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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23003-2018 (O&M)
Date of decision: 08.01.2024

SHANTI PARKASH SACHDEVA

...Petitioner

VERSUS

STATE OF HARYANA AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. A. K. Virdi, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Padamkant Dwivedi, Advocate for
Mr. Vivek Chauhan, Advocate for respondents No.2 and 3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondents to grant pay/salary to the petitioner for the post of AE/SDO along with all consequential benefits arising out of correct fixation of pay/salary with effect from 26.10.2005, i.e. the date when the petitioner who was working as JE-1 was transferred and posted in public interest to the post of SDO/AE till 27.01.2010, i.e. the date when the petitioner was given regular promotion as AE/SDO.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was working with the respondent-Nigam on the post of JE-1 and

vide Annexure P-2 dated 26.10.2005, he was given current duty charge for the post of AE/SDO and at that point of time, he was fully eligible for being promoted as AE/SDO. He further submitted that thereafter, the petitioner kept on performing and discharging the duties of an AE/SDO with effect from 26.10.2005 and thereafter, he was regularly promoted to the post of AE/SDO vide Annexure P-3 on 27.01.2010 and he was given the pay scale and monetary benefits pertaining to the post of AE/SDO after he was regularly promoted. He also submitted that the prayer in the present writ petition is pertaining to the period with effect from 26.10.2005 till 27.01.2010, which is almost a period of about 4 years and 3 months for which he is praying for grant of pay scale of the post of AE/SDO because he had been discharging the functions and duties of an AE/SDO even if on the current duty charge basis. He further submitted that it is a settled law that a person who discharges duties of higher responsibility or higher post even on current duty charge basis is entitled for grant of difference of pay to which the petitioner was entitled but he was not granted the aforesaid benefit.

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-4 and one *Nihal Singh* vide Annexure P-6 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 both the aforesaid judgments were assailed by the respondents-Nigam before the LPA Bench of this Court but the LPA's have also been dismissed and the copies of the judgments of the LPA have also been attached

along with the replication filed by the petitioner. He also referred to a judgment of Hon'ble Supreme Court in Smt. P. Grover versus State of Haryana and another, (1983) SCC 4 291 in this regard. Today, learned counsel for the petitioner has referred to the latest instructions issued by the Finance Department, Government of Haryana on 06.01.2023 giving clarification regarding pay fixation on assigning current duty charge. He has supplied a photocopy of the same in Court today which has also been supplied to learned counsel for the respondents. The aforesaid instructions are hereby taken on record as Mark-'X'.

4. On the other hand, learned counsel appearing on behalf of respondents No.2 and 3 submitted that there is a delay in filing of the present writ petition since the present writ petition has been filed in the year 2018 and the petitioner stood regularly promoted as AE/SDO in the year 2010 and was given current duty charge in the year 2005. He further submitted that since now the aforesaid instructions have been issued by the Finance Department, Government of Haryana, which are applicable to the respondents-Nigam, an appropriate decision will be taken in this regard in accordance with the aforesaid instructions.

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

6. The only prayer in the present writ petition is that the petitioner was working as JE-1 and he was given current duty charge to the post of AE/SDO vide Annexure P-2 on 26.10.2005 and he kept on discharging the duties of AE/SDO till the time he was regularly promoted as AE/SDO vide Annexure P-3 on 27.01.2010. The prayer of the petitioner is only for grant of monetary benefits for the time he discharged the duties of AE/SDO while

working on the post of AE/SDO on current duty charge basis. A perusal of para No.2 of the preliminary submissions of the written statement, which has been filed by respondents No.2 and 3 would show that the factual position regarding the assigning of current duty charge to the post of AE/SDO with effect from 26.10.2005 to 27.01.2010 has not been disputed by the respondents-Nigam. It has been specifically stated in para No.2 of the preliminary submissions that the petitioner was assigned the current duty charge of the post of AE/SDO in his own pay scale of JE without any extra remuneration on 25.10.2005. In other words, the objection which has been taken by the respondents-Nigam is that since the petitioner was given current duty charge without any extra remuneration, he is not entitled for the same. He also submitted that although the petitioner was given current duty charge and he was discharging the duties of AE/SDO but since he was not to be given any extra benefit, he is not entitled for the same is not sustainable. Once it is an admitted position that the petitioner has discharged the duties even on current duty charge basis on higher post then he is entitled for the grant of monetary benefits during the time when he had discharged his duties on a higher post. The law in this regard is also not *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. During the course of arguments, learned counsel for the petitioner has also supplied a photocopy of instructions issued by the Finance Department, Government of Haryana as Mark-‘X’ dated 06.01.2023, whereby clarification has been issued by the Finance Department, Government of Haryana which according to the learned counsel for the respondents-Nigam is applicable to the Nigam according to which it has been clarified that the matter has been considered in the Finance Department that where an employee, who is

otherwise fit for promotion, is given full-fledged charge of the promotional post in the hierarchy against the vacant post, then his pay will be fixed considering the pay scale/pay structure of promotional post for the period holding CDC as per applicable rules/instructions. It has also been clarified that these instructions will hold good only for the period holding CDC till 31.12.2015 as HCS (Pay) Rules, 2016 came into force with effect from 01.01.2016. In the present case, the current duty charge was given to the petitioner much prior to the aforesaid date. Para No.3 of the aforesaid instructions is reproduced as under:-

*“3. The matter has been considered in the Finance Department at length keeping in view the above facts and it is clarified that **where an employee, who is otherwise fit for promotion, is given full-fledged charge of the promotional post in the hierarchy against the vacant post, his pay will be fixed considering the pay scale/pay structure of promotional post for the period holding CDC as per applicable rules/instructions. Accordingly, only difference of pay for 02 posts while holding CDC shall be payable.** However, the period spent on current duty charge would not be countable towards seniority as well as award of any financial benefit such as promotion, ACP etc. On actual promotion, his pay will be fixed by considering the presumptive pay of feeder post as if he has **never** been given current duty charge. This would hold good only for the period holding CDC till 31.12.2015 as HCS (Pay) Rules, 2016 have come into force w.e.f. 01.01.2016.”*

8. After hearing learned counsel for the parties, this Court is of the view that the present writ petition deserves to succeed in view of the admitted position that the petitioner was given current duty charge on 26.10.2005 vide

Annexure P-2 and he worked on that post till the time he was regularly promoted as AE/SDO on 27.01.2010 vide Annexure P-3. Apart from the above, even otherwise also the case of the petitioner is squarely covered by the aforesaid instructions issued by the Finance Department, Government of Haryana dated 06.01.2023. So far as the argument raised by the learned counsel for respondents-Nigam that there was a delay in filing of the present writ petition is concerned, the same is unsustainable in view of the fact that for the purpose of grant of pay and benefits arising out of the salary of a person, the plea of limitation is not sustainable since it will be a case of recurring cause of action.

9. Consequently, the present writ petition is allowed. The respondents-Nigam shall pay the monetary benefits of pay/salary from 26.10.2005 to 27.01.2010 to the petitioner for the time he discharged his duties of AE/SDO on current duty charge basis, within a period of three months from today along with interest at the rate of 6% per annum.

08.01.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No