

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

229

CWP-28462-2018
Date of decision: 18.03.2024

Varinder Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vikas Kuthiala, Advocate for the petitioner

Mr. Arun Gupta, DAG, Punjab

AMAN CHAUDHARY. J. (ORAL)

1. The prayer in the present Civil Writ Petition filed under Article 226 of the Constitution of India, is to issue a writ in the nature of mandamus, to pay the arrears of pay arising due to the higher pay admissible to the post of the District Town Planner along with interest.
2. Learned counsel would submit that the petitioner, who was working as Assistant Town Planner, being senior most and eligible was given current duty charge for the post of District Town Planner vide order 27.08.2010, Annexure P-4, in addition to his original duties, which he continued to perform for 4 years and 6 months, till his regular promotion on 11.02.2015, Annexure P-5. However, a condition was incorporated therein that he shall not be entitled to financial benefits, for which he relied on **State of Punjab vs. B.K. Dhir**, (2017) 9 SCC 337 wherein Hon'ble the Supreme Court dealt with a similar issue, which was followed by the Division Bench of this Court in LPA-1629-2023, titled as **State of Haryana and another vs. Pardeep Narayan**, decided on 06.11.2023 and also on a judgment of Full Bench in the case of **Subhash Chander vs. State of Haryana and others**, 2012(1) PLR

778.

3. The relevant paras of **BK Dhir** (supra), read thus:

“5. This Court today in the case of "The State of Punjab & Another v. Dharam Pal", Civil Appeal No. 1549 of 2011, after referring to the authorities in Smt. P. Grover v. State of Haryana and another, AIR 1983 Supreme Court 1060 and Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and others, 1998(3) S.C.T. 90 : (1998) 5 SCC 87 and appreciating the similar factual matrix has held thus:

"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. The learned counsel for the State of Punjab referring to the Punjab Civil Services Rules (for short, "Rules"), urged that the respondent was not eligible to hold the post. Be it noted, the said stand was not taken before the High Court and, in any case, we are disposed to think that when the respondent had worked in the officiating post and had been granted the benefits by the High Court, he should be extended the said benefits. Had there been a contest on the score of eligibility of the respondent, possibly the matter would have been different. That not being the fact situation, we are not inclined to interfere with the order passed by the High Court.”

4. The Division Bench of this Court in **Pardeep Narayan** (supra) wherein, as the present case, there was a stipulation in order directing him to discharge the duties of a higher post that he shall not be entitled to any financial benefit on account of the same, 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 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."

5. The operative portion of **Subhash Chander** (supra), wherein also a condition had been imposed of instead of drawing salary of higher post in her own salary scale, it was observed and held thus:

“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."

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.
18. Accordingly, the writ petition is disposed of in the above terms.”

6. Learned State counsel was 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 petition is disposed of in terms of the judgments passed in **BK Dhir, Pardeep Narayan and Subhash Chander** (supra).

(AMAN CHAUDHARY)
JUDGE

18.03.2024
Hemant

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No