) and also grant the petitioners same benefit as allowed to the petitioners in CWP-14625-1998, decided on 13.09.2013 (Annexure P-13), implemented vide order dated 06.01.2014 (Annexure P-14), including the benefit of relaxation of qualification keeping in view the length of experience gained by the petitioners on the posts of Drivers and also grant them all the consequential benefits. Further prayer has been made for directing the respondents to grant the pay scale and emoluments of the posts of Drivers for the period the petitioners have been performing their duties as Drivers as detailed in Annexure P-1 along with the arrears.

3. Learned counsel for respondent No.3 submits that during the pendency of the present petition, out of total 24 petitioners, 07 petitioners have already been promoted to the post of Driver as per their seniority and the case of the remaining petitioners shall also be considered for promotion on their turn as per the relevant rules. With regard to the grant of pay and allowances on the post of Driver on which the petitioners are performing their duties, it has been admitted in the written statement as well as in the affidavit that the petitioners are performing their duties on the post of Driver.

4. The Hon'ble Supreme Court in its judgment passed in ***Smt. P. Grover Vs. State of Haryana : 1983(4) SCC 291*** has held that the officer promoted to higher post on acting basis is entitled to salary of such higher post. The relevant para of the said judgment reads as under :-

“3. We mentioned that she was promoted as an acting District Education officer with effect from July 19, 1976. The order of promotion contained a super-added condition that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order extending her services recited that she was an acting District Education Officer, but contained a super-added condition that her pay would not be more than the maximum of the Principal's grade. Smt. Grover claims that having been promoted as District Education officer, she was entitled to the pay of a District Education officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Art. 136 of the Constitution. The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt. P. Grover after she was promoted to act as District Education officer. All that was said in the counter-affidavit was that there were no Class-I post available and therefore, she was not entitled to be paid the salary of District Education officer. We are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education officer, a Class-I post, on an acting basis. Our attention was not invited to any rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled to be paid the salary of a District Education officer from the date she was promoted to the post, that is, July 19, 1976, until she retired from service on August 31, 1980. The appeal is accordingly allowed with costs.”

5. To the same effect is the judgment of the Hon'ble Supreme Court

AIR (SC) 2909. In the said case the employee was promoted as Junior Engineer-I in stop-gap arrangement and he had given the undertaking 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 said argument was rejected by Hon'ble Supreme Court and it was held that the Government being model employer cannot be permitted to make such an argument.

6. Similarly in the case of **Selva Raj Vs. Lt. Governor of Island, Port Blair : 1999(2) S.C.T. 286** the employee looked after the duties of higher post and he worked though temporarily and in an officiating capacity, however, it was held that he was entitled to draw salary attached to the higher post during the time he actually worked on that post. To the same effect are the judgments passed in **State of Punjab and another Vs. Dharam Pal : 2017 AIR SC 4438; Gurmej Singh Vs. State of Punjab : 1995 (3) S.C.T. 279; Balbir Singh Dalal and others Vs. State of Haryana and another : 2002(4) S.C.T. 422 and Pritam Singh Dhaliwal Vs. State of Punjab and another : 2004(6) SLR 758.**

7. In view of the above and the law laid down in the judgments referred above, the instant petition is partly allowed and the petitioners are entitled for grant of pay scale of the post of Driver on which they are performing their duties as discernible from the written statement and affidavit filed by the respondents and respondents shall consider their case for promotion to the post of Driver on their turn as per relevant Rules as admitted during the course of hearing.

8. The respondents are directed to grant the pay scale of the post of Driver to the petitioners w.e.f the date they are performing their duties as detailed in Annexure P-1. They shall also be entitled for arrears for 38 months prior to date of filing of the present petition in view of the Hon'ble Supreme Court

CM-7184-CWP-2024 in/and
CWP-22248-2019

judgment passed in **State of Madhya Pradesh and others Versus Yogendra Shrivastava 2010(1)SCT 434**. The necessary exercise shall be carried out within a period of three months from the date of receipt of certified copy of this order.

30.04.2024
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(NAMIT KUMAR)
JUDGE

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