

2024-PHHC:094670



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 25.07.2024
Pronounced on: 06.08.2024

1. CWP No.16178 of 2020 (O&M)

Ved Parkash Sharma
.....Petitioner
Versus
State of Haryana and others
.....Respondents

2. CWP No.18151 of 2020 (O&M)

Subhash Chander Sharma
.....Petitioner
Versus
State of Haryana and another
.....Respondents

3. CWP No.1730 of 2020 (O&M)

Usha Sharma
.....Petitioner
Versus
State of Haryana and another
.....Respondents

4. CWP No.18121 of 2020 (O&M)

Gobind Lal Chaudhary
.....Petitioner
Versus
State of Haryana and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Sandeep Panwar, Advocate
for the petitioner(s) (in all the writ petitions)

Mr. Ravi Dutt Sharma, DAG, Haryana
(in all the writ petitions)

2024-PHHC-094670



NAMIT KUMAR J.

1. This judgment shall dispose of CWP Nos.16178, 18151, 1730 and 18121 of 2020, as common questions of law and facts are involved therein for adjudication. For the sake of convenience, facts are taken from CWP No.16178 of 2020, titled as “Ved Parkash Sharma vs State of Haryana and others”.

2. The writ petition i.e. CWP No.16178 of 2020, has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 18.05.2020 (Annexure P-18), vide which the claim of the petitioner, raised in the legal notice dated 12.02.2019 (Annexure P-13), has been rejected and further a writ of mandamus has been sought for directing the respondents to grant interest @ 8% per annum on the arrears of pay from the date the same became due till the date of its disbursement, in view of the order dated 10.09.2019 (Annexure P-7) passed in CM No.141-CWP of 2019 filed in CWP No.15794 of 2013, titled as "Ram Kishan Mittal and others vs State of Haryana and others".

3. The undisputed facts of the case are that the petitioner was appointed as Junior Engineer (Civil) on 26.04.1971 with the respondent - Department and was promoted as Sub-Divisional Engineer (Adhoc) on 20.10.1981 and retired as such from service on attaining the age of superannuation on 31.08.2007.

4. The petitioner filed CWP No.19763 of 2011, along with another person, titled as "Gurbaksh Rai Dewan and another vs State of

2024-PHHC-094670



Haryana and another", with a prayer to grant promotion according to availability of vacancies on the post of Sub-Divisional Engineer and for grant of consequential benefits in the light of directions issued by a Division Bench of this Court in judgment dated 18.01.2011, passed in CWP No.10931 of 1990, titled as "Gian Singh vs State of Haryana and another and CWP No.2826 of 1990, titled as "J.R. Singla and another vs State of Haryana. The said petition was disposed of by this Court vide order dated 20.10.2011, with a direction to decide the legal notice as expeditiously as possible.

5. In compliance of the order dated 20.10.2011, the petitioner was notionally promoted as Sub-Divisional Engineer w.e.f. 01.01.1980, vide order dated 31.08.2012, against the quota post of J.E., AMIE Category. Further he was notionally promoted as Executive Engineer and Superintending Engineer w.e.f. 21.05.2003 and 24.11.2006, respectively. Thereafter, the petitioner served a legal notice dated 19.07.2017 (Annexure P-8) upon the respondents claiming difference of pay already drawn and actually entitled from 28.11.1981, date of joining as Sub-Divisional Engineer (Adhoc) till 31.08.2007 i.e. the date of retirement, along with interest as he had actually worked as Sub-Divisional Engineer (Adhoc) for the said period and cannot be treated as notional period.

6. In nutshell, the petitioner claimed that since he was promoted and continued as Sub-Divisional Engineer (Adhoc) from

2024-PHHC-094670



28.11.1981 till his date of retirement, therefore, he is entitled for the difference of pay and also entitled for arrears, thereof.

7. Thereafter, in the absence of any response to the legal notice dated 19.07.2017, the petitioner filed CWP No.26138 of 2017, claiming arrears of salary/difference of pay drawn and actually entitled from 28.11.1981 to 31.08.2007. The said petition was disposed of by this Court, vide order dated 16.11.2017, with a direction to respondents to consider and decide the legal notice dated 19.07.2017, by passing a speaking order within a period of three months.

8. Alleging non-compliance of the order dated 16.11.2017, the petitioner filed COCP No.1046 of 2018, titled as "Ved Parkash Sharma vs Alok Nigam, IAS and another" wherein an affidavit dated 13.07.2018 was filed by the respondents and in para 4 of the said affidavit, it has been submitted as under:-

“4. That the Government accorded the sanctions amounting to Rs.2,48,111/- regarding difference of salary for the period from 28.11.1981 to 21.05.2003 and the same has been deposited in the Bank account No.65021609572 of Sh. Ved Parkash Sharma vide pay order No.0200081964 dated 07.06.2018 (Annexure R-2) and pay order No.0200083455 dated 11.07.2018 (Annexure R-2A).”

9. Thereafter, another additional affidavit dated 08.01.2019 was filed by the respondents in the said contempt petition, wherein in para Nos.4 and 5, it was averred as follow:-

“4. That it is further submitted that the Hon'ble Court while deciding connected COCPs No. 2016 of 2017

2024-PHHC-094670



and 1693 of 2018 on 29/11/2018 directed the deponent to file an affidavit for the payment on the post of Sub Divisional Engineers from 2005 to 2007 along with salary. Therefore in addition to the above, as mentioned in para 2, the payment to the petitioner has been made additionally, as given in para 5 below, keeping in view order dated 29/11/2018 in COCPs No. 2016 of 2017 and 1693 of 2018.

5. That the amount of Rs 2,13,758/ have already been deposited in the bank account No. 65021609572 of the petitioner through State Govt. Treasury vide invoice No. 0200012019001084 dated 08/01/2019. A copy of the invoice is enclosed as Annexure R/5. Hence, the orders of the Hon'ble Court have been duly complied with and the entire claim of petitioner has been fully settled.”

10. In nutshell, the stand of the respondents in the aforesaid affidavits was that difference of arrears of salary for the period from 28.11.1981 to 21.05.2003 and from 2005 to 2007, has been paid to the petitioner.

11. The aforesaid contempt petition was disposed of by this Court vide order dated 09.01.2019, by passing the following order:-

“The present contempt petition has been filed for non-compliance of the order dated 16.11.2017 vide which a direction was issued to the respondents to decide the legal notice of the petitioner.

Additional affidavit of Sh. Alok Nigam, Additional Chief Secretary to Govt. Haryana on behalf of the respondents is filed today in the Court. The same is taken on record. Copy given to learned counsel for the petitioners. As per the said reply, the order has been complied with.

In view of the above, the present contempt petition is dismissed.

2024-PHHC:094670



Rule issued against the respondents stand discharged.

09.01.2019

(NIRMALJIT KAUR)
JUDGE”

12. Thereafter, the petitioner again served a legal notice dated 12.02.2019 (Annexure P-13) claiming interest on the arrears of difference of salary from 28.11.1981 to 31.08.2007, which was followed by a reminder dated 16.10.2019 (Annexure P-14) but to no avail. Thereafter, he filed CWP No.33852 of 2019, claiming interest @ 8% per annum on the arrears of pay with effect from the date the same became due till the date of disbursement. The said petition was disposed of by this Court, vide order dated 21.11.2019, by directing the respondents to decide the legal notice dated 12.02.2019, within a period of three months. In pursuance of the said directions, the order dated 18.05.2020 (Annexure P-18), has been issued, rejecting the claim of the petitioner for grant of interest on the arrears and the said order has been impugned in the present writ petition.

13. On issuance of notice of motion, written statement on behalf of the respondents has been filed wherein the facts have not been disputed, however, it has been submitted that the petitioner is not entitled for grant of interest. It has further been submitted that one another similarly situated person namely Sh. Vijay Kumar Kapur, filed a writ petition i.e. CWP No.13987 of 2013, titled as "Vijay Kumar Kapur vs State of Haryana and others", for quashing of the order dated 20.06.2013 and for directing the respondents therein to grant the arrears

2024-PHHC-094670



of pay drawn and actually entitled to the petitioner therein for the work done on the post of Sub-Divisional Engineer by him from 12.04.1982, i.e. the date on which he was appointed as Sub-Divisional Engineer on adhoc basis, till 31.01.2007, i.e. when he retired from service, along with interest. The said writ petition was dismissed by this Court vide order dated 20.01.2014 and he was held not entitled for arrears of pay from 12.04.1982 to 31.01.2007. Thereafter, he approached the Division Bench of this Court in LPA No.392 of 2014, titled as "Vijay Kumar Kapur vs State of Haryana and another", which was also dismissed vide order dated 10.08.2015 and thereafter, he approached the Hon'ble Supreme Court by filing Civil Appeal No.1554 of 2016, titled as "Vijay Kumar Kapur vs State of Haryana and another", which was withdrawn by him vide order dated 13.03.2024 with liberty to apply for review before the same Court.

14. Learned counsel for the petitioner submits that the petitioner had performed his duties on the post of Sub-Divisional Engineer (Adhoc) w.e.f. 20.10.1981, till his date of retirement i.e. 31.08.2007 and the respondents have released the arrears to the petitioner in the earlier round of litigation but, however, the petitioner has not been granted interest on the said arrears. He has placed reliance upon the order dated 10.09.2019, passed in CM No.141-CWP of 2019 filed in CWP No.15794 of 2013.

15. Per contra, learned State counsel has opposed the claim raised by the petitioner in the present writ petition and has submitted

2024-PHHC-094670



that the present writ petition is liable to be dismissed on account of principles of res judicata and has further submitted that when the petitioner was promoted as Sub-Divisional Engineer on adhoc basis in the year 1981, he never claimed the pay of the post of Sub-Divisional Engineer and he retired as such on 31.08.2007. For the first time, he claimed the said benefit by serving a legal notice dated 19.07.2017 (Annexure P-8), which was issued after ten years of his retirement. Though, the arrears have been paid to the petitioner, during the pendency of contempt petition, however, the petitioner is not entitled for grant of interest as claimed in the present writ petition.

16. I have heard learned counsel for the parties and perused the record.

17. The facts are not in dispute that the petitioner was appointed as Junior Engineer (Civil) on 26.04.1971 and was promoted as Sub-Divisional Engineer on adhoc basis on 20.10.1981 and he retired as such on attaining the age of superannuation on 31.08.2007. The petitioner never claimed the pay of the post of Sub-Divisional Engineer (Adhoc) from 20.10.1981 to 31.08.2007, while he was in service. After ten years of his retirement, for the first time he served a legal notice dated 19.07.2017 (Annexure P-8). He claimed difference of pay on the post of Junior Engineer (Civil) and Sub-Divisional Engineer (Adhoc) and thereafter, filed CWP No.26138 of 2017, which was disposed of by this Court vide order dated 16.11.2017, with a direction to consider and decide the legal notice dated 19.07.2017 (Annexure P-8) and alleging

2024-PHHC-094670



non-compliance of the said order, he filed COCP No.1046 of 2018 and during the pendency of the said contempt petition, the petitioner was paid arrears of difference of salary from 28.11.1981 to 21.05.2003 amounting to Rs.2,48,111/- and from 2005 to 2007 amounting to Rs.2,13,758/-. The petitioner cannot claim interest on the said arrears because it is the petitioner who slept over his claim for the period of 36 years and never claimed the salary for the post of Sub-Divisional Engineer from 1981 to 2007. Further the similar claim raised by one Vijay Kumar Kapur, has already been rejected by this Court vide order dated 20.01.2014 passed in CWP No.13987 of 2013, by observing as under:-

“In the present writ petition, now the petitioner is claiming the arrears of pay he would have drawn and was entitled to on the post of Sub-Divisional Engineer from 12.04.1982 to 31.01.2007, the date of his retirement.

In the light of the specific directions issued by this Court, which have been referred to above in an earlier writ petition preferred by him, the claim, as made in the present writ petition, cannot be granted. In any case, the present writ petition is not maintainable being barred by the principle of res judicata.

The writ petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE”

January 20, 2014

18. The said judgment has been upheld in LPA No.392 of 2014, decided on 10.08.2015 and the Special Leave Petition preferred

2024-PHHC-094670



by the petitioner has been withdrawn by him vide order dated 13.03.2024, with liberty to apply for review before the same Court.

19. In the case of Vijay Kumar Kapur, even the arrears have been denied by this Court.

20. The reliance placed by the petitioner upon the order dated 10.09.2019 passed in CM No.141-CWP of 2019 filed in CWP No.15794 of 2013, titled as "Ram Kishan Mittal and others vs State of Haryana and others", is totally misplaced. Firstly, the said order passed in civil miscellaneous application cannot be treated as a binding precedent to be followed in all subsequent cases. A perusal of the same further shows that no reply to the application was filed by the respondent-State and the said application was not contested.

21. The Hon'ble Supreme Court in ***"Bharat Petroleum Corporation Limited vs N.R. Vairamani"***, 2004(8) SCC 579, has held as under:-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact-situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not

2024-PHHC-094670



*interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In **London Graving Dock Co. Ltd. v. Horton** (1951 AC 737 at p. 761), Lord MacDermot observed:*

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

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12. The following words of Lord Denning in the matter of applying precedents have become locus classicus :

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

2024-PHHC-094670



22. Similarly, the Hon’ble Supreme Court in ***“Union of India and another vs Manik Lal Banerjee”, 2006(9) SCC 643***, has held that a decision is an authority for what is decided by it not what can be logically deduced therefrom.

23. In view of the foregoing reasons and abovesaid authoritative enunciation of law laid down by the Hon’ble Supreme Court, I do not find any merit in the present petitions and the same are accordingly, dismissed.

24. All the pending miscellaneous applications, if any, are also disposed of.

06.08.2024
yakub

(NAMIT KUMAR)
JUDGE

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