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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24739-2021
Date of decision: 02.05.2024

JAGTAR CHAND

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM, PANCHKULA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S. P. Arora, Advocate
for the petitioner.

Mr. Dhruv Walia, Advocate
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the impugned order dated 29.10.2021 (Annexure P-11), vide which the claim of the petitioner for pay/salary of higher post of SDO/AE has been rejected by the respondents and further to issue a writ in the nature of mandamus directing the respondents to grant pay/salary to the petitioner for the post of SDO/AE along with all consequential benefits arising out of correct fixation of pay/salary with effect from 18.12.2007 i.e. the date when the petitioner who was working as JE-1 was transferred and posted in public interest to the post of SDO/AE till 22.06.2010, i.e. the date when the petitioner was given regular promotion as SDO/AE.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was working as a JE and while he was in service and working as JE, he was given current duty charge for the post of SDO/AE on 15.12.2007 and although the aforesaid order of giving of current duty charge has not been attached with the present writ petition, but the handing over of the charge has been attached as Annexure P-1. He further submitted that thereafter, the petitioner continued to discharge the duties of SDO/AE till the time he was regularly promoted to the post of SDO/AE on 12.03.2012 vide Annexure P-2. He further submitted that thereafter, vide Annexure P-3 dated 18.07.2013, another order was passed whereby the petitioner was granted the benefit of deemed date of promotion as SDO/AE with effect from 23.06.2010 and it was also directed that the benefit of deemed date of promotion will be given only for notional pay fixation/seniority benefit and arrear is payable only from the date he actually assumed the charge of SDO/AE.

3. Learned counsel for the petitioner also submitted that in pursuance of Annexure P-1, the petitioner discharged the duties of SDO/AE on current duty charge basis from 18.12.2007 till the time he was regularly promoted to the post of SDO/AE and therefore, he is entitled for the grant of pay and salary for the time he had discharged his duties as SDO/AE in view of the judgment of Hon'ble Supreme Court in **Smt. P. Grover versus State of Haryana and another, (1983) 4 SCC 291**, a Division Bench judgment of this Court in **Balbir Singh Dalal versus State of Haryana, 2002 (4) SCT 422**, 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** and also another judgment of the Hon'ble Supreme

Court in Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87. He further referred to a Full Bench judgment of this Court in Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207, wherein similar issue was considered and it was held that a person who is given a current duty charge is entitled for the pay and salary for the time he had discharged his duties on that post.

4. Learned counsel for the petitioner also submitted that since the petitioner had been working as SDO/AE from the year 2007 as aforesaid and the respondent-Nigam failed to hold any DPC for the purpose of promotion, although vacancies were available, he was entitled for being promoted with effect from 18.12.2007 and not from 23.06.2010 and therefore, direction may also be issued to the respondent-Nigam that the deemed date of promotion of the petitioner be fixed from 18.12.2007 instead of 23.06.2010.

5. On the other hand, learned counsel for the respondent submitted that so far as the fact that the petitioner was given current duty charge with effect from 18.12.2007 for the post of SDO/AE is concerned, the same is not disputed by the respondent-Nigam. He however submitted that when an order was passed for giving of current duty charge to the petitioner for the post of SDO/AE, which is dated 15.12.2007, which is although not attached with the present writ petition, but is attached with the written statement filed on behalf of respondent as Annexure R-1, it was so incorporated in the said order that the petitioner to whom the current duty charge has been given shall have no right of seniority being a stop gap arrangement and he will exercise the powers of SDO under the delegation of powers. He further submitted that so far as the prayer of the petitioner for grant of pay and salary of the post on which he had discharged

his duties i.e. SDO/AE on current duty charge basis is concerned, he is not entitled for the same in view of Rule 76 of the Haryana Civil Services (Pay) Rules, 2016, which provides that no additional pay shall be admissible for holding, independently or in addition to own duties, current duty charge of another post(s) of the same or higher grade pay regardless of the duration and therefore, the petitioner was not entitled for the grant of aforesaid benefit.

6. Learned counsel for the respondent referred to one office memorandum issued by the State of Haryana, which is attached as Annexure R-2 with the written statement filed on behalf of the respondent, which explains that in pursuance of the aforesaid Rule 76 of the Haryana Civil Services (Pay) Rules, 2016, the date on which the claim is made, that date will be relevant for the purpose of considering as to whether the benefit of additional pay is to be given or not and since the petitioner has raised the claim after the commencement of the aforesaid Rules, he is not entitled for the same in view of the aforesaid office memorandum. He further submitted that since there is a delay in the filing of the present writ petition, the arrears of pay, if any, may be restricted to 38 months only.

7. I have heard the learned counsel for the parties.

8. There are two grievances of the petitioner. Firstly, that he was given current duty charge vide order dated 15.12.2007 (Annexure R-1) and the actual handing over of the charge took place on 18.12.2007 and when he was promoted on 12.03.2012, another order was passed thereafter vide Annexure P-3 that he is given the deemed date of promotion as SDO/AE from 23.06.2010 when his junior was promoted. The grievance of the petitioner is that he should have been promoted from the date when he was given current

duty charge because vacancies were available, but the DPC was not conducted. This Court is of the considered view that vide aforesaid Annexure P-3 when the deemed date of promotion was given to the petitioner with effect from 23.06.2010, it was based upon a reason that since his junior has been promoted from the earlier date i.e. 23.06.2010, he also deserves the same and therefore, he was granted the deemed date of promotion. The mere fact that the petitioner was given some current duty charge in the year 2007 itself cannot vest any right in the petitioner with regard to deemed date of promotion from that earlier date. Mere existence of vacancies would not mean that on the basis of the same, the petitioner can claim the deemed date of promotion from the date when current duty charge was given because the current duty charge is not a promotion, but it is only a stop gap arrangement for which the petitioner is not entitled for being promoted from the aforesaid date i.e. 18.12.2007.

9. So far as the second prayer of the petitioner that he has worked and discharged duties of SDO/AE from 18.12.2007 till the time he was regularly promoted to the post of SDO/AE and he is entitled for the grant of difference of pay i.e. he is entitled for pay of the post of SDO/AE is concerned, the same deserves consideration in the light of the aforesaid judgments of the Hon'ble Supreme Court and also of this Court.

10. 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 Engineer-I as he was given only current 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.”

11. The argument which has been raised by the learned counsel for the respondent while referring to the written statement filed on behalf of the respondent and also the impugned order that in terms of the Rule 76 of the Haryana Civil Services (Pay) Rules, 2016, the petitioner cannot be entitled for the pay to the post where he has worked on current duty charge basis is concerned, this Court is of the considered view that the aforesaid Rules came into force in the year 2016 and they do not have any retrospective effect and they are prospective in operation, whereas the claim in the present case arose much prior to the aforesaid Rules and therefore, the reliance placed upon Rule 76 of the Haryana Civil Services (Pay) Rules, 2016 by the learned counsel for the respondent and also in the impugned order is misplaced. So far as the office memorandum (Annexure R-2), which has been so referred by the learned counsel for the respondent, in which it has been so stated that it is the date of the claim which is relevant to be seen is concerned, learned counsel for the respondent has not been able to refer to any provision in the relevant Rules, wherein it has been so provided that the date of claim will be relevant. In the absence of any such provision in the Rules, no such interpretation could have been made by sending any memorandum in this regard.

12. So far as the argument raised by the learned counsel for the respondent with regard to restricting the arrears of pay for a period of 38 months only is concerned, this Court is unable to accept the same in view of the fact that the law in this regard as aforesaid is well settled and the respondent-Nigam being a State Organisation and an instrumentality of the State was supposed to know the law of the land. The salary of an employee to which he is legally entitled, if not paid, then it would be a case of *de die in diem*, which

means that it is a recurring cause of action and cause of action arises every day. It is not a case where because of some retrospective promotion or such like cases that the claim of the petitioner is being allowed by this Court because in those cases, it is a settled law that arrears are to be restricted for a period of 38 months, but it is a case of grant of salary for which there could be no objection pertaining to delay and laches.

13. In view of the aforesaid facts and circumstances, the present writ petition is partly allowed. The respondents are directed to release the difference of salary/pay to the petitioner for the time period when he started discharging the duties of SDO/AE till the time he was regularly promoted to the post of SDO/AE i.e. from 18.12.2007 till 22.06.2010, within a period of three months from today, along with interest @ 6% per annum (simple).

02.05.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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