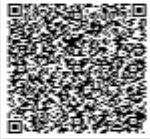


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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11477 of 2018 (O&M)
Date of decision: 18.10.2024

Surjit Singh

....Petitioner

Versus

Punjab State Warehousing Corporation

....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. R.K. Arora, Advocate
with Mr. Jugam Arora, Advocate
and Mrs. Sanowar, Advocate
for the petitioner.

Mr. Nikhil Jindal, Advocate
for Mr. Athar Ahmed, Advocate
for the respondent.

NAMIT KUMAR J. (Oral)

1. The petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Articles 226/227 of the Constitution of India, seeking a writ of mandamus, directing the respondents to grant the petitioner the pay scale and emoluments of the higher post of Section Officer (civil) against which the petitioner has been asked to perform duties and to share responsibilities, with all consequential benefits. Further a writ of certiorari has been sought seeking quashing of the clause in the order dated 27.03.2015 (Annexure P-1) regarding posting of the petitioner on the higher post in his own pay scale without any extra remuneration.

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2. The brief facts of the case, as have been pleaded, in the petition are that the petitioner joined the Punjab State Warehousing Corporation as Work Munshi on 13.03.1987, which was later on re-designated as Junior Technician. The services of the petitioner were regularized w.e.f. 01.01.1992, as Junior Technician and the next channel of promotion from the said post is to the post of Section Officer (Civil), and the petitioner possesses the eligibility for promotion to the said post as he is having the qualification of diploma in Civil Engineering. It is further the case of the petitioner that number of posts of Section Officer (Civil), were lying vacant in the department and instead of considering and granting regular promotion to the petitioner, respondent No.1 vide order dated 27.03.2015, assigned the duties of Section Officer to the petitioner in his own pay scale without any extra remuneration. In pursuance to the said order, the petitioner submitted his joining on 01.04.2015 and thereafter, he submitted representation dated 26.11.2015, claiming promotion to the post of Section Officer (Civil) on the strength that five posts are lying vacant and the said representation was recommended by the District Manager which was followed by subsequent representation(s) dated 14.09.2016 and 11.11.2016. Since the petitioner was continuously performing his duties on the post of Section Officer (Civil) w.e.f. 01.04.2015, without any extra remuneration, he submitted a representation dated 28.02.2017 for withdrawal of the officiating charge of the post of Section Officer (Civil), followed by representation(s) dated 04.09.2017 and 19.02.2018.

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On the said representations, the Sub-Divisional Officer, Punjab State Warehousing Corporation Limited, Jalandhar, again recommended his case for promotion to the post of Section Officer on the ground that the petitioner is a person with extraordinary caliber. He has maintained his integrity and, therefore, his case was recommended for regular promotion to the post of Section Officer (Civil). It is further the claim of the petitioner that the post of Section Officer (Civil) is higher post than the substantive post of the petitioner i.e. Junior Technician and as per Rule 4.4 of the Punjab Civil Services Rules, Volume I Part I, which have been adopted by the Corporation, he is entitled for the pay and allowances of the higher post as the same involves greater importance and higher responsibilities. However, the said claim of the petitioner has not been acceded to by the respondents and, therefore, the instant petition has been filed.

3. Pursuant to issuance of notice of motion, written statement on behalf of the respondent has been filed wherein the claim of the petitioner has been contested on merits by stating that although vide order dated 27.03.2015, he was assigned the duties of the post of Section Officer, which is the next higher post to Junior Technician in their own pay scale, without any extra remuneration, and subsequently, the officiating charge of post of Section Officer (Civil) has been withdrawn from the petitioner vide order dated 13.06.2018 (Annexure R-1). It has further been stated in the written statement that the qualification for Junior Technicians to be eligible for promotion to the

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post of Section Officer (Civil) is matriculation with diploma in Civil Draftsman with at least four years experience. In the seniority list of Junior Technician, the petitioner is at Serial No.31 and there are other four Junior Technicians, who are senior to him who also fulfill the required qualification and experience for the post of Section Officer (Civil).

4. Learned counsel for the petitioner contended that the petitioner has performed the duties against the post of Section Officer for many years but he has not been given pay scale and other benefits of the said post of Section Officer.

5. Per contra, learned State Counsel has opposed the claim of the petitioner by referring to the averments made in the written statement and submits that the petitioner was designated as Section Officer as a stop gap arrangement in his own pay scales which was subsequently withdrawn vide order dated 13.06.2018, therefore, the petitioner is not entitled to the relief claimed in the present writ petition.

6. The only issue which requires adjudication in the present petition is as to whether the petitioner is entitled for pay and allowances for the post of Section officer (Civil) from 01.04.2015 to 13.06.2018, the period for which the petitioner has performed the duties of higher post.

7. The issue involved in the present case is based upon question of law and the same is no longer res integra as the matter has already been settled by this Court in **CWP No.7312 of 2016**, titled as '**Baldev Krishan Sharma vs State of Haryana and others**', decided on

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17.11.2018, wherein it has been held as under:-

“xx xx xx xx xx

*Learned counsel for the petitioner has referred to the judgment passed by Co-ordinate Bench of this Court in **Ramesh Chander vs. State of Haryana and others**, CWP No.11667 of 2010, decided on 19.08.2013 (Annexure P-15), whereby claim of petitioner (therein) was working on the post of Store Purchase Office (SPO) on current duty charge in his own pay scale w.e.f. 01.12.1998. Finally, he was promoted to the post of Store Purchase Officer on regular vide order dated 21.07.2009. He was seeking the payment of regular pay scale on the post of Store Purchase Officer. The said writ petition was allowed keeping in view the decision given in **Subhash Chander vs. State of Haryana**, 2012 (1) RSJ 442, whereby it has been held that if, an official is doing all the duties of higher post and is being paid salary of the lower post, he will be entitled to the salary of his officiating post in the higher grade. A similar view has been taken by a Co-ordinate Bench of this Court in **Bijender Singh vs. State of Haryana and another**, CWP No. 19452 of 2013, decided on 23.03.2015 (Annexure P-16).*

Learned counsel for the respondents, on the other hand, has argued that the petitioner had given his willingness for appointment against the post of Section Officer in his own pay scale. Petitioner does not hold the basic qualification for the post of Section Officer, therefore, he cannot claim payment of salary of the post of Section Officer on the doctrine of 'equal pay for equal work.' He further argued that as per Haryana State Accounts Subordinate (Group C) Service Rules, 2013 (Annexure R-1), a Section Officer can be appointed by promotion/transfer or deputation amongst officials of Haryana Government with three years regular service and who have passed both parts (I & II) of Haryana Subordinate Accounts Service Examination (Ordinary Branch) conducted by the Government. The petitioner has only passed Part-I of Subordinate Accounts Service (SAS) Examination, which was held in the year 2008. He has not passed Part-II of the Examination, though he had appeared in this examination in the years 2009, 2010, 2011 and

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2014. Hence, the petitioner is not entitled to the salary of the post of Section Officer.

In the written statement, the respondents have stated that the petitioner and other similarly situated employees of different departments in the State of Haryana, who passed Part-I, Subordinate Accounts Services (SAS) examination, were offered posting on certain terms and conditions against the vacant posts of Section Officers in the Treasuries & Accounts Department, Haryana as a “stop gap arrangement.” The appointment was given with certain conditions, which were accepted by the petitioner vide letter dated 24.04.2008 (Annexure R-2). Even in the pre-appointment offer dated 17.04.2008 (Annexure P-2), it was categorically mentioned that it is purely a stop gap arrangement and the officials, who were offered appointments, will have no right to the posts of Section Officer (Ordinary Branch). After taking consent of the petitioner vide letter dated 24.04.2008 (Annexure R-2), he was given posting order dated 22.05.2008 (Annexure P-3). In this backdrop, his representation dated 11.08.2015 (Annexure P-4) was declined vide letter dated 18.12.2015 (Annexure P-5).

After hearing learned counsel for the parties and going through the contents of the petition, the only ground for not granting higher pay scale of the post of Section Officer to the petitioner is that he (petitioner) is not duly qualified for promotion to said post. As per Haryana State Accounts Subordinate (Group C) Service Rules, 2013, petitioner is supposed to have qualified two examinations i.e. Part-I and Part-II with minimum 40% marks in each subject and 45% in aggregate. He has only qualified Part-I, Subordinate Accounts Services (SAS) Examination. On this aspect, the petitioner has pleaded that respondent-department did not conduct frequent examinations in terms of the above said rules. A letter was issued on 12.07.2012 stating that next State S.A.S. Part-I & II (OB/LAD) examination would be held in the month of October-November. In 2013, applications were invited vide letter dated 30.07.2013, but the said examination was conducted in February, 2014. Thereafter, no exam was held till date.

In response to the said pleading, the respondent-

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State has given reply to the effect that examinations for SAS, Part-I & II could not be conducted after 2014 because of pendency of writ petitions, including CWP No.26672 of 2014.

*In the present case, petitioner has performing the duties of higher post since 22.05.2008. He has served on this post for almost 10 years. He has not been reverted back despite making representation dated 25.07.2014 (Annexure P-9) when four new Section Officers had joined the department of Food and Supplies, Haryana. Representation dated 25.07.2014 (Annexure P-9) is not being denied by the respondents in their written statement. Respondents have also not denied the letter dated 08.08.2013 (Annexure P-8), whereby it was stated that the petitioner was not relieved keeping in view his exceptional performance and non availability of any other capable/trained officer. The obvious conclusion is that the petitioner is performing the duties of higher post of Section Officer to the utmost satisfaction of the department. In this backdrop, he cannot be denied the benefit of regular pay scale of the said post keeping in view the judgment passed by Co-ordinate Bench of this Court in **Darshan Singh and another vs. The State of Punjab and others**, CWP No.4552 of 2003, decided on 01.07.2010 (Annexure P-10), which has been upheld by the LPA Bench vide judgment dated 15.11.2010 (Annexure P-11).*

In view of the above discussion, this petition is allowed and the respondents are directed to give pay/salary of the post of Section Officer to the petitioner in the scale of Rs.9300-34800 + 4600 Grade Pay + Rs.100/- as special pay along with interest at the rate of 6% per annum with effect from the date of his appointment till the payment is made.”

8. The said judgment has been upheld by a Division Bench of this Court in ***LPA No.1497 of 2019 tilted as ‘State of Haryana and others Vs. Baldev Krishan Sharma (deceased) through its LRs’*** vide decision dated 06.09.2019 by recording the following findings :-

“5. Learned counsel for the appellants laying much

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*stress on the terms and conditions of the letter/order whereunder appointment as Section Officer was made, argued that once he has agreed to work on the said post without making any claim to the salary admissible to the said post, he is not entitled for payment of the same. It is no doubt correct that one of the conditions enumerated in the appointment letter was that he will not have any right or claim either for the regular or permanent appointment on the said post nor to the pay scale or any other benefit attached to the said post because initially it was a purely stop gap arrangement and the incumbent was liable to be reverted back on availability of qualified persons. Undisputed fact is that he has been made to work on the said post for almost 10 years without any break and his request to relieve him from the assignment has been rejected by the appellant on the ground that no suitable officer to function on the said post was available, and during the interregnum period he was given further promotion to the post of Store Purchase Officer on regular basis vide order dated 21.07.2009, it does not appeal to reason at all that he will not be entitled for payment of regular pay scale admissible to the post of Section Officer though he was found entitled to be promoted on the next higher post. Learned counsel for the appellant relying upon a Full Bench decision of this Court in the case of **Subhash Chander v. State of Haryana and others, 2012(1) PLR 778**, and in particularly paragraph 14 of the said report, contended that since the officiating promotion was given to the respondent-petitioner on account of administrative exigency, he would not be entitled to payment of regular pay scale admissible to the said higher post. No doubt, the Full Bench in paragraph 14 of the said report observed the same, but the facts of the present case being entirely different, the preposition of law laid down in the said judgment in this regard is not at all attractive. On the contrary, the Full Bench while addressing the question posed before it i.e. Whether an employee who is given an independent charge and responsibility of a higher post is entitled to regular pay scale without being substantively appointed to such post, answered the question in affirmative and held if an employee is appointed to officiate on a post involving assumption of duties and*

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responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Thus, the Full Bench decision being relied upon by the learned Additional Advocate General for the State of Haryana is in fact in favour of the respondent-petitioner. Though initially the respondent-petitioner was given the higher post as a stop gap arrangement on account of administrative exigency, but he was made to continue to work on the said post regularly for more than 10 years and while working as such he was given promotion to the next higher post of Store Purchase Officer, which went to show that he worked with utmost satisfaction of the department now he cannot be denied the benefit of regular pay scale of the said post merely on the ground that his appointment was a stop gap arrangement. Such an arrangement is for a short period to overcome the exigency and if it is allowed to continue for a long period such as 10 years, it cannot be said to be a stop gap arrangement. The fact that his request to be relieved from assignment is being declined by the appellant on the ground that his services were exceptional is in itself to demonstrate that he worked with sincerity and utmost satisfaction and cannot be denied the benefit of regular pay scale admissible to the post of Section Officer on which he was made to work for more than 10 years.

6. *In view of the aforesaid facts and discussion, we find no reason to take a different view from the one taken by the learned Single Judge while allowing the petition. The appeal is devoid of merit and accordingly stands dismissed.*

9. Special Leave Petition(C) No.8217 of 2020, preferred against the abovesaid judgment has been dismissed by Hon'ble Supreme Court vide order dated 09.07.2020.

10. The judgment in ***Baldev Krishan Sharma's case (supra)*** has been followed by a Coordinate Bench of this Court in its order dated 27.02.2024 passed in ***CWP-11754-2020 titled as 'Ishwar Chander and another vs. State of Haryana and others'***. The said order reads as

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under:-

“1. Learned counsel for the petitioners argues that the petitioners were given promotion to the post of higher post of Section Officer on the stop gap arrangement dated 01.03.2021 and 01.05.2012 (Annexures P-1 and P-2 respectively) with the clear intent that the petitioners will not be granted the benefit of higher post but as the said stop gap arrangement is continued for a period of seven years and the petitioners discharged the duties of the higher post, keeping in view the settled principle of law, the respondents were under an obligation to grant the petitioners the benefit of the pay for the post of Section Officer, duty of which the petitioners had discharged on stop gap arrangement.

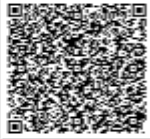
2. Learned counsel for the petitioners places reliance upon the decision of this Court in **CWP No.7312 of 2016 titled as Baldev Krishan Sharma Vs. State of Haryana and others, decided on 17.11.2018 (Annexure P-6)** wherein, the similarly situated employees of the same Department have been given the benefit as being claimed by the petitioners in the present petition.

3. Learned counsel for the petitioners submits that the benefits as being claimed by the petitioners, have already been allowed in favour of the petitioner in **Baldev Krishan Sharma's case (supra)** but the same has not been extended to the petitioners on the ground that the petitioners never approached this Court for the grant of relief which was extended to the petitioner in **Baldev Krishan Sharma's case (supra)**.

4. Learned counsel for the respondents, on the other hand, submits that the petitioners were asked to discharge the duties of the post of Section Officer as stop gap arrangement. Learned counsel for the respondents further submits that once the petitioners have never been promoted as Section Officer on regular basis, the petitioners cannot be allowed the benefit of same pay scale as being extended to the Section Officer and therefore, the claim of the petitioners is liable to be rejected.

5. With regard to the grant of same benefit, as being claimed by the petitioners in **Baldev Krishan Sharma's**

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case (supra), learned counsel for the respondents concede the said factum.

6. *I have heard learned counsel for the parties and have gone through the record with their able assistance.*

7. *Once, a benefit which is being claimed by the petitioners has already been extended to similarly situated employees by this Court, which judgment has already been accepted by the respondents, it was incumbent upon the respondents to grant the same benefit to the similarly situated employees rather than forcing them to approach this Court.*

8. *Keeping in view the conceded fact that the petitioners are similarly situated employees as the petitioner in **Baldev Krishan Sharma’s case (supra)**, the present writ petition is also allowed in terms of **Baldev Krishan Sharma’s case (supra)**.*

11. In view of the above factual position and the law laid down in the abovesaid judgments, the present petition is allowed and the respondent is directed to release the pay and allowances of the post of Section Officer to the petitioner for the period he performed the duties on the said post i.e. 01.04.2015 to 13.06.2018, with all consequential benefits, within a period of three months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

18.10.2024

yakub

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No