

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209

CWP-11323-2016
Date of Decision : 24.01.2024

Sukhpreet Singh and othersPetitioners

Versus

Punjab State Power Corp. Ltd. and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Garima Pandey, Advocate for
Mr. Anil Mehta, Advocate for the petitioners.

Mr. Rajiv Dhawan, Advocate
for respondent No.2.

None for respondents No.1, 3 to 5.

NAMIT KUMAR, J. (ORAL)

1. The petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ of certiorari for quashing the condition contained in transfer/posting orders dated 26.09.2013, 04.10.2013, 09.12.2013 and 12.12.2013 (Annexure P-1) (Colly) to the extent that despite working on the promotional post of Accounts Officer, they shall not claim pay attached to the said post and will be posted only in their own pay scale. Further a writ in the nature of mandamus has been sought for directing the respondents to grant the pay scale of the post on which the petitioners are performing their duties.

2. Brief facts leading to the filing of the present petition as have been pleaded in the writ petition are that the petitioners are

employees of the Punjab State Power Corporation Limited and Punjab State Transmission Corporation Limited. They were working as Assistant Accounts Officers and after completion of more than five years of service as Assistant Accounts Officers, they were ordered to be posted as Accounts Officers with the condition that they shall be placed in their own pay scale of Assistant Accounts Officer without any financial benefit. They were constrained to accept the posting orders as Accounts Officer. The service particulars of the petitioners and their date of assuming the charge of the post of Accounts Officer are as under:-

Name of Employee/Emp. Code with Father's name	Date of Assuming charges as AAO/SAS	Period of Service as AAO (Approx)	Date of Assuming Charges as AO
Sukhpreet Singh	08.02.2002	5 Years 8 Months	07.10.2013
Paramjeet Kaur	08.02.2008	5 Years 7 Months	30.09.2013
Kuldeep Singh Raina	12.03.2008	6 Years	10.02.2014
Bhupinder Singh	08.02.2008	6 Years 1 Months	12.03.2014
Vinod Kumar	07.02.2008	6 Years	08.02.2014
Ranjit Singh	11.03.2008	5 Years 6 Months	26.09.2013
Kuldeep Singh	08.02.2008	5 Years 7 Months	27.09.2013
Manpreet Walia	07.02.2008	5 Years 10 Months	13.12.2013
Manisha Singla	07.02.2008	5 Years 10 Months	17.12.2013
Dapinder Kaur	08.02.2008	5 Years 10 Months	09.12.2013
Mohinderpal Singh	07.02.2008	5 Years 10 Months	13.12.2013

3. It has further been averred that the petitioners made representation dated 14.01.2016 (Annexure P-3), however, they have not been granted the pay scale of the post of Accounts Officer and therefore, left with no alternative, the instant writ petition has been preferred by them.

4. The respondents have filed their written statement wherein it has been stated that the petitioners were posted on the posts of Accounts Officers in their own pay scale without any financial benefits and once having accepted the said condition and joined on the posts of Accounts Officers, they cannot claim the pay scale of the said post and further their posting is only due to Administrative exigencies and as a stop-gap arrangement. The relevant paras of the written statement read as under :-

“2. The claim of the petitioners for higher pay scales for performing duties of higher post does not lie in view of the fact that the petitioners were posted against the vacant posts of Accounts Officers falling to the share of direct quota and reserve quota only in their own pay scale and as such they cannot claim any benefit for performing the duties of Accounts officers from the date when they joined in their own scale, further their posting is only due to administrative exigencies and as a stop gap arrangement due to vacant posts of reserve quota and direct quota same functions as were being performed by them earlier. In view of the abovesaid facts, the writ petition filed by the petitioner is liable to be dismissed on this ground only.

4. It has further been stated that the present writ petition is liable to be dismissed on the ground that the respondent Corporation will consider the case of the petitioners for regular promotion as Accounts Officer as per their eligibility and seniority in the cadre of Assistant Accounts Officers and as such the petitioners cannot claim the pay scale associated to the post of Accounts Officer till the time they were granted regular promotion by the respondent Corporation.”

5. Learned counsel for the petitioners submits that the condition laid down in the posting orders (Annexure P-1) (Colly) of the petitioners that they shall be placed in their own pay scales without any financial benefits is totally arbitrary and is against the law laid down by the Hon'ble Supreme Court in *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* and law laid down by this Court in *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*. Therefore, the petitioners are entitled for pay scale of the post of Accounts Officer.

6. Per contra, learned counsel for the respondents submits that since the petitioners have already accepted the said condition and thereafter, joined on the posts of Accounts Officers, therefore, they are not entitled for the pay scales of the said post.

7. I have heard learned counsel for the parties and perused the relevant documents.

8. The petitioners, who were working as Assistant Accounts Officers, have been posted against the posts of Accounts Officers after they had rendered service of more than 05 years as Assistant Accounts Officers. Once the petitioners have performed the duties of the posts of Accounts Officers, they cannot be denied the pay scale of the said post.

The condition that the petitioners shall be placed in their own pay scale of Assistant Accounts Officer without any financial benefit is totally arbitrary and not sustainable.

9. The Hon'ble Supreme Court in its judgment passed in **Smt. P. Grover's case (supra)** 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."

10. To the same effect is the judgment of the Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma : 1998 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.

11. 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***.

12. In view of the above factual position and the law laid down in the abovesaid judgments, the present petition is allowed and the respondents are directed to release the pay and allowances of the post of Accounts Officers w.e.f. the date the petitioners have assumed the charge of Accounts Officers, with all consequential benefits within a period of three months from the date of receipt of certified copy of this order.

24.01.2024

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No