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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1489-2014

Date of decision: 12.09.2024

RAJ SINGH CHHIKARA

...Petitioner

VERSUS

HARYANA VIDYUT PARSARAN NIGAM LTD. AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

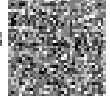
Present:- Mr. Shvetanshu Goel, Advocate
for the petitioner.

Mr. P. S. Poonia, Advocate and
Mr. Pulkit Dhanda, Advocate
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondent authorities to grant ACP benefits to the petitioner in view of the ACP Rules, 1996 and explanatory memorandum thereof and to grant the pay scale for the post of AEE w.e.f. 15.02.2010 to 31.03.2013 and further to grant promotion to the petitioner to the post of Executive Engineer from the date of entitlement and to re-fix his pension and pensionary benefits and also release the arrears thereof within stipulated period along with interest.

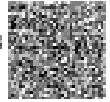
2. Learned counsel for the petitioner submitted that there are two-fold prayers in the present case. Firstly, the petitioner was not granted the benefit of



1st, 2nd and 3rd ACP and secondly, the petitioner was promoted to the post of AEE/Civil on 01.02.2010 vide Annexure R-1 and he retired as such on 31.03.2013 and he has not been paid the salary for the post of AEE but has been paid salary only for the post of SDO for the aforesaid period.

3. Learned counsel for the petitioner submitted that so far as the first prayer with regard to grant of 1st, 2nd and 3rd ACP is concerned, he does not wish to press the same but he is pressing only the second prayer i.e. once he has been promoted to the post of AEE/Civil on substantive basis and he retired as such from the aforesaid post and also discharged his duties on the aforesaid post then he cannot be denied the benefit of salary for the time when he has worked and actually discharged the duties of AEE/Civil. He further submitted that even otherwise also, Annexure R-1 dated 01.02.2010 was a promotion order, although it was conditional in nature stating that petitioner was to pass departmental examination within a period of two years and in case he fails to pass the same then he was liable to be reverted but the respondent-Nigam never invoked the aforesaid clause and never reverted the petitioner and he retired as such on the substantive post of AEE on 31.03.2013 and therefore, he was not only entitled for the grant of salary for the period he has actually discharged his duties as AEE/Civil but also his pensionary benefits are to be re-fixed accordingly.

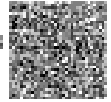
4. On the other hand, learned counsel for the respondents while referring to Annexure R-1 dated 01.02.2010 submitted that the petitioner although was promoted to the post of AEE vide Annexure R-1 but it was subject to a condition which is contained in clause-iii that the petitioner along with



other persons have been promoted on provisional basis and they will continue as such till they avail the period of two years or four chances to pass the DAE and on passing of the DAE they will be promoted as AEE/C on regular basis from the date of passing of DAE and if they fail to pass the DAE within two years or four chances, whichever is later, then they will be reverted as JE/Civil without any further notice and they have submitted an undertaking in this regard. He also referred to Annexure R-2, wherein undertaking was submitted by the petitioner in which he had undertaken that he has no objection to his promotion on regular basis from the date of passing of DAE and will not claim seniority and other benefits from prior to this date and he has no objection to his reversion as AE/Civil from the date of his non-passing of DAE and will not submit any representation in this regard for consideration. He further submitted that in the present case, the petitioner never cleared the departmental examination and although he was not reverted and he continued as such on the post of AEE/Civil till the time of his retirement but considering the aforesaid condition, which he could not fulfill, the petitioner is not entitled for the grant of salary for the aforesaid period and also for re-fixation of his pensionary benefits.

5. I have heard the learned counsels for the parties.

6. The short controversy involved in the present case is that the petitioner, who was working as a SDO was promoted to the post of AEE/Civil by the respondent-Nigam vide Annexure R-1 dated 01.02.2010. There was a specific condition in the aforesaid order as contained in clause-iii, which is reproduced as under:-



“iii) S/Sh. R.S. Chikkara, R.K. Khurana, Sandeep Jain & Ashok Kumar Rehlan who have not passed the DAE and promoted as AEE/Civil on provisional basis will continue as such till they avail the period of two years or four chances to pass the DAE and on passing of the DAE they will be promoted AEE/C on regular basis from the date of passing of DAE (last date of examination held). If their fail to pass the DAE within 2 years or 4 chances whichever is later they will be reverted as JE/Civil without any further notice and they have submitted an undertaking in this regard to this office.”

7. In pursuance of the aforesaid condition, the petitioner furnished an undertaking vide Annexure R-2, which is also reproduced as under:-

UNDERTAKING

Sub:- Regarding promotion to the post of AEE/Civil.

- 1. I have no objection to my promotion on regular basis from the date of the passing of the DAE and will not claim seniority and other benefits from prior to this date.*
- 2. I have no objection to my reversion as AE/Civil from the date of my non passing of the DAE and will not submit any representation in this regard for consideration.*

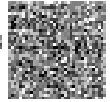
sd/-

R.S. CHHIKARA

AE/Civil

*Civil Works Sub Division HVPNL
Jind*

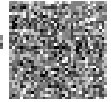
8. In the present case the petitioner after being promoted vide Annexure R-1, which was in the nature of proper promotion to the substantive post of AEE/Civil, worked on the aforesaid post and discharged his duties as



AEE/Civil, which is not disputed by the learned counsel for the respondents and therefore, the petitioner has actually worked on the aforesaid post till the time he retired on 31.03.2013. The petitioner has restricted the claim of the present writ petition only to the aforesaid extent of grant of salary and also for re-fixing of his pensionary benefits and has foregone the grant of 1st, 2nd and 3rd ACP in this regard.

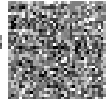
9. Now the grievance of the petitioner for grant of salary for the time during which he has actually worked as AEE/Civil and also for re-fixation of his pensionary benefits are to be considered independently. So far as the first issue is concerned, it is a settled law that when an employee has worked on a higher post and has actually discharged his duties on a higher post, then he is entitled for grant of salary thereof. Reference in this regard may be made to the judgment of Hon'ble Supreme Court in Smt. P. Grover versus State of Haryana and another, (1983) 4 SCC 291, a Division Bench judgment of this Court in Balbir Singh Dalal versus State of Haryana, 2002 (4) SCT 422, 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, another judgment of Hon'ble Supreme Court in Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87 and a Full Bench judgment of this Court in Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207.

10. The Hon'ble Supreme Court in Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others (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 Engineer-I as he was given only current 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.

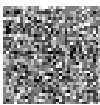
8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit 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.”

11. Therefore, in view of the aforesaid legal position which is no longer *res integra*, it is a settled law that the salary for the period during which an employee has discharged the duties on a higher post has to be granted. Therefore, the first prayer of the petitioner with regard to grant of salary has to succeed. The petitioner is therefore entitled for grant of salary for the post of AEE/Civil from 01.02.2010 till the time of his retirement i.e. 31.03.2013.

12. So far as the second issue is concerned, the petitioner vide Annexure R-1 was promoted in a proper manner to a substantive post of AEE/Civil. Although there was a condition as aforesaid with regard to passing of departmental examination and in the eventuality of non-passing of the departmental examination, there was a condition that the petitioner could have been reverted but in the facts and circumstances of the present case, it is an admitted position that no action was taken by the respondent-Nigam for invoking the aforesaid condition and the petitioner continued to work on the post of AEE/Civil till the time he retired and therefore, the condition which could have been prejudicial to the petitioner was never invoked by the respondent-Nigam. In this way, the petitioner continued on the substantive post of AEE/Civil till the time he retired from service. So far as the undertaking given by the petitioner vide Annexure R-2 is concerned, it would also be of no significance because he had only stated in the aforesaid undertaking that he has



no objection to his promotion on regular basis from the date of passing of DAE but the respondent-Nigam never invoked the condition vide clause-iii, which has been reproduced as above. In other words, there was a waiver of the aforesaid condition which was imposed by the respondent-Nigam. Since the petitioner had continued on the substantive post of AEE/Civil till the time he retired i.e. 31.03.2013 and he was never reverted to the post of SDO, the petitioner was entitled for re-fixation of his pensionary benefits on the basis of his last pay drawn for the aforesaid post of AEE/Civil. In view of the above, the second prayer of the petitioner is also liable to succeed.

13. Consequently, the present writ petition is partly allowed. It is therefore directed that the respondent-Nigam shall calculate the salary of the petitioner to the post of AEE/Civil from 01.02.2010 till 31.03.2013 and pay the same to him, within a period of three months from today, along with interest @ 6% per annum (simple). As a consequence thereof, the petitioner shall also be entitled for grant of re-fixation of his pension and pensionary benefits from the date of his retirement, if not already done, on the basis of last pay drawn and the same be also paid to the petitioner, within a period of three months thereafter.

(JASGURPREET SINGH PURI)
JUDGE

12.09.2024
Chetan Thakur

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