

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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2024.PHHC.135576



CWP No. 28911 of 2017 (O&M)

DATE OF DECISION: 16th October, 2024

Chander Bhan Chopra

.....PETITIONER

VERSUS

State of Haryana and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI.

Present: Mr. Himanshu Raj, Advocate with
Mr. Pranav Goyal, Advocate for petitioner.

Mr. Kapil Bansal, DAG Haryana.

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

JASGURPREET SINGH PURI, J (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents No. 3 to release the salary of the petitioner in the scale of S.D.E. keeping in light the instructions/notification dated 03.11.2017.

2. Learned counsel appearing for the petitioner submitted that the petitioner was working as Junior Engineer with the respondent-Marketing Board and vide Annexure P-1 he was granted current duty charge for the higher post of Sub Divisional Engineer on 09.05.2012. He continued to discharge his duties as Sub Divisional Engineer till the time of his retirement in the year 2016 and he retired as a Junior Engineer on 31.03.2016. He discharged the duties and worked on the post of Sub Divisional Engineer on current duty charge from 09.05.2012 till the time of his retirement but he has

been paid salary for the post of Junior Engineer whereas he is entitled to get

the salary for the post of Sub Divisional Engineer for the period during which he has worked on that post on current duty charge.

3. Learned counsel for the petitioner referred to a Full Bench judgment of this Court in ***Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207***; a judgment of Hon'ble Supreme Court in ***Smt. P. Grover versus State of Haryana and another, (1983) 4 SCC 291*** and ***Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87*** and judgments passed by a Coordinate Bench of this Court in ***P. D. Kaushik versus State of Haryana and others, CWP-16541-2015*** and ***Nihal Singh versus State of Haryana and others, CWP-7642-2018*** wherein it is held that once an employee is made to work and discharge his duties on the higher post then he is entitled for the salary of the higher post. Learned counsel further submitted that so far as clause contained therein by which he was granted the benefit, the same would not be relevant in view of settled law as discussed above.

The Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (supra)*** 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 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.”

5. On the other hand, learned counsel for respondents appearing on behalf of Marketing Board submitted that there is no dispute with regard to the proposition of law as so stated by learned counsel for the petitioner. He further submitted that since there was a clause in Annexure P-1 that the petitioner will work in his own pay scale therefore, he is not entitled for payment of salary at a higher pay scale.

6. I have heard learned counsel for the parties.

7. The factual position that the petitioner had worked on current duty charge from 09.05.2012 till the time of his retirement is not disputed. The proposition of law as laid down by the various judgments of Hon'ble Supreme Court and this Court is also not disputed by learned counsel for petitioner. However, so far as the clause in Annexure P-1 by which it has been so stated that the petitioner has been assigned current duty charge in his own pay scale as referred by learned counsel for the respondent is concerned the same has no relevance in view of settled law.

8. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents are directed to calculate the difference of salary for the post of Junior Engineer and that of Sub Divisional Engineer, i.e. higher post on which he discharged his duties and after calculating the same to pay the petitioner along with interest at the rate of 6% per annum (simple) within a period of three months from today.

9. Learned counsel for the petitioner at this stage submitted that the petitioner is also entitled for grant of consequential benefits of pensionary re-fixtation.
10. In case any such grievance of the petitioner still survives then he shall be at liberty to file an appropriate application before the respondents and in the event of filing of any such application, the same shall be considered and decided strictly in accordance with law within a period of two months.

16th October, 2024
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(JASGURPREET SINGH PURI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>