



222+239

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 16-07-2024

1. CWP-27065-2016 (O&M)
HAR SURAT SINGHPetitioner

VERSUS

STATE OF PUNJAB & ORSRespondent(s)
and

2. CWP-1143-2021 (O&M)
JASBIR SINGH MAHIPetitioner

VERSUS

STATE OF PUNJAB AND ANRRespondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harinder Sharma, Advocate
for the petitioner in CWP No. 27065 of 2016.

Mr. R.S. Athwal, Advocate with
Mr. TPS Bawa, Advocate for the petitioner
in CWP No.1143 of 2021.

Mr. Swapan Shorey, DAG Punjab and
Mr. Amarpreet Singh Bains, AAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

Present bunch of two writ petitions involve common question
of law in the background of common set of facts and thus they are being
decided by a common order.

Learned counsel for the petitioner in CWP No.27065 of 2016 submits that while working on the post of Joint Director, Animal Husbandry, the petitioner was given the charge of the post of Director, Animal Husbandry and the petitioner retired while discharging the duties of the said post, therefore, the petitioner is entitled for the salary of the post of Director for the period, the petitioner had discharged the duties of the same.

Learned counsel for the petitioner very fairly submits that though in the petition, the petitioner is also claiming the revised pensionary benefits on the basis of the last pay drawn, but the said prayer is not being pressed.

The learned State counsel submits that the petitioner has only discharged the duties of the post of the Director but he was never promoted, and therefore, he is not entitled for the salary of the post of the Director.

Learned State counsel further submits that even otherwise, the charge of the post of Director was given to the petitioner as the incumbent of the post of Director could not discharge the duties of the said post due to his involvement in criminal proceedings but as regular incumbent of the post of Director was subsequently exonerated of the charge, he was given all the benefits of the post of Director and therefore, the petitioner cannot be given the salary of the said post as, for the period of 03.04.2003 to 30.05.2003, the salary will have to be paid to two employees, which is not permissible.

Learned State counsel relies upon the judgment of the Hon'ble Supreme Court of India in ***State of Haryana Vs. R.K. Aggarwal***, 1997 Vol. III SCT 638, decided on 28.07.1997 to submit that keeping in view the

settled principle of law in *R.K. Aggarwal's case (supra)*, no salary can be paid to the petitioner for discharging the duties of the post of Director on current duty basis.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

It is a settled principle of law that an employee has to get the salary to the post, the duties of which is being discharged by him/her. It is a conceded position that when the incumbent of the post of Director was not allowed to discharge the duties as he was involved in a criminal proceedings, the petitioner discharged the duties of the post in question from 03.04.2003 to 30.05.2003. Once the petitioner has performed the duties of a higher post, the petitioner is entitled for the salary for the post in question from 03.04.2003 to 30.05.2003. Hence, for the period starting from 03.04.2003 till 30.05.2003, the salary to the post of the Director needs to be extended to the petitioner.

The argument that the salary of the post of Director has been given to the regularly promoted incumbent, cannot come in the way of the petitioner as, for a particular period, the petitioner had discharged the duties of the said post whether the regular incumbent of the post was unable to discharge the duties of the post in question. Even if, while regularising the period of the regular incumbent, he/she has been paid the salary, the same cannot come in the way of the petitioner to claim the salary of the post of which, concededly the petitioner discharged the duties. Therefore, the

petitioner is held entitled for the salary of the post of Director from 03.04.2003 till 30.05.2003.

Learned counsel for the petitioner submits that the same is the claim of the petitioner in CWP No.1143 of 2021 wherein current duty charge was given to the petitioner therein and he performed the duties of the Tehsildar from 19.05.2005 to 16.10.2014.

The objection of the learned State counsel is that as per the instructions dated 19.04.2005, on the ground of current duty charge, the same has to be given in his own pay-scale. The same cannot be accepted being contrary to the settled principle of law that an employee is entitled for the salary of the post on which he/she discharged the duties.

An employee is entitled to get the salary of the post of which he/she is discharging the duties. Once, the State asks an employee to discharge the duties of a higher post even if on temporary basis or on current basis, the employee get right to claim the salary of the post he/she is discharging the duties. The judgment in Civil Appeal No. 5546 of 1995 titled as ***Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma***, decided on 29.04.1998, Hon'ble Supreme Court of India held that denying the salary to an employee of the post of which he/she has actually discharged the duties will be against the public interest. The relevant paragraph of the said judgment is as under :-

“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.”

It may be noticed that in the said judgment, charge of the post of the Chief Engineer was given as there was *inter se* dispute of seniority between the concerned officer as to who is senior and the benefit of the pay was declined which embargo was held to be valid. Thus, the said judgment is not applicable in the present case.

Qua the reliance upon ***R.K. Aggarwal’s case (supra)***, it may be noticed that subsequent to the said judgment, in ***Hari Om Sharma’s case (supra)*** , the benefit has been extended by the Hon’ble Supreme Court of India. Not only this, Full Bench of this Court in CWP No. 21358 of 2008 titled ***“Subhash Chander Vs. State of Haryana and ors.”*** decided on 20.12.2011, while considering the case of the Hon’ble Supreme Court of India in ***R. K. Aggarwal’s case (supra)***, held that an employee who is

discharged the duties of a higher post, will be entitled for the salary for the post in question. The relevant paragraph 17 of the said judgment is as under :-

“17. In view of the above, the question posed in para no. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

Hence, the petitioner is to be held entitled for the relief of salary of the higher posts on which he has discharged the duties.

Accordingly, the petitioner in CWP 27055 of 2016 is held entitled for the salary of the higher post of Director from 03.04.2003 to 30.05.2003 and similarly other petitioner in CWP-1143-2021 is held entitled for salary of the post of Tehsildar from 19.05.2005 to 16.10.2014. Let the same be complied within a period of 8 weeks from the receipt of certified copy of this order.

In view of the above, the present set of petitions are allowed in the above terms.

Pending application, if any, also stand disposed off.

Photocopy of this order be placed on the other connected case file.

16-07-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO