

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

214

CWP-20452-2021 (O&M)
Date of decision: 25.09.2024

Nand Pal

....Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jaivir Yadav, Sr. Advocate with
Ms. Sunita Shekhawat, Advocate for the petitioner

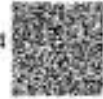
Ms. Tanisha Peshawaria, DAG Haryana

AMAN CHAUDHARY, J. (ORAL)

1. The petitioner joined the Transport Department as Store Purchase Assistant on 14.05.1979 and was assigned the current duty charge, vide order dated 31.12.1998, of the higher post of Store Purchase Officer, wherefrom he retired on 31.10.2003, after independently discharging the duties and responsibilities thereof. However, was not granted the salary for the said period.

2. In a matter pertaining to the very same post in the Department wherein also current duty charge had been assigned to Ramesh Chander but no monetary benefits were granted, this Court allowed his CWP-11667-2010, on 19.08.2013, Annexure P-3, to which there was no challenge and relevant paras whereof read thus:

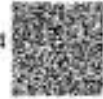
“Mr. Arora presses his alternative prayer for grant of relief of pay scale and salary of the higher post of Store



Purchase Officer (SPO) from the date when the petitioner was given current duty charge of the post though in his own pay scale and with the rider that he would not claim seniority or any other service benefits on this account. With the passing of the order dated 1st December, 1998, the petitioner discharged full duties and responsibilities of the higher post of SPO. He continued to discharge those duties till 11.6.2006 when the CDC charge was withdrawn from the petitioner. When the current duty charge was withdrawn from the petitioner, he approached this Court by filing CWP No.13035 of 2006. Vide order dated 19.12.2006, a Division Bench of this Court disposed of the writ petition with liberty to the petitioner to approach the respondents for relaxation of the eligibility condition for promotion to the higher post, in accordance with the Rules. In the process of complying with the directives of the Court, the respondent department granted relaxation to the petitioner vide order dated 21.7.2009 (P-8) where after he was promoted to the post of Store Purchase Officer on regular basis. The petitioner retired from service on reaching the age of superannuation on 31.10.2009.

Mr. Arora very fairly does not press his case for regular promotion for the period he held the current duty charge since during that period, he, admittedly, was not qualified. It was, later on, that the relaxation was granted by the government and he was promoted to the higher post substantively. However, for the pay scale of the higher post and salary, Mr. Arora claims the same on the basis of the actual value of services performed and relies on a decision of the Full Bench of this Court in *Subhash Chander v. State of Haryana*, 2012 (1) RSJ 442 to urge that where an employee is appointed to officiating post involving discharge of duties and responsibilities of greater importance, then, those attaching to the lower post substantively held, the current duty charge-employee would be entitled to salary of his officiating post in the higher grade. This will be true where the current duty charge is given to an employee with independent charge and responsibility to shoulder and discharge duties of greater importance, especially having served for a substantial period from 1998 to 2006, the length of CDC service itself ipso facto giving rise to a presumption of discharge of full fledged officiating authority though with no right to hold the post. The petitioner, in the considered view of this Court, will be entitled to difference of arrears of salary calculated in the pay scale of the post of Store Purchase Officer.

On the other hand, Mr. Nehra submits that the petitioner accepted the order dated 1st December, 1998 without demur and did not press his claim till he filed the present writ petition.



He would, therefore, be bound by the terms of the order and would not be entitled to any other service benefits on account of CDC.

Heard learned counsel for the parties.

There is substance in the argument of Mr. Arora based on the decision of the Full Bench of this Court in *Subhash Chander v. State of Haryana*, the terms of CDC and the rider put in the order cannot take away the burden of the State to pay salary of the higher post after having used the petitioner's services as a Store Purchase Officer permitting him to exercise full authority and discharge duties and responsibilities of the promotional post over a long period of time. The origin of the entitlement to higher pay scale in such circumstances lies on the well accepted principle of quantum meruit. In this view of the matter, this court is of the view that the petitioner would also have also a legitimate expectation that he will be entitled to the higher pay on discharge of duties of higher office and that the fetters in the CDC order cannot be construed as binding in a case where charge of current duty is spread over 8 long years. After all, the qualification rule was ultimately relaxed in favour of the petitioner to earn him promotion to the CDC post itself which could have been so done in 1998 itself or any time thereafter and not to have waited so long.

Consequently, this writ petition is partly allowed. A mandamus is issued to the respondents to calculate and pay the difference of arrears of salary to the petitioner for the period he actually worked on current duty charge on the post of Store Purchase Officer. Let the monetary benefits under this order be paid to the petitioner within a period of 3 months from the date of receipt of a copy of this order. No costs."

3. Hon'ble the Supreme Court in **State of Punjab and another vs.**

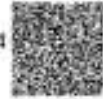
Dharam Pal¹ and **State of Punjab vs. B.K. Dhir²**, upheld the grant of benefit of

higher pay for higher posts. The relevant paras of Dharam Pal (supra) read 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

¹ (2017) 9 SCC 395

² (2017) 9 SCC 337



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 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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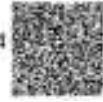
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20. In Hari Om Sharma (supra), the respondent was promoted as a Junior Engineer I in 1990 and had been continuing on that post without being paid salary for the said post and without being promoted on regular basis. It was in this situation, he approached 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]

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.”

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



5. In wake of the above, the present writ petition is disposed of in terms of the judgments passed in **Ramesh Chander** (supra).

(AMAN CHAUDHARY)
JUDGE

25.09.2024
M.Kamra

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