



CWP-31351-2018 (O&M)

-1-

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

219

CWP-31351-2018 (O&M)

Date of decision: 21.05.2024

Karnail Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Baldev Singh Sodhi, Advocate for the petitioner.

Mr. Swapan Shorey, DAG, Punjab.

AMAN CHAUDHARY, J.(Oral)

1. The present petition has been filed for setting aside the promotion orders dated 12.06.2018 and 13.11.2018, Annexures P-4 and P-5, respectively, as also for granting arrears of pay and allowances on promoted post of Forester and Deputy Ranger up to date of retirement alongwith interest @ 12% per annum.

2. Learned counsel submits that the husband of the petitioner, namely Mohinder Singh, was appointed as Forest Guard and superannuated on 03.04.2009, after rendering 32 years of service, however, despite being eligible for promotion to the posts of Forester and Deputy Ranger, he was denied the same. Consequent to representations evoking no response, she filed CWP-25039-2017, decided on 13.11.2017, wherein the case was directed to be considered and speaking order passed. His case was previously considered for promotion by DPC meeting held on 09.11.2001 and kept under sealed cover, wherein he was found not eligible on account of adverse remarks in his Annual Confidential Report of 2001-02, which were finally expunged on 02.11.2018, after his retirement, upon which he was granted retrospective promotions, though



on notional basis and for no fault of his, without payment of actual arrears, vide order dated 13.11.2018, to the posts of Forester and Deputy Ranger, w.e.f. 05.03.2002 and 17.08.2005, respectively, dates his junior, Sh. Jagtar Singh, was promoted. Had the respondent taken action in a timely manner, before his retirement, he could have been promoted prior thereto and worked on the said post, for which he was willing.

3. The issue is no longer *res integra* as held in **Satyavir Singh Shekhawat vs. State of Haryana and others**¹, wherein the Division Bench of this Court held that it would be unfair for the petitioner to be denied promotion due to no fault of his own, as also non payment of benefits would be discriminatory, against which SLP² stands dismissed on 08.04.2013, the relevant paras whereof read thus:

“17. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc., upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and give him afterwards through retrospectively. (Also see State of Kerala and others Vs. E.K. Bhaskaran Pillai, 2007(2) S.C.T. 757 : JT 2007 (6) SC 83; Mohd. Ahmed Vs. Nizam Sugar Factory and Others-(2004) 11 SCC 210; Nalini Kant Sinha Vs. State of Bihar and others-1993 Supp (4) SCC 748. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.

18. In those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary

¹ 2014(4) S.C.T. 233

² SLP(C)-14453-2013, decided on 08-04-2013



for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of the higher post for the relevant period, in such circumstances, would amount to hostile discrimination.

19. Keeping in view the principles we have formulated above which are culled out above from the catena of judgments, we have to find the outcome to the present case. The facts of the case have already been noticed above. It is clear there from that the appellant was not promoted earlier, when his juniors were promoted because of the departmental enquiries pending against him. No doubt, these enquiry proceedings have been dropped on the ground of delay. We were shown the original record containing this decision. The reason given is that there is a 14 years delay in conducting the enquiry which would act to the prejudice of the appellant if the inquiries continue. Once that fact is accepted by the Department itself and on that basis the enquiries were dropped, the net effect thereof would be that the appellant was exonerated of the charges. As no penalty has emanated from these charge-sheets, it is for this reason the respondents have themselves given him the promotion from back date. In such circumstances, denial of actual salary and grant of only deemed promotion on the principle of 'no work no pay' may not be appropriate. Admittedly, the juniors who were granted the benefit of promotion received the salary and if the appellant is deprived thereof, it would amount to hostile discrimination qua him. We are, therefore, of the opinion that the principle of 'no work no pay' cannot be made applicable in the instant case and the appellant would be entitled to salary. There is a Division Bench judgment of this Court in case **Vidya Parkash Harnal Vs. State of Haryana 1995(3) S.C.T. 785** which is squarely applicable in the present case. The Court negated the argument predicated on the basis of principle of 'no work no pay'.

xxx

xxx

xxx

We thus allow this appeal and set aside the impugned order. Accordingly, the writ petition filed by the petitioner stands allowed. As a consequence, the appellant shall be entitled to the arrears of pay and allowances as well from 05.07.1994 to 31.01.2006 as Divisional Employment Officer and from 01.02.2006 to 09.04.2008 as Deputy Director (Employment). The arrears shall be calculated and paid to him within a period of one month from today."

4. In case of **Surjit Singh vs. State of Haryana and others**³, it was held that, "...The legal position resulting from dropping of disciplinary proceedings and the charge-sheet or exoneration is that person is entitled to all

³ CWP-7892-2016, decided on 19.05.2016



consequential benefits from the due date in view of the law laid down by the Supreme Court in **Union of India & others Vs. K.V. Jankiraman**, AIR 1991 SC 2010. The Supreme Court has ruled out of consideration the defence of employer relying on the principle of 'no work no pay'. Therefore, the promotion order is good when it promotes, but is bad when it denies the consequential benefits and limits them to be read notionally. The attested copy of the promotion order produced by Mr. Sharma is taken on record as Mark "A". In view of the settled legal position, the State cannot fall back on the defence since the issue raised by the State to form the very basis of the impugned order is stare decisis in the binding authority of their Lordships of the Supreme Court then the civil authorities in the State of Punjab have to abide by the mandate of Article 144 and give effect to the law least they invite contempt. As a result, the writ petition is allowed. The promotion order will be read without the rider that the rights would only be notional. That part is quashed as offensive, arbitrary, illegal and unconstitutional by issuing a writ of certiorari. The consequential benefits flowing from ante-dated promotion are a matter of right of the petitioner and thus the same are liable to be calculated and paid to him within a period of three months from the date of receipt of certified copy of the order. Failing which the amounts of difference of salary etc., will earn interest @ 12% from the date of default till payment.”

5. This Court in **Jagjit Kumar Batra vs. State of Punjab and others**⁴, observed that, “It is further a conceded fact before this Court that there was no impediment with regard to the grant of promotion to the petitioner to the post of Accounts Officer, when the persons junior to him were promoted, i.e. in November, 2012. Hence, once the respondents had themselves realized their

⁴ 2022(3) S.C.T. 348



mistake and had granted the promotion to the petitioner as Accounts Officer with retrospective effect, the petitioner was also entitled for the grant of consequential benefits of the said promotion including arrears of salary.” Further held that, “Let the respondents calculate the arrears of salary, for which the petitioner is entitled for upon promotion to the said post of Accounts Officer, from the date when he was notionally promoted, under this order within a period of two months from the date of receipt of the copy of this under and the amount so calculated be released to the petitioner within a period of four weeks thereafter.”

6. In **Kailash Chander Sharma vs. State of Haryana and others**⁵, wherein the departmental proceedings were initiated against the petitioner, however without he being at fault, such proceedings were kept pending and with the disciplinary case being dropped, were finalized after period of 13 long years, the Division Bench allowed the petition, while holding him entitled to the consequential benefit of actual arrears of salary/wages for the period in question, by observing that, “... It was only upon culmination of departmental proceedings leading to his exoneration vide order dated 24.6.2010, Annexure P3, that the petitioner rightfully staked his claim to be granted deemed dates of promotion on the promotional posts of Accounts Clerk and Deputy Superintendent with effect from the dates his immediate junior had been so promoted. Such claim having been accepted, the petitioner was also entitled to all consequential benefits including arrears of salary.”

7. A reference can also be made to the case of **Darshna Devi vs. State of Punjab and others**⁶, wherein it was observed and held thus:

“5. The Division Bench of this Court in **Sports Authority of India and another vs. Central Administrative Tribunal**

⁵ CWP-17952-2012, decided on 13.10.2014

⁶ CWP-19815-2015, decided on 10.04.2024



and another, CWP-14998-2009, decided on 06.11.2009, while granting pay and allowance to an employee who was subsequently promoted, on the ground that it was due to fault of the respondent that he was denied promotion, held that, “The perusal of the aforesaid authorities make it clear the principle of 'no work, no pay' cannot be treated as an inflexible principle to which there are no exceptions. It has been consistently held that when the employee has been wrongly denied the promotion for no fault of his due to some lapse on behalf of the employer, the principle of 'no work, no pay' will have no application. Therefore, the question as to whether there are any exceptions to the principle of 'no work, no pay' will be replied in the affirmative. The second question will also be answered in the affirmative as in the present case admittedly the respondent no.2 was denied promotion for no fault of his. As has already been pointed out, respondent no.2 was denied the promotion as his name was omitted from the seniority list due to inadvertence which has been admitted by the petitioner employer. Therefore, the principle of 'no work, no pay' will have no application in the present case. For this reason, the impugned order does not warrant any interference.” Following the above dictum of law, this Court in **Gulzar Singh** (supra), had granted arrears of salary from the date of retrospective promotion, which was even upheld by the Division Bench.

6. There is no denying the fact that the petitioner, working as S.S. Mistress, was eligible to be considered for promotion to the post of Lecturer, having been placed at seniority No.1495, however, was overlooked and instead her juniors-Vijay Laxmi and Sukhvir Kaur, seniority Nos.1499 and 1548, respectively, were promoted vide order dated 25.02.2014, w.e.f. 19.05.2012. It is only on account of submission of a representation by her that the respondents rectified the mistake and granted promotion *albeit* on notional basis from the date that of her juniors.

7. As is axiomatic, the petitioner was unable to perform duties of the promoted post of Lecturer, due to the fault on the part of the Department. Thus, the principle of ‘no work no pay’ would not be attracted in this particular situation, since it is not a rule of thumb, there being exceptions to it, as had been observed by Hon’ble the Supreme Court in **Union of India vs. K.V. Jankiraman**, 1991(4) SCC 109, that the discretion based on circumstances should be exercised when implementing the rule of ‘no work no pay’, so if an employee is unjustly kept away from work by authorities, they deserve salary and benefits. The relevant paras whereof read thus:

“24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid



only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the, administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny



the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum :

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

- 8. In wake of the aforesaid, the submissions canvassed by the respondents cannot be countenanced.
- 9. On the aforesaid premise and as a fall out thereof, the present petition is hereby allowed. The petitioner is held entitled to arrears of salary, with all consequential benefits w.e.f. 19.05.2012. Needful be done within a period of three months."

- 8. Learned State counsel despite his best efforts, has not been able to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
- 9. Resultantly, in view of the aforesaid, the present petition is disposed of in terms of the judgments in **Satyavir Singh Shekhawat, Surjit Singh, Jagjit Kumar Batra, Kailash Chander Sharma and Darshna Devi** (supra).

21.05.2024
Aman Dua

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No