

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CM-2210-CWP-2024 in/&
CWP-18041-2020
Date of Decision :01.04.2024

Sudesh Malik

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vinay Puri, Advocate for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-2210-CWP-2024

Present application has been filed for recalling the order dated 23.01.2024 passed by this Court by which, the main writ petition was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Order dated 23.01.2024 passed by this Court is recalled and the main writ petition is ordered to be restored to its original number and status and is taken up for hearing today itself.

CWP-18041-2020

1. In the present petition, grievance of the petitioner is that

though, the petitioner is working as a Supervisor with the respondent-department but she is not being paid salary of the said post despite the fact that the Coordinate Bench of this Court in *CWP-3818-1992, titled as Mohinder Lal. Vs. State of Haryana, decided on 18.02.2009* had already granted the said benefit of the pay scale to all the supervisors working in the respondent-department.

2. The facts which need to be mentioned for the correct appreciation of the issue in hand are that the petitioner was initially selected as Gram Savika through the Subordinate Services Selection Board, Haryana after adopting a proper procedure. The petitioner continued working on the said post when in the year 2003, she was adjusted in the Integrated Child Development Services Scheme (I.C.D.S.) as Supervisor and Haryana Staff Selection Board had also given concurrence for adjusting the petitioner as Supervisor under the said scheme and after completing all the formalities, the petitioner was adjusted as such and she continued working on the post of Supervisor in the said Integrated Child Development Services Scheme (I.C.D.S.). Petitioner claims that the salary of the other supervisors working in the said scheme is higher as being paid to the petitioner though, the petitioner is working in the same cadre and is also discharging the same duties as being discharged by the other supervisors.

3. Claim of the petitioner is being resisted by the respondents. Learned counsel for the respondents though, conceded the factum that the petitioner was initially appointed as Gram Savika and, thereafter, adjusted as Supervisor in the Integrated Child Development Services Scheme (I.C.D.S.) but submitted that as the petitioner was adjusted on her own pay scale of Gram Savika as Supervisor, she cannot claim benefit of salary as

being paid to the other supervisors working under the said scheme.

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

5. It is a settled principle of law that an employee is entitled for the salary of the post on which he/she is working. In the present case, it is a conceded position that the petitioner is working as Supervisor under the Integrated Child Development Services Scheme (I.C.D.S.). It is also a conceded position that the other supervisors, who are working under the said scheme are getting higher pay as compared to the petitioner. Once, the respondents have decided to adjust the petitioner as Supervisor and even the Haryana Staff Selection Board has given concurrence to the said adjustment, the petitioner is entitled for the perks attached to the post of supervisor in the said scheme. It has not been denied by the respondents that the petitioner while working on the post of Supervisor is discharging the same duties as being discharged by the other supervisors, who are getting higher pay scale than the petitioner. Once, the petitioner is discharging the same duties as being discharged by the other supervisors and she is part of the same cadre of Supervisor, there is no reason as to why the petitioner is being paid less salary than the other supervisors despite discharging the same duties.

6. A coordinate Bench of this Court while passing order in **Mohinder Lal (supra)** had held that once an employee working in the cadre of supervisor has been given the benefit, all the supervisors is to be given the same benefit. The argument which has been raised by the respondents is that the petitioner is only working in the Integrated Child Development Services Scheme (I.C.D.S.) hence, she cannot be granted benefit of the post

which exists in the department cannot be accepted.

7. It may be noticed that vide order dated 19.09.2003 (Annexure P/3), the petitioner has been adjusted against a vacant post of the department as she fulfilled the prescribed qualification. Once, the petitioner has been adjusted as a Supervisor against a vacant post of the department, there is no reason as to why the petitioner be not paid the salary as being given to the other supervisors working in the said department. The only reason given by the respondents to deny the benefit to the petitioner is that the petitioner has been adjusted on her own pay scale of Gram Savika, which reason is not good enough to deny the benefit of salary of the post of Supervisor to the petitioner on the basis of 'equal pay for equal work'. Once, the petitioner is discharging the same duties as being discharged by the other supervisors in the department, the petitioner is entitled for the same pay scale as being paid to the other supervisors from the date of her absorption.

8. It may be noticed that judgment of this Court in **Mohinder Lal (supra)** was given in the year 2009 but despite the said judgment, the respondents have not given the said benefit to the petitioner hence, keeping in view the settled principle of law settled by the Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, wherein, it has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given, the petitioner is entitled for the grant of benefit of interest on the arrears of salary. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

“The jurisprudential basis for grant of interest is the

fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

9. Keeping in view the facts and circumstance noticed hereinbefore, present petition is allowed in the terms and conditions as mentioned hereinabove so as to allow the benefit of pay scale of the supervisor to the petitioner as granted to the other supervisors working in the Integrated Child Development Services Scheme (I.C.D.S.) along with arrears of salary with interest @ 6% per annum from the date of accrual till the date of payment.

10. Let the present order be complied with within a period of 08 weeks from the date of receipt of copy of this order.

11. Civil Miscellaneous application pending, if any is disposed of.

April 01, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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