



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1829

CWP-6674-2016 (O&M)
Date of Decision:18.05.2024

Harish Kumar Bedi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON’BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Dhiraj Chawla, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY, J. (Oral)

1. The present petition has been filed for quashing the order dated 05.02.2016, Annexure P-12.
2. Learned counsel submits that the petitioner was appointed as Junior Scale Stenographer in the Department of Industries, Punjab from 30.11.1983 and thereafter, placed with the Commissioner, Appeal (Ferozepur Division) at Chandigarh as Senior Scale Stenographer/P.A. from 12.09.1985 till 11.07.1996, whereafter, while working as Personal Assistant, he was given officiating charge to the post of Private Secretary on 30.08.2007, Annexure P-4. However, twin conditions were imposed that, first, there would be no creation of additional financial liability on account of the same and second, the arrangement was temporary till appointment of suitable person as regular, in consequence of which he was not granted higher pay for performing the said duty. Prior thereto,



-2-

respondent No.2-Commission had vide letter dated 05.06.2007, Annexure P-3, recommended him for promotion to the very same post being fully eligible under the relevant rules. He was subsequently promoted vide order dated 08.08.2014, Annexure P-8. The Commission also vide order dated 27.03.2015, Annexure P-9, recommended respondent No.1 to grant the petitioner the salary for officiating period as Private Secretary, on higher post, from 06.09.2007 to 10.08.2014, whereafter the said issue was taken up to the Legal and Legislative Affairs, Punjab, who vide his opinion dated 19.05.2015, Annexure P-10, also advised the same. However he was still not paid the higher pay for officiating at the post, despite his case being covered on all fours by judgment passed by the Division Bench of this Court in **State of Haryana and another vs. Pardeep Narayan**, LPA-1629-2023, decided on 06.11.2023, which followed the judgment of Hon'ble the Supreme Court in **State of Punjab vs. B.K. Dhir**, (2017) 9 SCC 337; **State of Haryana vs. Sita Ram**, LPA-1491-2016, decided on 27.11.2019, against which SLP stands dismissed on 10.10.2022; **State of Punjab and another vs. Dharam Pal**, (2017) 9 SCC 395; **Raj Kumar Singh vs. Punjab Mandi Board and others**, CWP-128-1993, decided on 17.07.2014; **Subhash Chander vs. State of Haryana and others**, 2012(1) SCT 603 and **Pritam Singh Dhaliwal vs. State of Punjab**, 2004 (4) SCT 403.

3. In **Pardeep Narayan** (supra), wherein stipulation was imposed mandating the petitioner to discharge the duties of a higher post, without being entitled to any financial benefit on account of the same, the Division Bench had observed thus:

“4. As is evident that the respondent was assigned duties of a higher post by the Department against a vacant post on its own volition, he having no role to play whatsoever in the same, which was for a period of three years on the post of District



-3-

Commander, till he retired on attaining the age of superannuation, albeit with a caveat that he shall not be entitled to the pay-scale or seniority of the said post.

5. The respondent, who is said to have received commendation certificates in recognition of maintenance of law and order displaying address acuteness, industry and devotion to duty and his active cooperation with Home Guards, Haryana and given cash reward on a number of occasion, Annexures A-1 (colly) appended with the writ petition, vacancy for the higher post being available and he being the senior most in the feeder cadre but ironically instead of considering him for grant of regular promotion, he was made to perform duties of the higher post without any financial benefit thereof. It is a clear case of the Department being in the wrong.

6. It is trite that there is no estoppel against law.

7. An endeavour to canvass non-entitlement to the pay of the higher post on account of the condition, is required to be deprecated, it being exploitative and incorporated by the State, which is in a dominant position. Needless to say that the aforesaid decision was unilateral and therefore not enforceable.

8. Gainful it would be to refer to the dictum in **State of Punjab vs. B.K. Dhir, (2017) 9 SCC 337**, which is intrinsically applicable to the present facts inasmuch as, the respondent therein was not paid the salary while having made to officiate on a higher post, wherein Hon'ble the Supreme Court while affirming the order of the Division Bench of the High Court observed that it was incumbent upon the Department to pay him the salary for the period he had worked on the said post, despite the condition imposed in the order that he would do so without any extra emoluments.

9. As a fall out and consequence of the afore-discussion, we find that the respondent was rightly allowed the benefit of salary for the period he performed duties on the higher post, regardless of any condition incorporated as an impediment to his cause."

4. The relevant portion of judgment passed by the Full Bench of this Court in **Subhash Chander** (supra) reads thus:

"12. A close examination of Rule 4.13 of the Rules would show that once a person like the petitioner has been given independent charge of a post, which involves assumption of duties and responsibilities of greater importance than the one attaching to the post held by such an employee on which he holds a lien or would have held his lien had it not been suspended, then he is entitled to pay of the higher post. A post is regarded to involve assumption of duties and responsibilities of greater importance if it carries higher pay scale than the one on which he holds the lien. In the present case, the pay scale of the post of Accountant is lower than that of the post of the



Secretary.

13. It has come on record that the petitioner Subhash Chander was given the charge of the post of Secretary of Municipal Committee, Ratia on 02.11.1996/11.12.1996 (P-1). The aforesaid charge was given to him against a vacant post without requiring him to work as Accountant in addition. In other words, it was not additional charge but was an independent charge of the post of Secretary. Therefore, it is evident that within the principle emerging from Rule 4.13 of the Rules, he would be entitled to higher pay scale of the post of Secretary because the post of Secretary has to be considered involving assumption of duties and responsibilities of greater importance than those attaching to the post of Accountant on which the petitioner had held the lien. The petitioner also fulfilled the conditions being in the line of promotion because he was senior most Accountant and would have been promoted on the basis of his seniority. Merely because he has been given officiating charge of the higher post without regular promotion, would not result into deprivation of higher salary from the date he has assumed the charge.

14. We wish to make it clear that the Rules laid down by us would not cover a case where a fortuitous officiating promotion is given to an employee working in the lower cadre on account of administrative exigency resulting in vacancy of a higher post. For illustration, if the post of Sub Division Officer is a feeder cadre for promotion to the post of Assistant Executive Engineer then on vacancy caused by retirement, death or promotion etc., the promotion of the Sub Division Officer available at the station on the post of Assistant Executive Engineer would not earn him higher pay scale because it is a fortuitous circumstance unless he is senior enough to stake his claim for regular promotion. The aforesaid principle has been laid down by their Lordships' of Hon'ble the Supreme Court in the case of Ramakant Shripad Sinai Advalpalkar v. Union of India, 1993(3) S.C.T 586: 1991 (Suppl. 2) SCC 733.

15. We are further of the view that Rule 4.13 of the Rules would virtually sound like the principle laid down in the judgment of Hon'ble the Supreme Court in **Smt. P. Grover v. State of Haryana, AIR 1983 Supreme Court 1060**. In that case, an employee in the State of Haryana was given promotion as acting District Education Officer about two years before her superannuation. The order giving her promotion as an acting District Education Officer recited a condition that she was to draw salary in her own pay scale which meant that her scale would continue to be that of the post of Principal, Higher Secondary School. Accordingly, their Lordships' of Hon'ble the Supreme Court accepted the claim of Smt. P. Grover as if the principles laid down in Rule 4.13 of the Rules have been applied. The concluding para of the 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 superadded 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 was 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 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 Article 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 was no Class-I posts 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 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."

16. The argument of learned State counsel based on the judgment rendered in R.K. Aggarwal's case (supra) would not require any detail consideration because there was serious dispute concerning seniority of the officers in the cases where disputes concerning seniority are involved. The officiating charge may not earn the fixation of higher pay scale for the post on which the officer is officiating. However, in the present case, there is no dispute of such nature. We are also not impressed with the argument that somewhere in 2006, the petitioner was charge-sheeted and, therefore, regular promotion has to be taken into account only from 27.10.2008 (P-10) and the salary is also required to be fixed in the higher grade from that date alone. The aforesaid argument is liable to be rejected for more than one reason. Firstly, the petitioner has been discharging the duties on a higher post of Secretary w.e.f. 2.11.1996/11.12.1996 (P-1). If any, charge-sheet in 2006 was issued then it was at a



-6-

stage when the petitioner was discharging his duties as Secretary, therefore, the argument would have no effect insofar as the present case is concerned and the judgment in R.K. Aggarwal's case (supra) would have no application.

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.”

5. Thereafter, in the judgment of **Dharam Pal** (supra) it had been observed thus:

“14. Having analysed the Rule position, we may allude to the authorities that have been commended to us. First, we shall dwell upon the decision in **Pritam Singh Dhaliwal** (supra) that has been relied upon by the High Court in the impugned order. In the said case, the Division Bench of the High Court had placed reliance upon **Smt. P. Grover v. State of Haryana and another** and **Selvaraj v. Lt. Governor of Island, Port Blair and others** and earlier decisions of the High Court and analyzing the Rule position opined that the officer therein had been asked to officiate as Deputy Director with effect from 14.03.1996 and he had been continuously posted to equivalent posts such as Additional Deputy Commissioner (D) and till his superannuation the officiating charge was never withdrawn and hence, his entitlement to claim higher pay scale for the post for which he was asked to officiate and perform his duties till his superannuation would not be negated.

15. As the reasoning of the High Court is fundamentally based on enunciation of law propounded by the Court in Smt. P. Grover (supra), we think it apt to appreciate the ratio laid down in the said case. A two-Judge Bench of this Court was dealing with the fact situation wherein keeping in view the policy decision, the appellant therein was promoted as an acting District Education Officer. The order of promotion contained a superadded condition that she would draw her own pay scale which apparently meant she would continue to draw her salary on her pay scale prior to promotion. The claim was put forth by the appellant that she was entitled to the pay of District Education Officer and there was no justification for denying



-7-

the same to her. A Writ Petition was filed before the High Court and the State filed the counter affidavit contending, inter alia, that she was promoted to the post of acting District Education Officer as there was no Class I post and hence, she was not entitled to be paid the salary of District Education Officer. Appreciating the fact situation, the Court held:

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20. In Hari Om Sharma (supra), the respondent was promoted as a Junior Engineer I in 1990 and had been continuing on that post without being paid salary for the said post and without being promoted on regular basis. It was in this situation, he approached the Central Administrative Tribunal which allowed the claim petition with the direction that the respondent shall be paid salary for the post of Junior Engineer I. That apart certain other directions were also issued. The Court took note of the fact that the respondent was promoted on a stop-gap arrangement as Junior Engineer I and opined that this by itself would not deny his claim of salary for the said post. In that context, the Court held:

“... If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.”

21. After so stating, the Court proceeded to opine thus:

“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.”

[Emphasis added]



-8-

The principle postulated in the said case is of immense significance, for it refers to concept of public policy and the conception of unconscionability of contract.

22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in Smt. P. Grover (supra) and Hari Om Sharma (supra). As far as the authority in A. Francis (supra) is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma (supra) and resultantly we hold that the view expressed by the High Court is absolute impeccable.”

6. Learned State counsel despite his best efforts is unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

7. In view of the aforesaid, the present writ petition is disposed of in terms of the judgments passed in **Pardeep Narayan, Subhash Chander** and **Dharam Pal** (supra).

(AMAN CHAUDHARY)
JUDGE

18.05.2024
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Whether speaking : Yes/No

Whether reportable : Yes/No