



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-25070 of 2017

Date of decision: 02.09.2024

Subhash Chander

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. S.K. Malik, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. This writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* quashing the order dated 14.12.2012 (Annexure P-3), vide which claim of the petitioner has been rejected; writ in the nature of *mandamus* has been sought directing the respondents to fix the pay of the petitioner in the scale meant for the post of Sub-Divisional Officer from the date the petitioner was given look after charge of the said post and further to revise the pension of the petitioner after fixing pay in the said scale, with all consequential benefits and direction has been sought to the respondents to release the arrears of difference of due and drawn of salary along with 18% interest.

2. Brief facts, as have been narrated in the petition, are that petitioner was appointed as Draftsman in the Irrigation Department, Haryana, in October, 1976. He was promoted as Circle Head



Draftsman and subsequently was given look after charge of SDO Civil Engineering on 31.01.2011 and he retired from the post of SDO having the look after charge. Petitioner submitted various representations to the respondents to grant the status of SDO from the date look after charge was given to him, with all consequential benefits but to no avail. Thereafter, petitioner approached this Court by way of CWP No.18008 of 2012 and the same was disposed of vide order dated 13.09.2012 (Annexure P-2), with a direction to respondent No.2 to decide the representation dated 15.05.2012 within three months. Pursuant to the order of this Court, claim of the petitioner was rejected by the respondents vide impugned order dated 14.12.2012 (Annexure P-3). Hence, present petition.

3. Pursuant to notice of motion, respondents have filed written statement stating therein that petitioner was given look after charge of the post of Sub Divisional Officer in extreme administrative exigency in his own pay scale subject to the condition that he shall not be entitled to any additional remuneration or seniority or any other benefits for the reason that the look after charge is assigned purely as a stop gap arrangement. Look after charge is not a promotion and it can be withdrawn at any time.

4. Learned counsel for the petitioner contended that petitioner is entitled for the pay of the post of Sub Divisional Officer for the period i.e. from 03.02.2011 to 31.03.2011 for which he performed the duties as Sub Divisional Officer as also for the pay scale and other retiral benefits of the post of Sub Divisional Officer inasmuch



as he retired as such on 31.03.2011. He contended that claim of the petitioner has wrongly been declined by the respondents vide impugned order dated 14.12.2012 (Annexure P-3).

5. *Per contra*, learned counsel for the respondents contended that since the petitioner was only given the look after charge of the post of Sub Divisional Officer in his own pay scale of Circle Head Draftsman subject to the condition that he shall not be entitled to any additional remuneration or seniority or any other benefits. He submitted that claim of the petitioner was considered by the department in accordance with law and has rightly been rejected vide impugned order.

6. I have heard learned counsel for the parties and perused the record.

7. Admittedly, petitioner was given look after charge of SDO on 31.01.2011 in his own pay scale of Circle Head Draftsman and he looked after the charge of SDO from 03.02.2011 till his retirement i.e. 31.03.2011. Once the petitioner has performed the duties of higher post of SDO, he cannot be denied the pay scale of the said post in view of the settled proposition of law.

8. The Hon'ble Supreme Court in its judgment passed in ***Smt. P. Grover v. State of Haryana, 1983(4) SCC 291*** has held that the officer promoted to higher post on acting basis is entitled to salary of such higher post. The relevant para of the said judgment reads as under:-

“3. We mentioned that she was promoted as an acting District Education officer with effect from July 19, 1976. The order of promotion contained a super-added condition



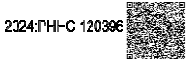
that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order extending her services recited that she was an acting District Education Officer, but contained a super-added condition that her pay would not be more than the maximum of the Principal's grade. Smt. Grover claims that having been promoted as District Education officer, she was entitled to the pay of a District Education officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Art. 136 of the Constitution. The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt. P. Grover after she was promoted to act as District Education officer. All that was said in the counter-affidavit was that there were no Class-I post available and therefore, she was not entitled to be paid the salary of District Education officer. We are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education officer, a Class-I post, on an acting basis. Our attention was not invited to any rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled to be paid the salary of a District Education officer from the date she was promoted to the post, that is, July 19, 1976, until she retired from service on August 31, 1980. The appeal is accordingly allowed with costs.”



9. To the same effect is the judgment of the Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma : 1998 AIR (SC) 2909***. In the said case the employee was promoted as Junior Engineer-I in stop-gap arrangement and he had given the undertaking that on the basis of stop-gap arrangement, he would not claim promotion as a right nor would he claim any benefit pertaining to that post. The said argument was rejected by Hon'ble Supreme Court and it was held that the Government being model employer cannot be permitted to make such an argument.

10. Similarly in the case of ***Selva Raj Vs. Lt. Governor of Island, Port Blair : 1999(2) S.C.T. 286*** the employee looked after the duties of higher post and he worked though temporarily and in an officiating capacity, however, it was held that he was entitled to draw salary attached to the higher post during the time he actually worked on that post. To the same effect are the judgments passed in ***State of Punjab and another Vs. Dharam Pal : 2017 AIR SC 4438; Gurmej Singh Vs. State of Punjab : 1995 (3) S.C.T. 279; Balbir Singh Dalal and others Vs. State of Haryana and another : 2002(4) S.C.T. 422 and Pritam Singh Dhaliwal Vs. State of Punjab and another : 2004(6) SLR 758***.

11. However, no Rule has been placed before this Court by learned counsel for the petitioner which provides for calculation of retiral benefits on the post for which the petitioner was given the look after charge, therefore, the said claim cannot be accepted.



12. In view of the above and the law laid down in the abovesaid judgments, the present petition is partly allowed and the respondents are directed to release the pay of the post of Sub Divisional Officer to the petitioner from the date he was given the look after charge of SDO i.e. 03.02.2011 to 31.03.2011, within a period of three months from the date of receipt of certified copy of this order, failing which the same would carry interest @ 6% per annum from the date it became due.

02.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No