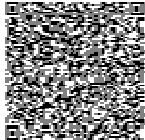


LPA-1910-2024 (O&M)

2024:PHHC:107698-DB



115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-1910-2024 (O&M)
Date of Decision: August 20, 2024

THE COMMISSIONER MUNICIPAL CORPORATION, SAS NAGAR
..... Appellant

Versus

SANJEEVAN SINGH AND OTHERS
..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 12.03.2024 passed by learned Single Bench whereby CWP-21473-2018 filed by respondent No. 1 (writ petitioner) has been allowed holding him eligible to actual benefits of arrears of pay and directing present appellant to release necessary benefits within a period of three months from the date of receipt of certified copy of the order.

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2. Brief facts necessary for adjudication of the matter are that respondent No. 1 (writ petitioner) filed CWP-21473-2018 for setting aside order dated 13.11.2017/17.11.2017 to the extent that while granting promotion to writ petitioner to the post of Inspector w.e.f. 04.12.2015, monetary benefits of arrears on account of retrospective promotion (from 04.12.2015 to 17.11.2017) had been wrongly denied on the principle of 'No Work No Pay'. Writ petitioner, who was initially appointed as clerk on 07.05.1984 with erstwhile Notified Area Committee, Mohali, subsequently upgraded as Municipal Council in 1995 and thereafter Municipal Corporation on 09.12.2012, was promoted to the post of Senior Clerk and Junior Assistant w.e.f. May, 1989 and May, 1994 respectively. Process for promotion to the post of Inspector/Senior Assistant was initiated but one Gurmeet Singh Gill at serial No. 145 of seniority list of Clerks/Junior Assistants and junior to writ petitioner was promoted to the said post. Promotion case of writ petitioner, who was at serial No. 143 of seniority list, was kept under sealed cover due to pendency of departmental inquiry(ies). Three charge sheets dated 18.02.2014, 16.03.2015 and 16.07.2015 respectively were issued to writ petitioner with all of them, however, being filed/dropped. First two charge sheets were filed vide order dated 01.08.2017 and 3rd charge sheet was filed with writ petitioner being warned to be careful towards his duty in future.

3. Writ petitioner was then promoted to the post of Inspector vide order dated 13.11.2017 w.e.f. 04.12.2015 notionally which is the date when his junior Gurmeet Singh Gill was promoted. Representation dated 13.03.2018 submitted by writ petitioner seeking release of arrears from 04.12.2015 to 17.11.2017 was rejected on 27.04.2018 on the ground that promotion w.e.f. 04.12.2015 was afforded on notional basis, thus, principle of 'No Work No Pay'

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being applicable, actual benefit cannot be released. CWP-21473-2018 was filed being aggrieved of this rejection.

4. Learned Single Bench after considering the factual matrix and applicable Rules, vide detailed order dated 12.03.2024 allowed the writ petition while specifically observing that two of the charge sheets were admittedly dropped and in respect to third charge sheet, it was only a warning which was given to writ petitioner while dropping the same. Therefore, as warning in itself is not classified as punishment in terms of Rule 5 of Punjab Civil Services (Punishment and Appeal) Rules, 1970, actual benefits could not be denied to the writ petitioner. Aggrieved therefrom, present appeal has been filed by Commissioner, Municipal Corporation, SAS Nagar.

5. It is argued that as many as three charge sheets were pending against respondent though two of them were dropped but warning was administered to the writ petitioner in third charge sheet. Once petitioner did not work on the post in question, he was not entitled to arrears of salary. It is, thus, prayed that this appeal be allowed.

6. We heard learned counsel for appellant and have perused the file with his able assistance.

7. It is a matter of record that a person junior to writ petitioner was promoted to the post of Inspector (Senior Assistant) w.e.f. 04.12.2015. Case of writ petitioner was kept under sealed cover due to pendency of inquiries against him. Admittedly, all the three charge sheets were filed/proceedings dropped with two of the charge sheets filed being bereft of any substance and in the third mere warning was issued to writ petitioner while dropping the same. Learned counsel

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for appellant is unable to deny that in terms of Rule 5 of Punjab Civil Services (Punishment and Appeal) Rules, 1970, warning in itself is not a punishment.

8. In our considered opinion, learned Single Bench has correctly referred to and relied upon various judgments as discussed in para 7 of impugned order. Reference was gainfully made to judgment of Division Bench of this Court in **Satyavir Singh Shekhawat versus State of Haryana and others, 2014 (4) SCT 233** wherein reference had been made to various judgments of Hon'ble the Supreme Court including **Union of India versus K.V. Jankiraman and ors. 1991(4) SCC 109**, **State of AP versus K. Narasimha Rao and ors. (1999) 4 SCC 181**, **State of Haryana and ors. versus O.P. Gupta & ors. (1996) 7 SCC 533**, **Union of India & Ors. versus Rejinder Singh Rawat (1999) 9 SCC 173**, **State of Uttaranchal and another versus Dinesh Kumar Sharma 2007 (1) SCC 683**.

9. It was concluded in the case of **Satyavir Singh Shekhawat** (supra) that:

“in those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of higher post for the relevant period, in such circumstances, would amount to hostile discrimination”.

10. It was further observed in abovesaid judgment that where inquiries against employee have been dropped, net effect thereof would be that employee is exonerated of the charges and as no penalty emanated from these charge sheets, promotion is given to employee with retrospective effect by the

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Department itself. Therefore, in such a situation, denial of actual salary and grant of mere deemed promotion on the principle of ‘No Work No Pay’ may not be appropriate.

11. Learned counsel for appellant is unable to point out any illegality, infirmity or irregularity in impugned order dated 12.03.2024 which calls for interference.

12. No other argument has been raised.

13. At this stage, learned counsel for appellant submits that period of one month given to appellant to comply with directions in order dated 12.03.2024 be extended. In the given factual matrix, said period is extended for one month from today.

14. Keeping in view the facts and circumstances as above, appeal is dismissed with no order as to cost.

15. As the matter has been considered and decided on merits, adjudication upon application seeking condonation of delay of 92 days in filing the appeal, is rendered academic. Application is disposed of accordingly.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

August 20, 2024
Rts

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