

228 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-32192-2019 (O&M)
Date of Decision:15.02.2024

Sanjeev Kumar

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr.Abhishek K. Premi, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Jagbir Malik, Advocate for respondent No.3.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Mandamus* for issuance of directions to respondents to consider the case of the petitioner for granting various service benefits based upon the length of service spent by the petitioner on current duty charge to the post of Sub-Fire Officer for the purpose of pay-scale, increments and other monetary benefits including ACP w.e.f. 18.10.2008 (Annexure P-5) with all consequential benefits.

2. Learned counsel for the petitioner submitted that the petitioner was working as a Fireman in the office of respondent-Municipal Corporation, Rohtak, and vide Annexure P-5 he was granted CDC/Look After Charge to the post of Sub Fire Officer till regular appointment/promotion is made. Thereafter, he continued to discharge his duties as Sub Fire Officer from the aforesaid date i.e.18.10.2008 and ultimately on 14.01.2020 he stood regularly

promoted on the aforesaid post. He had submitted that since he had discharged the duties of Sub Fire Officer and in accordance with the orders passed by the respondent-State vide Annexure P-5 he was entitled for the grant of pay for time during which he had discharged the duties as Sub Fire Officer. He also referred to a judgment of the Hon'ble Supreme Court in ***P. Grover Vs. State of Haryana (AIR 1983 SC 1060)*** and another judgment decided by Division Bench of this Court in ***Balbir Singh Dalal V. State of Haryana 2002 (4) SCT 422*** in this regard. He further referred to a judgment of the Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87*** 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.”

3. On the other hand, learned State counsel as well as learned counsel appearing for respondent No.3 respectively, submitted that since in view of the Haryana Civil Services (Pay) Rules 2016 (hereinafter to be referred to Rules 2016) which are made applicable w.e.f. 01.01.2016 and as per Rule 75 in which it has been so provided that no such pay shall be admissible to the employees who are discharging the duties on CDC Post. They further referred to Rule 75 of 2016 Rules, which has been so reproduced in the reply filed by respondent No.2 and is also reproduced as under as well:-

Rule 75. Pay on charge of one or more posts of identical or higher pay scale

On appointment, in addition to ordinary duties as temporary measure, to hold full charge of the duties of one or more posts of identical or higher pay structure in the same department and in the same cadre/line of promotion, no additional or higher pay shall be admissible. However, the special pay of arduous nature of duties and/or compensatory allowance(s), if any, attached with such post(s) shall be admissible..”

3. Mr. Abhishek K. Premi, appearing on behalf of the petitioner has submitted that he restricts his claim only to the extent for granting pay for the post of Sub Fire Officer with effect from the time when he started discharging his duties in pursuance of the order dated 18.10.2008 till 01.01.2016 when the aforesaid Rules came into force.

4. After hearing learned counsel for the parties, this Court is of the view that the prayer made is squarely covered by the aforesaid judgments passed in ***P.Grover's case(supra)*** and ***Balbir Singh Dalal's case (supra)***. Once it is admitted that petitioner has been discharging his duties as Sub Fire Officer in pursuance of the order dated 18.10.2008, thereafter he stood regularly promoted on the said post then for the aforesaid time i.e. from the time when he joined in pursuance of the order dated 18.10.2008 till 01.01.2016 when the aforesaid Rules 2016 came into force, the petitioner is entitled for the pay of the aforesaid post of Sub Fire Officer.

5. In view of the above, the present petition is partly allowed. The respondents-Department are directed to pay the differences of pay to the petitioner for the time period when he joined in pursuance of the order dated

18.10.2008 (Annexure P-5) from 18.10.2008 till 01.01.2016 when the Rules 2016 came into force @ 6 per cent per annum within a period of four months from today.

(JASGURPREET SINGH PURI)

JUDGE

15.02.2024

shweta

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No