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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20165-2021 (O&M)

Date of Decision: 02.02.2024

Om Kumar Dalal

....Petitioner(s)

Versus

Dakshin Haryana Bijli Vitran Nigam and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.K. Nehra, Advocate, for the petitioner.

Mr. Brijesh, Advocate for

Mr. Rajesh Gaur, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing the impugned order dated 06.04.2021 (Annexure P-14) vide which respondent No.2 has rejected the claim of the petitioner for grant of pay/salary for the post of AE/SDO from 17.02.2014 till 31.12.2018.

2. Learned counsel for the petitioner submitted that the petitioner was serving as Junior Engineer in the respondent-Nigam and vide Annexure P-1 dated 12.02.2014, he was given additional charge of Sub Divisional Officer against a vacant post and he worked and discharged his duties on the aforesaid post of SDO till the time he attained the age of superannuation i.e. on 31.12.2018 when he retired. He submitted that the prayer of the petitioner is that the time during which he discharged his duties and worked on the post of

SDO, he is entitled for grant of pay on that post and therefore, the difference of pay which he received and for which he was entitled is required to be paid to the petitioner alongwith interest. He further submitted that the impugned order Annexure P-14 has been passed by rejecting the claim of the petitioner on the ground that the petitioner had never applied or represented for the aforesaid pay till the year 2020 and in view of the above, he is not entitled for the same. Apart from the above, another reason for non-grant of the aforesaid benefit was that the State of Haryana framed Rules namely, HSCR (General) Rules, 2016 and the same were adopted by the respondent-Nigam vide Annexure R-1 on 08.05.2017 and by virtue of Rule 76 it has been so provided that no additional pay shall be admissible for holding independently in addition to own duties, current duty charge of another post of the same or higher grade pay regardless of the duration. Learned counsel submitted that even if the aforesaid Rule is applicable to the respondent-Nigam but the same cannot be made applicable retrospectively and it can only be operative from the date when the same was adopted by the Nigam vide Annexure R-1 dated 08.05.2017 and therefore from the time when he was given additional charge for the post of SDO vide Annexure P-1 on 12.02.2014 till the time of adoption i.e 08.05.2017, he was entitled for the aforesaid difference of pay to which necessary directions may be issued.

3. Learned counsel for the petitioner referred to two judgements passed by the learned Single Bench of this Court, wherein similarly situated persons, namely, *P. D. Kaushik* vide Annexure P-7 and one *Nihal Singh* vide Annexure P-8 were also given current duty charge to higher post and this Court had granted the monetary benefits for the time during which they had discharged the duties of higher post on current duty charge basis. He further submitted that the aforesaid judgment (Annexure P-8) was assailed by the

respondents-Nigam before the LPA Bench of this Court but the LPA has also been dismissed. 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* in this regard.

4. On the other hand, learned counsel appearing on behalf of the respondent-Nigam submitted that although HSCR (General) Rules, 2016 were adopted by the respondent-Nigam vide Annexure R-1 on 08.05.2017 but the petitioner never claimed or represented to the Nigam till the year 2020 and therefore because of the inaction on the part of the petitioner, he is not entitled for the aforesaid same.

5. I have heard learned counsel for the parties.

6. The only issue involved in the present case is that the petitioner who worked as SDO on additional charge vide Annexure P-1 was entitled for the salary for the aforesaid post or not. So far as the factum that the petitioner worked on the aforesaid post is concerned, the same has not been denied by the learned counsel for the Nigam nor it has been so controverted in the reply filed by the Nigam. Therefore, it is an admitted position that the petitioner worked on the post of SDO from 12.02.2014 till the date of his superannuation i.e.31.12.2018. The mere fact that the petitioner did not claim difference in salary as so submitted by learned counsel for the Nigam would be insignificant. If an employee has discharged his duties on a higher post, then it is the duty of the employer to pay the benefit of difference of salary and it is not necessary for an employee to make a claim with regard to the same. The proposition of law as to whether a person who had worked on a current duty charge or additional charge etc. would be entitled for the benefit of pay for the post on which he had discharged his duties is no longer *res integra*. The Hon'ble

Supreme Court in *Secretary-cum-Chief Engineer, Chandigarh versus Hari*

Om Sharma and others, (1998) 5 SCC 87 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.”

7. In the present case undisputedly the petitioner worked on the

aforesaid post from 12.02.2014 till 31.12.2018. However, during the aforesaid period, the respondent-Nigam adopted the Rules of the State of Haryana vide Annexure R-1 on 08.05.2017. As per Rule 76 which has been so reproduced in the impugned order, no additional pay shall be admissible in this regard. Even otherwise also, learned counsel for the petitioner has so confined his prayer only to the extent of grant of the aforesaid benefit of pay to the post of SDO from 12.02.2014 till 07.05.2017.

8. Therefore, this Court is of the view that the aforesaid Rule 76 would not be applicable to the petitioner for the purpose of the aforesaid period regarding which now the petitioner has claimed the benefit.

9. In view of the above, present petition is partly allowed. The petitioner shall be entitled for the grant of pay for the post of SDO on which he actually worked from 12.02.2014 till 07.05.2017. The respondent-Nigam is directed to calculate the difference of pay and shall pay to the petitioner alongwith interest @ 6% per annum within a period of three months from today.

10. In case any other claim of the petitioner still subsists, then the petitioner shall be at liberty to file a comprehensive representation to the respondent-Nigam and in the event of doing so, then the respondent-Nigam shall consider and decide the same within next three months and strictly in accordance with law.

02.02.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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