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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17896-2021
Date of decision: 15.04.2024

JAI SINGH BENIWAL

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. A. K. Virdi, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Jagbir Malik, Advocate for respondents No.2 and 3.

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 *certiorari* for quashing the impugned order dated 27.04.2021 (Annexure P-1), vide which the claim of the petitioner for pay/salary of higher post of SDO/AE for the period from 03.01.2007 till 18.01.2014 has been rejected and further to issue a writ in the nature of *mandamus* directing the respondents to grant pay/salary to the petitioner for the post of SDO/AE along with all consequential benefits arising out of correct fixation of pay/salary with effect from 03.01.2007, i.e. the date when the petitioner who was working as JE-1 was transferred and posted in public interest to the post of SDO/AE till 18.01.2014, i.e. the date when the petitioner was given regular promotion as SDO/AE.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was working as JE-1 and he was given current duty charge to the post of SDO/AE vide order dated 09.12.2006 (Annexure P-3) and he started discharging his duties on the said post from 03.01.2007. He further submitted that thereafter, the petitioner kept on discharging the duties of SDO/AE and on 18.01.2014, he was regularly promoted to the post of SDO/AE. He further submitted that for the period i.e. from 03.01.2007 till 18.01.2014, wherein the petitioner discharged the duties of SDO/AE, although he was working as JE-1, he was to be given the balance of the pay scale and salary. He further submitted that by way of impugned order dated 27.04.2021 (Annexure P-1), the reason for non-payment of the salary for the post of SDO/AE to the petitioner while he was discharging his duties even on current duty charge basis was that in view of Rule 76 of the Haryana Civil Services (Pay) Rules, 2016, it has been so provided that *no additional pay shall be admissible for holding, independently or in addition to own duties, current duty charge of another post(s) of the same or higher grade pay regardless of the duration*. He also submitted that the aforesaid Rules came into force in the year 2016, whereas the petitioner is claiming the aforesaid benefit till the year 2014 and the aforesaid Rules were never made retrospective in operation and therefore, the reliance made on the aforesaid Rule 76 of the Haryana Civil Services (Pay) Rules, 2016 is misplaced and therefore, the impugned order itself is liable to be quashed. He further submitted that it is a settled law that a person who discharges the duties of higher responsibility or higher post even on current duty charge basis is entitled for grant of difference of pay to which the petitioner was entitled but he was not granted the aforesaid benefit.

3. He referred to a judgment of this Court in CWP-32192-2019, Sanjeev Kumar versus State of Haryana and others, whereby the benefit of salary/pay for the post where the petitioner of that case worked on current duty charge has been considered and allowed by this Court while relying upon various other judgments. In this regard, he also referred to a 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 and also another judgment of the Hon'ble Supreme Court in Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87. He further referred to a Full Bench judgment of this Court in Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207, wherein similar issue was considered and it was held that a person who is given a current duty charge is entitled for the pay and salary for the time he had discharged his duties on that post.

4. On the other hand, Mr. Jagbir Malik, learned counsel for respondents No.2 and 3 submitted that in the aforesaid order dated 09.12.2006 (Annexure P-3), a specific condition was inserted that the work has been re-allocated to the officials in their own pay scales of JE-1 without any extra remuneration and therefore, in view of the aforesaid condition in the form of a note, the petitioner is not entitled for the aforesaid benefit. He further submitted that the petitioner is claiming the benefit of difference of salary/pay for the period from 03.01.2007 till 18.01.2014 and the present petition has been filed in

the year 2021 and therefore, the prayer of the petitioner is hit by delay and laches.

5. Learned counsel for respondents No.2 and 3 has however submitted that so far as the proposition of law as so stated by the learned counsel for the petitioner by relying upon the aforesaid judgments is concerned, there is no dispute and the proposition of law is well settled that when an officer is given current duty charge on a higher post and he actually discharges duty at a higher post, then he is entitled for grant of salary. He also submitted that so far as the Rules of 2016 are concerned, the same did not have any retrospective effect.

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

6. There are two objections raised by learned counsel for respondents No.2 and 3 in this regard. The first objection was that there was a condition imposed in the order Annexure P-3 when the petitioner was granted current duty charge to the effect that he will get his own pay scale without any extra remuneration. The aforesaid objection raised by the learned counsel for respondents No.2 and 3 is not sustainable in view of the fact that the law in this regard is well settled and therefore, condition, if any, imposed is not enforceable in view of the settled law not only by this Court but also by the Hon'ble Supreme Court. Therefore, this Court is of the view that the aforesaid condition is unenforceable.

7. So far as the second objection raised by the learned counsel for respondents No.2 and 3 pertaining to the delay and laches is concerned, a perusal of impugned order Annexure P-1 would show that earlier also the petitioner has approached this Court by way of filing CWP-3611-2021,

whereby a Coordinate Bench of this Court vide Annexure P-2 had disposed of the aforesaid writ petition on 16.02.2021 with a direction to decide the representation of the petitioner within a period of three months from the receipt of certified copy of the order. The aforesaid order was passed by a Coordinate Bench of this Court in the year 2021 and the present petition has also been filed in the year 2021 itself and the order which has been passed in pursuance of the aforesaid directions issued by this Court is under challenge in the present case and therefore, there is no question of any delay and laches and the objection raised by the learned counsel for respondents No.2 and 3 is misconceived.

8. 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.”

9. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The impugned order dated 27.04.2021 (Annexure P-1) is hereby set aside. The respondents are directed to release the difference of salary/pay to the petitioner for the time period when he started discharging the duties of SDO/AE till the time he was regularly promoted to the post of SDO/AE i.e. from 03.01.2007 till 18.01.2014, within a period of four months from today, along with interest @ 6% per annum (simple). However, there shall be no order as to costs.

15.04.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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