

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14829-2019 (O&M)

Reserved on 19.10.2023

Pronounced on 11.01.2024

Gurcharan Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. AK Viridi, Advocate for the petitioner
Mr. Gaurav Jindal, Addl.AG Haryana
Mr. Hitesh Pandit, Advocate and
Ms. Suman Rani, Advocate for respondents No.2 to 6

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the order dated 16.10.2017 (Annexure P-1) passed by respondent No.5 to the extent denying arrears of salary for the period from 04.08.2004 to 03.01.2006.

(2). Brief facts of the case are that the petitioner was appointed as JE in the respondent-Nigam on 03.08.2004 and pursuant thereto, he reported herself to join on 11.08.2004 but was not allowed to join by respondent No.6 purportedly on account of the remarks given by LR, HVPN dated 06.08.2004. The petitioner was offered another appointment letter dated 31.12.2005 and was permitted to join on 03.01.2006. The petitioner represented before the authorities to consider his deemed date of joining w.e.f. 11.08.2004 i.e. when persons juniors to his (as per the select list prepared by HSSC) were permitted to join but to no effect. The petitioner also approached this Court in CWP-12769-2014 but the said writ petition was dismissed as withdrawn vide order dated 22.12.2014 (Annexure P7) statedly

on account of the fact that the respondent-Nigam conceded to the prayer of the petitioner and vide order dated 16.10.2017 (Annexure P-1) passed by Under Secretary/HR-II, it was decided that the deemed date of joining of the petitioner will be treated from the date on which his junior had joined in Nigam for the purpose of seniority, pensionary benefits and deduction of GPF with further stipulation that no payment of arrear of salary from the deemed date of joining to actual date of joining shall be payable to the petitioner. Hence this writ petition.

(3). Learned counsel for the petitioner contended that non-grant of arrears of salary on account of grant of deemed date of joining as JE on 04.08.2004 for the period from 04.08.2004 to 30.01.2006 is unjust and arbitrary. He submitted that the deemed date of joining shall mean the joining date, “for all intents and purposes” and non-grant of arrears of pay from 04.08.2004 to 03.01.2006 is not only violative of his right to equality guaranteed under Articles 14 and 16 of the Constitution of India but is also contrary to the ratio of the judgment of the Supreme Court in **Union of India vs. KV Jankiraman (1991) 4 SCC 109** wherein it has been held that the rule of ‘no work no pay’ would not be applicable to cases where employee is willing to work but is kept away by the authorities for no fault of his. Similar view has been reiterated in **State of Haryana vs. DK Sood, RSA No.857 of 1992 decided on 10.11.1988** and **Indraj Singh vs. State of Haryana CWP No.13656 of 1998 decided on 09.08.2000.**

(4). Notice of motion was issued on 26.08.2019 and pursuant thereto, the respondents have filed their reply dated 20.11.2020 wherein it has been averred that the order under challenge is a perfect order passed on the

principle of 'No Work No Pay', as it is an admitted fact that petitioner had not performed any work on the post in question, hence was rightly denied the benefit of actual pay. It is also submitted that joining of the petitioner and other similarly situated selected candidates was stayed by this Court vide order dated 05.08.2004 (Annexure P/10) as the selection in question was quashed and the respondents were restrained from allowing the joining of selected candidates against the selection.

(5). Heard learned counsel for the parties.

(6). The prime argument fielded on behalf of respondents No2 to 6 is that the petitioner was not entitled to the grant of arrears of salary on the principle of "No work, no pay" is apparently misconceived and based upon wrong notions of law. If a govt. servant is not offered the work to which he was legally entitled, he cannot be deprived of the wages for the post to which he subsequently is held entitled to. Permitting such a course to be adopted would be encouraging the imposition of double penalty, i.e. firstly by declining the govt. servant his right of appointment despite being selected and secondly by depriving him of the salary to which he would have been entitled to had he been allowed to join on the very first day which was subsequently considered in his favour vide order dated 16.10.2017 (Annexure P-1) by granting him deemed date of joining. Deprivation to work against the post to which a govt. servant is entitled is always at the risk and responsibility of the State and cannot be made a basis for depriving such a govt. servant of the emoluments to which he was entitled to. The Courts cannot ignore the magnitude of the sufferings and the pains to which a govt. servant is subjected on account of deprivation of the monetary benefits

particularly in this case of skyrocketing prices and non-availability of essential requirements of livelihood.

(7). The respondent-Nigam, once being satisfied and granted the deemed date of joining at par with his junior with retrospective effect cannot deprive the petitioner of the benefits of salary accruing on account of such grant of benefit from an early date without assigning valid, cogent and specific reasons. The order impugned in this case by which the petitioner was deprived of his right to claim arrears is admittedly non-speaking without assigning any justification or cogent and specific reasons. The same view has further been reiterated by this Court in **Civil Writ Petition No. 11749 of 1996, Krishan Kumar v. The Haryana Stale Federation of Consumers Co-operative Wholesale Stores Ltd. and another, decided on 10.12.1996 : 1997(1) SCT 686 (P&H)(DB)**, wherein the promotion order carrying a condition of non-payment of arrears of salary to the extent of the condition was quashed.

(8). Accordingly, this writ petition is allowed and order dated 16.10.2017 (Annexure P-1) is quashed to the extent that the petitioner shall be entitled to grant of arrears of pay w.e.f. 04.08.2004 to 03.01.2006, along with interest @ 6% p.a. which shall be paid to the petitioner within a period of two months from the date of receipt of certified copy of this order. In default thereof, the petitioner shall be entitled to interest @ 12% p.a.

(9). Ordered accordingly.

11.01.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No