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

**CWP-16488-2017 (O&M)
Date of Decision: 10.07.2024**

Raj Krishan Sharma through his LR's

..... Petitioner

Versus

Haryana Khadi and Village Industries Board and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sumeet Jain, Advocate,
for the petitioner.

Mr. Jagbir Singh, Advocate,
for respondent No.1.

Mr. Gaurav Jindal, Addl. AG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)**CM-10576-CWP-2024**

The present application has been filed under Order XXII, Rule 3 read with Section 151 of the CPC for bringing on record the Legal Representatives of petitioner, namely, Raj Krishan Sharma.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. The legal representatives of petitioner as mentioned in Para No.3 of the application, are impleaded as party.

Amended Memo of Parties is taken on record.

Application stands disposed of.

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1. The present writ petition has been filed under Article 226 of the



Constitution of India for issuance of a writ, order or direction in the nature of *certiorari* for quashing the order dated 07.06.2013 (Annexure P-1) to the extent of imposition of condition that even though the petitioner will work as Secretary but will be granted salary in his own pay-scale and for quashing the impugned order dated 25.06.2017 (Annexure P-7) whereby respondent No.3 has been posted as Secretary, Haryana Khadi and Village Industries Board in addition to his duties as Secretary, HUDA by deeming the post of Secretary, Haryana Khadi Village Industries Board to be a vacant post for further issuance of a writ in the nature of *mandamus* directing the respondents to pay the salary of the petitioner attached to the post of Secretary from the date of its accrual i.e. 07.06.2013 till the date of actual disbursement along with all arrears and interest.

2. Learned counsel for the petitioner submitted that the prayer in the present petition is only to the limited extent that when the petitioner was working as Section Officer (L&R) in the respondent-Board then he was granted current duty charge for the post of Member Secretary on 07.06.2013 vide Annexure P-1 and he worked on that post for about four years and discharged his duties on the aforesaid post which is also clear from the order itself. He further submitted that there is no dispute raised by the respondents in this regard that as to whether the petitioner discharged his duties on the aforesaid post or not but the only dispute raised by the respondents is that he is not entitled for the pay-scale of Secretary because it has been so stated in the order itself that he will also discharge his duties as a Member Secretary in his own pay scale in addition to his present duties as Section Officer (L&R) and also on the ground that the Harayan Civil Services Rules as well



as the Punjab Civil Services Rules do not permit the aforesaid grant of pay scale for the period during which he actually discharged his duties on current duty charge basis.

3. Learned counsel for the petitioner has referred to a number of judgments passed by the Hon'ble Supreme Court as well as by this Court in "Smt. P. Grover Vs. State of Haryana and another", (1983) 4 SCC 291, "Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and others", (1998) 5 SCC 87, "State of Punjab and another Vs. Dharam Pal", (2017) 9 SCC 395, CWP-21358-2008 titled as "Subhash Chander Vs. State of Haryana and others" decided on 20.12.2011, LPA-1308-2017 titled as "Ram Dhan Pandir Vs. Haryana State Agricultural Marketing Board and others", decided on 06.07.2022, LPA-1491-2016 titled as "State of Haryana Vs. Sita Ram", decided on 27.11.2019, LPA-1497-2019 titled as "State of Haryana and others Vs. Baldev Krishan Sharma (deceased) through its LRs", decided on 06.09.2019, LPA-110-2014 titled as "State of Punjab and another Vs. Deep Singh Sahota", decided on 17.02.2014, CWP-6723-2004 titled as "Pritam Singh Dhaliwal Vs. State of Punjab and another", decided on 23.08.2004, in this regard.

4. On the other hand, Mr. Gaurav Jindal, Addl. AG, Haryana and Mr. Jagbir Singh, learned counsel for respondent No.1 submitted that when the petitioner was granted the aforesaid current duty charge on the post of Member Secretary then as per Annexure P-1 he was to get the pay of the pay scale for the post on which he was actually working i.e. as Section Officer (L&R) and apart from the above, as per the Rule 4.22 of the Punjab Civil Services Rules and also after implementation of the Haryana Civil Services



Rules, 2016, it has been so provided that a person who has been granted current duty charge will not be granted the benefit of pay-scale of the post on which he is working. Both the counsels further stated that the petitioner was granted additional charge vide Annexure P-1 and not current duty charge.

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

6. There is no dispute that the petitioner was granted current duty charge to the post of Member Secretary by the respondent-Board vide Annexure P-1 and he had actually discharged his duties on the aforesaid post. This Court is of the considered view that the prayer of the petitioner is squarely covered by the judgment of a Division Bench of this Court in “**Balbir Singh Dalal Vs. State of Haryana**”, 2002(4) SCT 422, aforesaid judgment of Full Bench of this Court in **Subhash Chander’s case (supra)** and the aforesaid judgment passed by Hon’ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and others’ case (supra)**. The relevant portion of the same is reproduced 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 be 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.”

7. Consequently, the present petition is allowed. The respondents are directed to calculate the arrears of pay for the time the petitioner



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discharged his duties for the post of Secretary/Member Secretary in the respondent/Board and pay to the LRs of the petitioner within a period of four months from today. However, there shall be no order on interest.

10.07.2024

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |