

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(220)

CWP No. 25961 of 2018 (O&M)

Date of Decision : 12.12.2024

Pawan Kumar

...Petitioner

Versus

Financial Commissioner, Cooperative Department, Govt. of Punjab,
Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Ekta Thakur, Advocate with
Ms. Shikha, Advocate for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that he was made to discharge the duties of the higher post of the Assistant Registrar and not paid the salary for duties that he discharged.

2. Learned counsel for the petitioner submits that petitioner was given the charge of the post of Assistant Registrar on 28.05.2015 and the petitioner started performing the duties of the said post from 01.06.2015 and continued to discharge the same till the petitioner attained the age of superannuation on 30.09.2015. The prayer of the petitioner is that petitioner is entitled for the salary of the post of Assistant Registrar for the period he had discharged the duty of the said post.

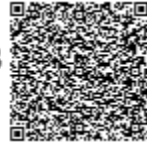


3. Upon notice of motion, the respondents have filed the reply, wherein, they have stated that keeping in view the fact that there was no order to pay additional emoluments to the petitioner for discharging the duties of the Assistant Registrar, the petitioner cannot claim the said benefit. Learned counsel for the respondents submits that the present petition has been filed after the retirement, hence, the claim of the petitioner for the grant of salary for the post of Assistant Registrar may kindly be declined.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. Keeping in view the settled principle of law that an employee is entitled to get the salary of the post on which he/she is discharging the duties, the petitioner is entitled for the grant of salary of the post of Assistant Registrar for the period, he had discharged the duties of the said post. The said question has also been decided by this Court while passing order in CWP No. 6348 of 2020 titled as ***Pawan Kumar Vs. State of Punjab and others***, decided on 17.07.2024. The relevant paragraphs of the said judgment are as under :-

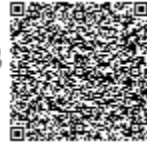
*“5. An employee is entitled to get the salary of the post of which he/she is discharging the duties. Once the State asks an employee to discharge the duties of a higher post even if on temporary basis or on current basis, the employee get right to claim the salary of the post he/she is discharging the 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.”

6. *The judgment being relied upon by the respondent-State in **R.K. Aggarwal (supra)** has been considered by the Full Bench of this Court in **Subhash Chander’s case (supra)** and held that the same will not be applicable and the Full Bench held that the employee will be entitled for the pay of the post he/she has discharged the duties, is to be paid. 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.”

7. *Once, after the judgment in **R.K. Aggarwal (supra)**, the Hon’ble Supreme Court in **Hari Om Sharma’s case (supra)**, granted the relief and the Full Bench of this Court in **Subhash Chander’s case (supra)** after considering **R.K. Aggarwal (supra)** held that the employee is entitled for the salary of post of which he/she has discharged the duties, the petitioner is entitled for the grant of benefit.”*

6. In the present case, it is a conceded position that the petitioner discharged the duties of the post of Assistant Registrar, hence, once it is a conceded position that the petitioner discharged the duties of a higher post, petitioner is entitled for the salary of the post of Assistant Registrar for the period he had discharged the duties.

7. Keeping in view the above, the respondents are directed to calculate the salary which the petitioner will be entitled for while working on



the post of Assistant Registrar and release the same after deducting the salary already paid for the substantive rank for the period in question.

- 8. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.
- 9. Petition is allowed in above terms.
- 10. Pending miscellaneous application, if any, also stands disposed of.

December 12, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No