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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21473 of 2018 (O&M)
Date of decision: 12.03.2024

Sanjeevan Singh
.....Petitioner
Versus
State of Punjab and others
....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ranjivan Singh, Advocate
with Ms. Kanika Toor, Advocate
and Mr. Risham Raag Singh, Advocate for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Amardeep Singh Mann, Advocate
with Mr. Birinder Pal, Advocate
and Mr. Aayush Goyal, Advocate for respondent No.3.

None for respondent No.4.

NAMIT KUMAR J. (Oral)

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India, for issuance of a writ in the nature of certiorari, for quashing the office order dated 13.11.2017/17.11.2017 (Annexure P-8) to the extent that while granting the retrospective promotion to the petitioner as Inspector w.e.f. 04.12.2015, on notional basis, has been denied the monetary benefits of arrears on account of retrospective promotion and the order dated 27.04.2018 (Annexure P-11), whereby the claim of the petitioner for grant of arrears for the period from 04.12.2015 to 17.11.2017, has been rejected on the principle of 'No Work No Pay'.
2. The brief facts, as have been pleaded in the petition, are

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that the petitioner was initially appointed as Clerk on 07.05.1984, in the erstwhile Notified Area Committee, Mohali, which was later on upgraded as Municipal Council, in the year 1995 and further upgraded as Municipal Corporation on 09.12.2012. Subsequently, the petitioner was granted promotion to the post of Senior Clerk and Junior Assistant w.e.f. May, 1989 and May, 1994, respectively.

It has further been pleaded that the petitioner belongs to General category and he was at Serial No.143, in the seniority list of Clerks/Junior Assistants, issued vide office order dated 28.01.2015 as on 31.12.2008 and one Sh. Gurmeet Singh Gill, was at Serial No.145 in the said seniority list. Thereafter, the process was initiated by the Respondent – Corporation for promotion to the post of Inspector and vide order dated 04.12.2017, Sh. Gurmeet Singh Gill (Seniority No.145) was promoted to the post of Inspector/Senior Assistant and a note was given in the said promotion order to the effect that “promotion case of Sh. Sanjeevan Singh, Clerk, Municipal Corporation, Mohali as Inspector and whose name is mentioned at Serial No.143 is kept under seal cover due to departmental enquiry pending against him.” He made a detailed representation to the authorities in this regard.

It has also been pleaded that the petitioner was issued 03 charge-sheets by the Respondent – Department i.e. (i) charge-sheet No.1130 dated 18.02.2014, (ii) charge-sheet No.1110 dated 16.03.2015 and (iii) charge-sheet No.3372 dated 16.07.2015 (Annexures P-5 to P-7, respectively). The first two charge-sheets were filed vide order dated 01.08.2017 and the third charge-sheet was also filed with a further

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observation, whereby the petitioner was warned to be careful towards his duty in future.

Thereafter, the petitioner was promoted to the post of Inspector vide order dated 13.11.2017/17.11.2017 w.e.f. 04.12.2015 i.e. from the date when his junior Sh. Gurmeet Singh Gill, Clerk/Junior Assistant was promoted notionally. Thereafter, the petitioner submitted representation dated 13.03.2018 (Annexure P-10) for grant of arrears from 04.12.2015 to 17.11.2017, however, the same has been rejected vide order dated 27.04.2018 (Annexure P-11) by stating “xxxx your representation was received and considered, since no benefit of arrears can be granted as the promotion was given on notional basis. Besides this, the principle of ‘No Work No Pay’ is also applicable in this case.” Aggrieved against the said action of the respondents, the instant petition has been filed.

3. Learned counsel for the petitioner submits that the employee junior to the petitioner namely Sh. Gurmeet Singh Gill, was promoted to the post of Inspector/Senior Assistant vide order dated 04.12.2015 and the case of the petitioner was kept in a sealed cover due to pendency of 03 charge-sheets, which have already been filed/dropped and the petitioner has been promoted w.e.f. 04.12.2015, when the employee junior to him was promoted on notional basis. He submits that once the respondents have promoted the petitioner w.e.f. 04.12.2015, he cannot be denied the due arrears on the principle ‘No Work No Pay’. In support of his contention, learned counsel for the petitioner has placed reliance upon a Division Bench judgment of this Court passed in **LPA**

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No.1018 of 2012, titled as “*Satyavir Singh Shekhawat vs State of Haryana and others*”, decided on 02.11.2012.

4. Per contra, learned counsel for the respondents submits that since the petitioner had not worked from 04.12.2015 to 17.11.2017, therefore, the petitioner is not entitled for the pay and allowances of the promoted post.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. Admittedly, the case of the petitioner was kept in a sealed cover while promoting his junior namely Sh. Gurmeet Singh Gill, vide order dated 04.12.2015, due to pendency of 03 charge-sheets against the petitioner (Annexures P-5 to P-7). The said charge-sheets have been filed vide order dated 01.08.2017. The principle of ‘No Work No Pay’ would not be applicable in the present case as the petitioner was always willing to work on the promoted post but due to the fact that 03 charge-sheets were pending against him, his case was kept in a sealed cover. All the 03 charge-sheets have been filed. While filing the 3rd charge-sheet No.3372 dated 16.07.2015, he has been warned to be careful in future. Warning in itself is not a punishment as per the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The said Rules, reads thus:-

“5. Penalties:-- The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a Government employee, namely:--

Minor Penalties

(i) Censure;

(ii) Withholding of his promotions;

(iii) Recovery from his pay of the whole or part of

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any pecuniary loss caused by him to the Government by negligence or breach or orders;

(iv) Withholding of increments of pay without cumulative effect.

Major Penalties

(v) Withholding of increment of pay with cumulative effect or reduction to a lower state in the time scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay;

(vi) reduction to a lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government employee to the time scale of pay, grade, post or Service from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post or Service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or Service;

(vii) compulsory retirement;

(viii) removal from service which shall not be disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for further employment under the Government.”

7. The Hon'ble Division Bench of this Court in Satyavir Singh Shekhawat's case (supra), while considering the similar issue has observed as under:-

“9. We find that number of cases are decided by the Apex Court as well as various High Courts and in some cases, relief of arrears of pay is granted, while in some

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other cases it is denied applying the doctrine of 'No work No pay'. Determination of the circumstances under which an employee should be given the arrears of pay and under what circumstances in which he can be denied this benefit is the task before us which we will endeavour to carry out relying upon the principles laid down in the decided cases.

*10. The first case which needs mention in the chronology of the judgments, we are taking stock of, is the decision of the Supreme Court in **Paluru Ramkrishnaiah & Ors. v. Union of India & Anr. (1989) 2 SCC 541**. The Court in this case held that in case the promotion granted with retrospective effect, back wages for the period for which the person actually did not work in the promotion post is not payable. This view was taken on the basis of the following factual background:-*

"16. It may also be noticed that even though the petitioners on their completion of two years' service as Supervisor "A" were not promoted as Chargeman II in or about the year 1966 they chose to wait for about 17 years to file these writ petitions which were filed in 1983, and nearly 2 years even after the decision dated February 2, 1981 in Civil Appeal No.441 of 1981, which indicates that but for the decision in Civil Appeal No.441 of 1981 they would perhaps not have thought of filing these writ petitions inasmuch as in the meantime they had not only been promoted in the normal course as Chargeman II but some of them had been promoted even to higher posts in the hierarchy."

*11. In **Union of India and Ors. v. K.V. Jankiraman & Ors. 1991(3) S.C.T 317 : (1991) 4 SCC 109**, this issue came up for consideration namely whether the Government could deny the benefit of wages for the past period if he was granted promotion subsequently but from back date. Union of India had contended that a person cannot be*

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allowed to draw benefits of a post the duties of which he had not discharged. This contention was negated as not applicable where an employee, who is willing to work, is kept away from work by the authorities for no fault of his. The Supreme Court observed as under:-

"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 in applicable to such cases."

*12. Issue again came up for consideration before the Supreme Court in the case of **State of A.P. v. K.V.L. Narasimha Rao & Ors., 1999(2) S.C.T. 684 : (1999) 4***

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SCC 181. In this case also the court held that back wages are normally to be allowed in case of retrospective promotion. However, in the said case, the Court denied the benefit to the employee noting down the peculiar facts of this case in the following terms:-

"5. In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. However, on the reorganisation of States a large number of officers stood allotted from different States to the newly-formed State and their services had to be integrated on various principles and several agencies were involved in the same. The steps to be taken thereto were one of formulation of principles, publication of a provisional inter-State seniority list, inviting objections thereto, consideration of those objections in consultation with the Central Government and acting upon its directions to bring the seniority list in conformity with such directions. This entire exercise involved a good deal of time and gave rise to an extraordinary situation. It is in those circumstances that the rules contained in Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have been framed. As a matter of fact, rules of the erstwhile State regarding seniority are not applicable in the new State as the allottees are governed by the Act and seniority is finalised therein. Even so, we do not see that there is any impediment to frame new rules affecting conditions of service of such allottees but in conformity with the Act. Surely new rules cannot be brushed aside by saying that they are not applicable to cases coming under the Act. There is no contention either in the High Court or before us that they are framed in contravention of the Act. In this background,

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we fail to see as to why the rules are not applicable to the respondents as held by the High Court."

*13. Another judgment which needs to be mentioned is in the case of **State of Haryana & Ors. v. O.P. Gupta & Ors., (1996) 7 SCC 533**. The controversy involved in the said case was whether the employees were entitled to arrears of salary for the period for which they had admittedly not worked, but had been given notional promotion from the deemed date. The matter related to a seniority dispute where fresh seniority list was directed to be prepared in accordance with rules ignoring any inconsistent administrative instructions. The Supreme Court held that entitlement of the employees to work arose only when they were promoted in accordance with rules and the preparation of seniority list was a condition precedent for the exercise. The employees could not be posted in the promotional post till the exercise was carried out and thus, their plea that they were willing to work had no legal foundation. The Court, thus, did not give these employees benefit of arrears of salary for the period they had not worked. The case of **K.V. Jankiraman (supra)** was discussed and distinguished. We may, for our purpose, take note of the following observations in the said judgment:-*

"5. Shri Gupta, learned counsel appearing for the State, contended that the State was prepared to comply with the direction issued by the High Court in the first instance for the preparation of the seniority list but the rival candidates who claimed inter se seniority over the others approached the Division Bench and also this Court for relief; since, ultimately, this Court has decided that seniority has to be prepared strictly in accordance with Rule 9 of the Rules, on receipt thereof, the Government has complied with the conditions of the preparation of the

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seniority list. Accordingly, they have been given the promotion with the deemed dates, though there was no specific direction in that behalf. Others who had joined the service have not claimed, except the respondents, but some of them were not even parties to the earlier writ proceedings or to the appeal in this Court and consequently, they are not entitled to the arrears. It is contended by Shri S.M. Hooda, learned counsel appearing for the respondents that the respondents were willing to work in the respective posts but they were not given the same. To avoid their entitlement, a seniority list was wrongly prepared denying them their entitlement to work in the promotional post; consequently, the respondents are entitled to the arrears of salary and the High Court was right in granting the same."

14. We may also refer to two more judgments having some relevance. These cases are:-

1. Union of India & Ors. v. Rejinder Singh Rawat,(1999) 9 SCC 173.

2. State of Uttaranchal and Another v. Dinesh Kumar Sharma, 2007(1) S.C.T. 393 : 2007 1 SCC 683.

*In the first case mentioned above, namely, **Rejender Singh Rawat (supra)**, the Court granted the relief in the following context:-*

"2. The short question that arises for consideration is whether the High Court was justified in granting relief of payment of back wages to the respondent for the period he has not actually served. There is no dispute that the respondent's case was omitted from consideration on the ground that his chest was short by 2 cm. and as such he did not have the necessary physical standard, but, similar departmental candidates were considered and got the relief. The respondent' case was,

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therefore, appropriately considered by the appropriate authority and by letter dated 21-12-1995, it was conveyed that the respondent would be entitled to the rank of Assistant Sub-Inspector (Clerk/Typist) from 3-8-1992 the date on which panel of 1992 was released, with the further direction that his seniority would be protected on a notional basis, but he would not be entitled to any pay and allowances of Assistant Sub-Inspector (Clerk/Typist) for the back period and would be entitled to the same only from the date he assumes the charge physically.

3. In the teeth of the aforesaid order, the High Court was not justified in granting the payment of back wages for the period for which the appellant has not actually assumed the charge. In the aforesaid premises, we set aside the impugned order of the High Court and allow this appeal. There shall be no order as to costs."

*15. In **Dinesh Kumar Sharma (supra)**, the Supreme Court was concerned with the issue for consideration as to whether seniority should be given to incumbents from the date when promotional fell vacant or from the date of his substantive appointment to the said vacant post. The Court held that the seniority could not be given retrospectively from the date of occurrence of vacancy. This case, therefore, would not provide much assistance in dealing with the issue at hand.*

16. We find from the aforesaid discussion that at times Supreme Court has granted the relief whereas on some other occasions, the arrears of salary for the period prior to the date of actual assumption of promotional post are denied. However, a closure scrutiny of the facts in each case would clearly reveal a discerning trend and there is no contradiction as far as principle of law laid down in various judgments is concerned.

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17. *The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realising that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see **State of Kerala and Others v. E.K. Bhaskaran Pillai, JT 2007 (6) SC 83; Mohd. Ahmed v. Nizam Sugar Factory and Others – (2004) 11 SCC 210; Nalini Kant Sinha v. State of Bihar and Others – 1993 Supp (4) SCC 748.** On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.*

18. *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 the higher post for the relevant period, in such circumstances, would amount to hostile discrimination.*

19. *Keeping in view the principles we have*

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*formulated above which are culled out above from the catena of judgments, we have to find the outcome to the present case. The facts of the case have already been noticed above. It is clear there from that the appellant was not promoted earlier, when his juniors were promoted because of the departmental enquiries pending against him. No doubt, these enquiry proceedings have been dropped on the ground of delay. We were shown the original record containing this decision. The reason given is that there is a 14 years delay in conducting the enquiry which would act to the prejudice of the appellant if the inquiries continue. Once that fact is accepted by the Department itself and on that basis the enquiries were dropped, the net effect thereof would be that the appellant was exonerated of the charges. As no penalty has emanated from these charge-sheets, it is for this reason the respondents have themselves given him the promotion from back date. In such circumstances, denial of actual salary and grant of only deemed promotion on the principle of 'no work no pay' may not be appropriate. Admittedly, the juniors who were granted the benefit of promotion received the salary and if the appellant is deprived thereof, it would amount to hostile discrimination qua him. We are, therefore, of the opinion that the principle of 'no work no pay' cannot be made applicable in the instant case and the appellant would be entitled to salary. There is a Division Bench judgment of this Court in case **Vidya Parkash Harnal v. State of Haryana 1995(3) S.C.T. 785** which is squarely applicable in the present case. The Court negated the argument predicated on the basis of principle of 'no work no pay' which is to the following effect:-*

"7. Similarly, the argument that the petitioner was not entitled to the grant of emoluments on the principle of 'No work No

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pay' is apparently mis-conceived and based upon wrong notions of law. If a civil servant is not offered the work to which he was legally entitled, he cannot be deprived of the wages for the post to which he subsequently is held entitled to. Permitting such a course to be adopted would be encouraging the imposition of double penalty, that is, firstly by declining the civil servant his right of promotion and secondly by depriving him of the emoluments to which he would have been entitled to upon promotion which subsequently is considered in his favour. Deprivation to work against the post to which a civil servant is entitled on promotion is always at the risk and responsibility of the State and cannot be made a basis for depriving such a civil servant of the emoluments to which he was entitled, had he been promoted in accordance with the rules at the time when he became eligible for such promotion. The Courts cannot ignore the magnitude of the sufferings and the pains to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this age of skyrocketing prices and non availability of essential requirements of livelihood. The Court cannot shut its eyes and forget the holocaust of economic deprivation to the petitioner and his dependants. Such a deprivation might have upset the career of the dependants, depriving the society of the services of such youth and budding dependants or children of the petitioner. The executive once being satisfied that a civil servant was entitled to the promotion with retrospective effect cannot deprive him of the benefits of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons. The order impugned in this case by which the petitioner/appellant was deprived of his right to claim back wages is admittedly non-speaking without assigning

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any justification or cogent and specific reasons."

We thus allow this appeal and set aside the impugned order. Accordingly, the writ petition filed by the petitioner stands allowed. As a consequence, the appellant shall be entitled to the arrears of pay and allowances as well from 05.07.1994 to 31.01.2006 as Divisional Employment Officer and from 01.02.2006 to 09.04.2008 as Deputy Director (Employment). The arrears shall be calculated and paid to him within a period of one month from today."

8. Applying the abovesaid principle to the present case, admittedly, 03 charge-sheets have been filed against the petitioner by the respondent – Department and the petitioner has been given retrospective promotion w.e.f. 04.12.2015, i.e. the date when his junior employee was promoted, therefore, he cannot be denied the benefit of arrears of pay for the said period.

9. In view of what has been discussed hereinbefore, the present petition is allowed and the action of the respondents in denying the arrears of pay to the petitioner on the promoted post is held illegal and arbitrary and he is held entitled for grant of the same, with all consequential benefits. The necessary benefits shall be released to the petitioner within a period of 03 months from the date of receipt of certified copy of this order.

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(NAMIT KUMAR)
JUDGE

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