

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-19815-2015 (O&M)
Date of decision: 10.04.2024

Darshna Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K. Arora, Advocate for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1. The prayer made in the present petition is for quashing part of the order dated 07.05.2015, Annexure P-5, whereby the petitioner has been allowed retrospective promotion on notional basis to the post of Lecturer, Punjabi from the date of her juniors without any arrears of salary and for directing the respondents to release the same with interest at the rate of 12% p.a.
2. Learned counsel would contend that the petitioner was eligible to be considered for promotion to the post of Lecturer, however, her juniors, despite being at a lower seniority level, were promoted instead, vide order dated 25.02.2014, w.e.f. 19.05.2012. Subsequently, representation was made by her wherein directions were issued to consider her claim vide judgment dated 02.09.2014, in CWP-17998-2014, Annexure P-3, following which, she was promoted on notional basis w.e.f. May, 2012 vide order dated 07.05.2015, Annexure P-5. After retiring on 31.12.2014, she received revised pension vide letter dated 30.07.2015, reflecting her updated pay as a result of her promotion w.e.f. 19.05.2012. To buttress his submission regarding release of arrears of salary,

he relies on the judgments passed by this Court in **Sports Authority of India and**

another vs. Central Administrative Tribunal and another, CWP-14998-2009, decided on 06.11.2009, Annexure P-6, **Gulzar Singh vs. The State of Punjab and others**, CWP-11389-2011, decided on 14.02.2013, Annexure P-7, against which the LPA-1255-2013 was dismissed on 18.07.2013, Annexure P-8. Further reliance is placed on **Sanjeevan Singh vs. State of Punjab and others**, CWP-21473-2018, decided on 12.03.2024.

3. Learned State counsel, on the other hand, submits that the promotions made earlier, were on the basis of the joining date of concerned employees. Furthermore, in case of retrospective promotions, no actual arrears have to be granted and only notional benefits are allowed, since the petitioner had not worked on the post during the said period.

4. Heard learned counsel on either side.

5. The Division Bench of this Court in **Sports Authority of India** (supra), while granting pay and allowance to an employee who was subsequently promoted, on the ground that it was due to fault of the respondent that he was denied promotion, held that, “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.” Following the above dictum of law, this Court in **Gulzar Singh** (supra), had granted arrears of salary from the date of retrospective promotion, which was even upheld by the Division Bench.

6. There is no denying the fact that the petitioner, working as S.S. Mistress, was eligible to be considered for promotion to the post of Lecturer, having been placed at seniority No.1495, however, was overlooked and instead her juniors-Vijay Laxmi and Sukhvir Kaur, seniority Nos.1499 and 1548, respectively, were promoted vide order dated 25.02.2014, w.e.f. 19.05.2012. It is only on account of submission of a representation by her that the respondents rectified the mistake and granted promotion *albeit* on notional basis from the date that of her juniors.

7. As is axiomatic, the petitioner was unable to perform duties of the promoted post of Lecturer, due to the fault on the part of the Department. Thus, the principle of ‘no work no pay’ would not be attracted in this particular situation, since it is not a rule of thumb, there being exceptions to it, as had been observed by Hon’ble the Supreme Court in **Union of India vs. K.V. Jankiraman**, 1991(4) SCC 109, that the discretion based on circumstances should be exercised when implementing the rule of ‘no work no pay’, so if an employee is unjustly kept away from work by authorities, they deserve salary and benefits. The relevant paras whereof read thus:

“24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the

instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the, administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum :

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and

circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.”

8. In wake of the aforesaid, the submissions canvassed by the respondents cannot be countenanced.
9. On the aforesaid premise and as a fall out thereof, the present petition is hereby allowed. The petitioner is held entitled to arrears of salary, with all consequential benefits w.e.f. 19.05.2012. Needful be done within a period of three months.

(AMAN CHAUDHARY)
JUDGE

10.04.2024
Hemant

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