



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

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CWP-5381-2021

Date of decision: 14.01.2025

Jasbir Singh Bains

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for directing the respondents to grant salary for the post of Director, Department of Agriculture for the period to which the petitioner had actually performed his duties w.e.f. 02.04.2016 till 31.01.2019.

2. Learned counsel for the petitioner restricts his claim only for grant of salary for the period from 02.04.2016 till 31.01.2019. The petitioner, while working as senior most Joint Director, was given the officiating charge against the vacant post of Director, which continued till 31.01.2019, however his claim of payment of salary has been rejected on the ground that in the order granting him the charge, it was specified that he shall not be paid any remuneration. In the written statement, the reliance is placed on Rule 4.22 and 4.13 of the Punjab Civil Services Rules, Volume 1 Part-I, to deny the claim, which the Division Bench of this Court in **Pritam Singh Dhaliwal vs.**



State of Punjab and another, 2004(4) S.C.T. 403, had considered and held that the petitioner is entitled to pay for the period he worked on the higher post, which the learned State counsel has not been able to controvert regards factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law the relevant paras read thus:-

“5. We have heard the learned counsel for the parties and have also perused the pleadings and so also the documents appended by way of annexures. We are of the opinion that the petitioner is justified in claiming the higher pay for having performed the duties of Deputy Director of Panchayat/Addl. Deputy Commissioner (Development) from time to time pursuant to the orders passed by the Government, copies of which have been appended as Annexures P2 to P8. It is the settled principle that if a person is asked to perform the duties regularly though in officiating capacity or on current duty charge or as a temporary measure, he would be entitled to the higher pay i.e. the pay which is payable while performing the duties in the higher/promotional post. In this regard, it shall be apposite to mention rules 4.22 and 4.13 of the Punjab Civil Services Rules, Volume I Part-I, which read as under :-

"4.22. A competent authority may appoint one Government employee to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time. In such cases, his pay is regulated as follows :-

- (a) the highest pay, to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;
- (b) For each other post he draws such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the competent authority may fix; and
- (c) If compensatory allowances are attached to one or more of the posts he draws such compensatory allowances as the competent authority may fix: Provided that such allowances shall not exceed the total of the compensatory allowances attached to all the posts.

Note: xx xxx xx".

"4.13. (1) Subject to the provisions of rules 4.22 to 4.24, a Government employee who is appointed to officiate in a post shall not draw a higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which he is appointed to officiate is one enumerated in the schedule to this rule or unless the officiating the appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post on which he holds a lien or would hold a lien had his lien not been suspended:



Provided that the competent authority may exempt from the operation of this rule, any service which is not organised on a time scale basis and in which a system of acting promotions from grade to grade is in force at the time of the coming into force of these rules:

Provided further that the competent authority may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions of this rule and subject to such conditions as the competent authority may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide and may thereupon be granted the same pay (whether with or without any special pay, if any, attached to such posts) as they would have received if still in the ordinary line.

(2) For the purpose of this rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien or would hold a lien had his lien not been suspended, or on a scale of pay identical therewith."

Note 1. The words 'duties' and 'responsibilities' used in this rule are to be interpreted in a wide sense as including besides the works to be performed the general responsibilities and liabilities incidental to being member of a particular service. See also note 7 below 4.4.

xx xx xx xx xx ".

The principle of "*quantum meruit*" (so much as the employee has earned is found on premises i.e. to pay the employee for doing a thing as much as he has earned or merited; projects where a special contract has been entered into to pay the employee a particular amount or he is entitled to recover equivalent to the value of work that has been put in by him. The employer is obligated to pay the employee as per the emoluments available in the higher pay scale during the time he/she actually works on the post though it may be in the officiating capacity/as temporary measure and or current duty charge. The rigour of "regular promotee" would not come in the way under these circumstances.

6. In the case at hand, the plea of the Government is that the seniority of District Development and Panchayat Officers and the Deputy Directors etc. has been challenged before the Supreme Court and, therefore, making regular appointments was not possible. This would not come in the way of the Government to deny the right of the employee, who has been asked to officiate in the post or hold the post as a temporary measure or on current duty charge. It is the admitted case that the petitioner had been asked to officiate as Deputy Director with effect from 14.3.1996 and he has been continuously posted to equivalent posts such as Addl. Deputy Commissioner (D) and that till his



superannuation the officiating charge was never withdrawn. In view of the law laid down by the Hon'ble Supreme Court of India and so also the view expressed by the two Division Bench judgments of this Court, with which we are in respectful agreement, we hold that the petitioner is entitled to claim the higher pay scale in the post in which he had been asked to officiate and perform his duties till his superannuation. The respondents are directed to carry out the mathematical exercise accordingly and grant the relief (including fiscal benefits) to the petitioner in the right and correct perspective within a period of three months from the date of receipt of certified copy of this order. It shall be apposite to mention that the case of the respondents is that the seniority of the Deputy Directors and District Development and Panchayat Officers is under challenge before the Supreme Court, as and when the said matter is determined by the Supreme Court, the petitioner shall be well within this rights to stake his claim accordingly. The petition is disposed of in the above terms.

Order accordingly.”

3. In view of the above, the present petition is disposed of in terms of **Pritam Singh Dhaliwal** (supra).

(AMAN CHAUDHARY)
JUDGE

14.01.2025

Hemant

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