

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-17259-2016
Date of decision: 12.03.2024

Anil Sandhir ...Petitioner

versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. R.K. Arora and
Mr. Jugam Arora, Advocates for the petitioner

Mr. Charanpreet Singh, AAG, Punjab

AMAN CHAUDHARY. J.

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari/mandamus or such other appropriate writ, order or directions for quashing the action of the respondents in not releasing/finalizing the ACP case of the petitioner on completion of 14 years of service in the cadre of Supdt Grade II. Further prayer of the petitioner is for issuance of direction to the respondents to release the arrears of salary on retrospective promotion to the petitioner as Supdt Grade II and Administrative Officer w.e.f 27.09.2010.
2. Learned counsel submits that during the pendency of the present petition, on completion of 14 years of service in the cadre of Supdt Grade II, the petitioner has been granted ACP scales, vide order dated 19.04.2017, Annexure R-1. However, the higher pay scale has not been granted in terms of the scheme, Annexure P-5, for which, he on instructions submits that the petitioner will file a representation, which may be directed to be decided in a time bound manner.
3. With respect to second prayer of the petitioner where challenge is to order dated 16.09.2015 to the extent it restricted the benefit to be granted

notionally on account of the fact that charge sheet was pending against him, he places reliance on the Division Bench judgment of this Court in the case of **Satyavir Singh vs. State of Haryana and others**, 2014 (4) S.C.T 233, Annexure P-13, the relevant para of which reads thus:-

“19. Keeping in view the principles we have formulated above which are culled out above from the catena of judgments, we have to find the outcome to the present case. The facts of the case have already been noticed above. It is clear there from that the appellant was not promoted earlier, when his juniors were promoted because of the departmental enquiries pending against him. No doubt, these enquiry proceedings have been dropped on the ground of delay. We were shown the original record containing this decision. The reason given is that there is a 14 years delay in conducting the enquiry which would act to the prejudice of the appellant if the inquiries continue. Once that fact is accepted by the Department itself and on that basis the enquiries were dropped, the net effect thereof would be that the appellant was exonerated of the charges. As no penalty has emanated from these charge-sheets, it is for this reason the respondents have themselves given him the promotion from back date. In such circumstances, denial of actual salary and grant of only deemed promotion on the principle of 'no work no pay' may not be appropriate. Admittedly, the juniors who were granted the benefit of promotion received the salary and if the appellant is deprived thereof, it would amount to hostile discrimination qua him. We are, therefore, of the opinion that the principle of 'no work no pay' cannot be made applicable in the instant case and the appellant would be entitled to salary. There is a Division Bench judgment of this Court in case Vidya Parkash Harnal Vs. State of Haryana 1995(3) S.C.T. 785 which is squarely applicable in the present case. The Court negated the argument predicated on the basis of principle of 'no work no pay' which is to the following effect:-

"7. Similarly, the argument that the petitioner was not entitled to the grant of emoluments on the principle of 'No work No pay' is apparently mis-conceived and based upon wrong notions of law. If a civil 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, that is, firstly by declining the civil servant his right of promotion and secondly by depriving him of the emoluments to which he would have been

entitled to upon promotion which subsequently is considered in his favour. Deprivation to work against the post to which a civil servant is entitled on promotion is always at the risk and responsibility of the State and cannot be made a basis for depriving such a civil servant of the emoluments to which he was entitled, had he been promoted in accordance with the rules at the time when he became eligible for such promotion. The Courts cannot ignore the magnitude of the sufferings and the pains to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this age of skyrocketing prices and non availability of essential requirements of livelihood. The Court cannot shut its eyes and forget the holocaust of economic deprivation to the petitioner and his dependants. Such a deprivation might have upset the career of the dependants, depriving the society of the services of such youth and budding dependants or children of the petitioner. The executive once being satisfied that a civil servant was entitled to the promotion with retrospective effect cannot deprive him of the benefits of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons. The order impugned in this case by which the petitioner/appellant was deprived of his right to claim back wages is admittedly non-speaking without assigning any justification or cogent and specific reasons."

We thus allow this appeal and set aside the impugned order. Accordingly, the writ petition filed by the petitioner stands allowed. As a consequence, the appellant shall be entitled to the arrears of pay and allowances as well from 05.07.1994 to 31.01.2006 as Divisional Employment Officer and from 01.02.2006 to 09.04.2008 as Deputy Director (Employment). The arrears shall be calculated and paid to him within a period of one month from today."

4. In another case **Sports Authority of India and another vs. Central Administrative Tribunal and another**, CWP-14998-2009 decided on 06.11.2009, Annexure P-10, it was observed thus:

"There can be no quarrel with the proposition that ordinarily arrears of salary cannot be granted in case of retrospective proposition. Two short questions, which arise for our consideration, are (a) whether there can be any exceptions to the principle of "no work no pay" and

(b) whether the case of respondent No.2 is covered by any such exceptions.

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The perusal of the aforesaid authorities make it clear the principle of 'no work, no pay' cannot be treated as an inflexible principle to which there are no exceptions. It has been consistently held that when the employee has been wrongly denied the promotion for no fault of his due to some lapse on behalf of the employer, the principle of 'no work, no pay' will have no application. Therefore, the question as to whether there are any exceptions to the principle of 'no work, no pay' will be replied in the affirmative. The second question will also be answered in the affirmative as in the present case admittedly the respondent no.2 was denied promotion for no fault of his. As has already been pointed out, respondent no.2 was denied the promotion as his name was omitted from the seniority list due to inadvertence which has been admitted by the petitioner employer. Therefore, the principle of 'no work, no pay' will have no application in the present case. For this reason, the impugned order does not warrant any interference.”

5. Learned counsel submits that the case of the petitioner is on a better footing, as the charge sheet against him was dropped vide order dated 08.04.2015, upon him having been acquitted in the FIR by the Sessions Judge, Patiala, vide judgment dated 11.08.2014, whereafter, he was reinstated on 17.07.2015. Thus, he was entitled to grant of arrears of salary on his retrospective promotion w.e.f. 27.09.2010.

6. Learned State counsel is unable to controvert the aforesaid factual position or cite any contrary law. However, regarding the first limited prayer, he has no objection.

7. In view of the aforesaid and without commenting upon the merits of the case, the present petition is hereby disposed of in terms of the judgment in **Satyavir Singh** (supra). Insofar as the prayer for seeking benefit of placement in the higher pay scale in terms of scheme is concerned, a direction is passed that in case they submit a representation within a period of four weeks, the same shall be considered and decided by the respondents taking into account the pleas raised,

within a period of four months and if found entitled, necessary benefit be granted to him forthwith. However, in the eventuality of the relief being denied, a speaking order be passed, after associating him therewith.

(AMAN CHAUDHARY)
JUDGE

12.03.2024
G Arora

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