

09.04.1976. At that time, he was under-matric, and he later passed the matriculation examination in October 1983 after seeking permission from the defendants vide letter dated 06.09.1985. As per the qualification prescribed under PUNSUP Service Rules, 1985, the plaintiff, after completing five years of service and having passed the matriculation examination, became eligible for promotion as Public Distribution Clerk (PDC). However, despite his eligibility, the plaintiff was ignored while his juniors were promoted. The plaintiff made representations dated 15.09.1986 and 19.02.1987, which were admitted by the defendants, but promotion was still not granted.

3. The plaintiff served a notice under Section 80 CPC on 02.05.1987 and ultimately vide order dated 18/20.07.1988 he was promoted as Public Distribution Clerk with effect from 05.09.1986. The grievance of the plaintiff is that although the promotion was granted w.e.f. 05.09.1986, the financial benefits attached to the post were wrongfully denied, as the impugned order contained a rider that he would not be entitled to any monetary benefit from the said date. According to the plaintiff, denial of financial benefit despite retrospective promotion was illegal, arbitrary and against natural justice. He claimed that he was entitled to salary in the pay scale of Rs. 400–600 and other allowances attached to the post of PDC from 05.09.1986. He repeatedly requested the defendants to release the monetary benefits, but to no effect, giving rise to the cause of action.

4. In the written statement, the defendants contested the suit by stating that the suit against defendants No. 2 and 3 was not maintainable as they were officers of Punjab State Civil Supplies Corporation (PUNSUP). It was further pleaded that the suit was time-barred as the plaintiff claimed relief from 05.09.1986, whereas the suit was filed only on 05.06.1991. Territorial jurisdiction

dated 18.07.1988 was issued by defendant No. 1 at Chandigarh, and the plaintiff was posted at Fatehgarh Churian at the time of passing of the impugned order. It was also pleaded that the plaintiff had earlier filed a suit (No. 19/88 filed on 11.01.1988) in the Court of Sub-Judge Ist Class, Jalandhar, on the same cause of action, which was dismissed on 15.11.1989. The appeal filed thereafter was also dismissed, and the plaintiff was directed to approach the competent court having jurisdiction. Instead of complying with the directions of the learned Additional District Judge, Jalandhar, the plaintiff filed the present suit claiming the same relief, and therefore the present suit was not maintainable.

5. The defendants further pleaded that although the plaintiff was given notional promotion as PDC w.e.f. 05.09.1986, he was not entitled to financial benefits as he did not actually work on the said post during the relevant period. They asserted that the plaintiff joined duties as PDC only on 22.07.1988, and therefore he was entitled to benefits only from that date, and not earlier.

6. On the basis of the pleadings of the parties, the following issues were framed by the learned Trial Court:

(i). Whether the plaintiff is entitled to the declaration prayed for?

OPP

(ii). Whether the suit is not maintainable against defendants no. 2 & 3 as pleaded in preliminary objection no.1 of the written statement?

OPD

(iii). Whether the suit is within limitation? OPP

(iv). Whether the Civil Court at Gurdaspur has no territorial jurisdiction to try the suit? OPD

(v). Whether the suit is not maintainable as per averments contained in preliminary objection no.4 of the written statement? OPD

(vi). Relief.

Findings of the trial Court

7. After hearing the learned counsel for the parties and examining the evidence on record, the learned Trial Court held that the plaintiff had clearly established that he was eligible for promotion as Public Distribution Clerk w.e.f. 05.09.1986 after improving his qualification by passing the matriculation examination in October 1983 with due permission from the defendants. The Court found that although the plaintiff was granted promotion retrospectively vide order dated 18.7.1988, the financial benefits attached to the post were denied to him not on account of any lapse attributable to the plaintiff, but due to the inaction and delays on the part of the officials of PUNSUP. Accepting the testimony of the plaintiff-PW2 and PW1, and the supporting documents including Ex.P1, Ex.P2 and the promotion order Ex.PW2/A, the Court concluded that once promotion is granted with retrospective effect, denial of consequential monetary benefits to the employee, despite his non-posting on the higher post for reasons attributable solely to the employer, is illegal. Reliance was placed on the judgment in ***B.M. Sharma, Executive Engineer and Others vs. State of Haryana and Another 1991(1) CurLJ (CCR) 529***, wherein it was held that arrears of pay and financial benefits cannot be denied where the employee is prevented from working on the higher post due to administrative lapses. Accordingly, the Court rejected the defence plea that the plaintiff was not entitled to financial benefits because he had not actually worked as PDC from 05.09.1986 to 18.07.1988, observing that the plaintiff's absence from that post during the said period was not voluntary or due to any fault on his part. The Court also held that the suit was within limitation, that defendants No. 2 and 3 were proper parties, and that the Civil Court at Gurdaspur had territorial jurisdiction as the plaintiff was working there when the impugned order

was passed and the cause of action partly arose within its jurisdiction. It was further observed that the defendants failed to lead any evidence to support their objections regarding maintainability or jurisdiction. Consequently, the Trial Court decreed the suit, declaring the plaintiff entitled to all financial benefits attached to the post of Public Distribution Clerk w.e.f. 05.09.1986, including pay, allowances, increments and fixation in the pay scale of Rs. 400–600, and also issued a decree of mandatory injunction directing the defendants to release all such benefits within two months.

Findings of the Lower Appellate Court

8. Aggrieved by the judgment and decree passed by the learned Trial Court, the defendants preferred an appeal before the learned District Judge, Gurdaspur. The learned Lower Appellate Court, after hearing the counsel for the parties and re-appreciating the evidence, dismissed the appeal and upheld the judgment and decree of the Trial Court. The appellate court noted that the only argument pressed by the appellants was that in the absence of actual work on the post of Public Distribution Clerk, the plaintiff was not entitled to financial benefits for the period from 05.09.1986 to 18.07.1988. This contention was rejected by relying upon the principle laid down in ***Karam Chand Vs. State Transport Controller, Chandigarh 1994(3) PLR 430***, wherein it has been held that when promotion is retrospectively granted, an employee cannot be denied arrears of pay or back wages merely because he could not work on the promoted post due to inaction or lapses on the part of the department. The Appellate Court found that the learned counsel for the appellants could not cite any authority to the contrary. It further reaffirmed that the plaintiff had proved through his testimony that he had improved his qualification with due permission in October 1983 and was entitled

promotion was indeed granted w.e.f. 05.09.1986 but financial benefits were withheld. The learned District Judge also considered the objection raised by the respondent that the appeal itself was not maintainable as it had been filed by Punjab State Civil Supplies Corporation, a corporate body, without any resolution authorising any person to institute the appeal. Relying on the principle laid down in ***Sadhu Vs. Gram Panchayat 1990 PLJ 108***, the court held that a corporate body can act only through properly authorised resolutions and, in the absence of a resolution authorising the filing of the appeal, the act would be without authority and not binding on the corporation. Observing that no such resolution had been produced by the appellants, the Appellate Court held the appeal to be not maintainable. Consequently, the lower Appellate Court concluded that the appeal was devoid of merit and dismissed the same with costs on 13.08.1998, thereby affirming the decree passed by the Trial Court.

9. Aggrieved from the concurrent findings of the Courts below, the defendants-appellants have preferred the present regular second appeal. Upon notice, respondent-plaintiff has contested the present appeal.

Submissions of learned counsel for the appellants

10. Learned counsel for the appellants has assailed the concurrent findings recorded by the courts below on the narrow ground that the claim for arrears of salary for the period 05.09.1986 to 18.07.1988 must fail in law because the respondent-plaintiff did not actually work on the post of Public Distribution Clerk during that period and, as such, the settled principle of “no work, no pay” must be applied. It was urged that the mere grant of notional or retrospective promotion cannot, as a matter of law, entitle an employee to arrears of pay for a period in which he did not perform duties of the higher post. Reliance was placed

strongly on the decision of the Hon’ble Supreme Court in ***Union of India v. B.M.***

Jha, 2007 (11) SCC 632 for the proposition that, in cases falling within its facts, arrears of salary cannot be awarded merely because a promotion is made retrospective.

Submissions of learned counsel for the respondent

11. Learned counsel for the respondent–plaintiff, on the other hand, submitted that the facts of the present case are materially distinguishable from those in *B.M. Jha’s case (supra)*. He urged that the plaintiff did not remain off from the higher post by his own conduct but was kept away from the benefits of promotion by reason of the inaction or omission of the respondents, his juniors were promoted though he was eligible and he was repeatedly ignored despite representations and service of statutory notice. Reliance was placed before this Court on the judgment of the Coordinate Bench in *Dhian Singh Kanwar v. State of Punjab and another (CWP-1551-2010, decided 22/05/2025)* and other authorities relied upon before the lower courts to submit that, where an employee is prevented from working on the promoted post by administrative lapses or arbitrary action of the employer, the employee cannot be made to suffer and is entitled to the monetary benefits flowing from the retrospective promotion.

Findings of this Court

12. I have given anxious consideration to the submissions of learned counsel for the parties and have carefully perused the record, including the findings recorded by the learned Courts below. The Trial Court after evaluating oral evidence including the plaintiff’s own testimony as PW-2 and documentary exhibits found that the plaintiff had secured the requisite qualification of matriculation with permission, was eligible for promotion w.e.f. 05.09.1986 and that, despite being so eligible, he was ignored and his juniors were promoted. The

respondents was not accompanied by release of financial benefits on account of administrative inaction of the employer and that, in such circumstances, denial of arrears would be contrary to natural justice and the settled view that an employee should not be made to suffer for the lapses of the administration. The learned Appellate Court has re-examined the evidence and endorsed these conclusions. It recorded that the appellants could not point to any material to show that the plaintiff himself caused or invited the non-release of the financial benefits and, further, it noted that no satisfactory explanation was offered for withholding the consequential monetary benefits.

13. Two propositions therefore fall for decision on this appeal, first, whether the “no work – no pay” principle is an inflexible rule which must operate in all cases of retrospective promotion to deny arrears and second, whether on the admitted facts of the present case the plaintiff was kept out of the benefits of promotion for reasons attributable to the defendants so as to bring the case within the exception to that principle.

14. The judgments relied upon by the parties including the authority cited by the appellants i.e. *Union of India’s case (supra)* show that the application of the “no work – no pay” rule is inherently factual and turns upon whether the employee’s inability to work on the promoted post was of his own making or was occasioned by employer’s conduct. The coordinate Bench decision in *Dhian Singh Kanwar’s case (supra)* pressed into service on behalf of the respondent deals with precisely that situation and affirms the well-recognised proposition that an employee cannot be made to suffer in consequence of arbitrary or negligent inaction of the employer, where the fault for not allowing the employee to work on the higher post lies squarely on the department, the employee is entitled to the financial benefits flowing from the retrospective promotion.

15. Turning to the facts of this case, the finding recorded by the Trial Court and accepted by the Appellate Court is that the plaintiff's exclusion from monetary benefits for the period in question was not due to any conduct of his but owing to departmental omissions. His juniors were promoted though he was eligible, his representations remained unheeded, and the promotion order itself records a retrospective date. Those factual findings were reached after assessment of oral testimony and documentary exhibits and have been affirmed on appeal. No ground of perversity or mis-appreciation of evidence is shown on the record before this Court which would permit this Court to disturb those concurrent findings. In the absence of any evidence that the plaintiff himself was responsible for not working on the higher post during the period 05.09.1986 to 18.7.1988, the exception to the "no work, no pay" principle squarely applies. Under these circumstances it would be contrary to the dictates of justice to deny the plaintiff arrears of pay and other consequential benefits from the retrospective date of promotion.

16. As regards the authority of the Hon'ble Supreme Court in *Union of India's case (supra)* relied upon by the appellants is concerned, this Court has examined that decision and the factual matrix on which it proceeded. On a careful comparison, the facts of *Union of India's case (supra)* are materially distinguishable from the facts of the present case. In the present case the record demonstrates that the denial of monetary benefits was occasioned by the employer's inaction and that the plaintiff's juniors were promoted in the meantime.

17. The decisions relied upon by the respondent including *Dhian Singh Kanwar's case (supra)*, support the conclusion that an employee prevented from working against the promoted post through no fault of his own is entitled to the

Singh v. State of Punjab, 1991(3) SCT 623 and *Rameshwar v. State of Haryana and others*, 2005(4) SCT 618, wherein it has been held that if the employee is entitled to and promoted with retrospective date, he cannot be denied monetary benefits of promotional pay scale from that date.

Conclusion

18. For the foregoing reasons and having taken into consideration the reasoning of the Trial Court and the learned Appellate Court which have both addressed and rejected the specific factual objections raised by the appellants on this point, this Court finds no merit in the present RSA. The plaintiff was rightly held by both courts below to be entitled to all the financial benefits attached to the post of Public Distribution Clerk with effect from 05.09.1986. The appellants' challenge confined solely to the "no work, no pay" contention fails on the facts that the denial of arrears was attributable to the employer and not to the plaintiff, and therefore the exception to the general principle applies.

19. Accordingly, the appeal is dismissed and the judgment and decree of the learned Trial Court as upheld by the learned District Judge, Gurdaspur are affirmed.

20. Pending application(s), if any, also stands disposed of.

December 04, 2025

Poonam Negi

(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.