



CWP-1551-2010 (O&M)

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

1251

CWP-1551-2010 (O&M)

Date of decision: 22.05.2025

Dhian Singh Kanwar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. Swapan Shorey, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Challenge laid is to the order dated 27.08.2009 (Annexure P9) to an extent of denying to the petitioner the arrears in upon being promoted from retrospective effect.
2. An inter-se dispute arose between the petitioner and one Sh. Rangi Singh, which was resolved by the Principal Secretary, Department of Home Affairs and Justice, Punjab, vide order dated 10.05.1999 (Annexure P3) on receipt of representations submitted by both of them by holding that, "Therefore, keeping in view all the facts pertaining to the appointment of Shri Dhian Singh Kanwar, Clerk and Shri Rangi Singh, Clerk, and the Departmental Service Rules, 1947 and the relevant instructions issued by the Government from time to time, a conscious decision has been taken that Shri Dhian Singh, as Clerk is senior to Shri Rangi Singh. Therefore, the seniority of Shri Dhian Singh Kanwar is fixed above Shri Rangi Singh and out of the above two employees Shri Dhian Singh Kanwar being senior in the cadre of Clerks, is placed in the scale of Rs.510-800/-. By declaring

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Shri Dhian Singh Kanwar as senior to Shri Rangi Singh. It has been decided to give him all the due benefits.”

3. The aforesaid order was made subject matter of CWP-7011-1999, which was disposed of in favour of the petitioner herein vide judgment dated 25.11.2008 to the effect that he be allowed the scale of Rs 510-800 and Sh Rangi Singh be repatriated within a period of 3 months, relevant portion whereof reads thus:-

“It is not a dispute that the petitioner was senior to the respondent No.3 as a Senior Clerk. As a matter of fact, the petitioner became Clerk on 01.01.1978 and promoted as Assistant in the year of 1986 before his services could be transferred in the office of the Administrator General and Official Trustee, Punjab. However, vide the impugned order the petitioner has been ranked junior to respondent No.3. It has also come on record that the petitioner was not transferred at his request but it was on the requisition of the respondent No.2 that his services were transferred to the office of Administrator General and Official Trustee, Punjab. Under the given circumstances petitioner cannot be deprived as his seniority on the basis of his length of service merely because he has been transferred from one department to another without his consent. At the same time, respondent No.3 also cannot be made to suffer on account of transfer of petitioner to his department. From the letter dated 01.03.1988 it is apparent that the lien of the petitioner has been kept in the office of Advocate General. In view of above circumstances, this petition is disposed of with the direction that the petitioner be repatriated to his parent department with all benefits of Senior Clerk and the respondent No.3 be allowed the scale of Rs.510-800/- on the basis of his long service in the office of Administrator General and Official Turstee, Punjab. Petitioner’s repatriation be ordered within a period of 3 months.”

4. Pending consideration of the above case, the respondents had passed an order dated 29.01.2004 treating petitioner to have been promoted as Superintendent Grade-II w.e.f. 01.10.1991 in the scale of Rs.2000-3500/- in terms

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of the order dated 10.05.1999, P3, with the arrears be paid to him retrospectively, while Rang Singh to be reverted to the post of Clerk w.e.f. 01.03.1988 in the scale of Rs.400-600/-, who challenged the same by way of CWP-2088-2004, which was disposed of as infructuous on 25.11.2008, in view of the decision of CWP-7011-1999.

5. The authorities though rectified the error and granted the due to the petitioner but denying the arrears on ground of 'no work no pay', particularly when he was armed with the judgment of this Court as also the afore-referred order dated 29.01.2004 in his favour even as regards to promotion as Superintendent Gr-II, w.e.f. 01.10.1991, is wholly untenable, it being also based upon wrong notions of law, the issue being no longer *res-integra*, for which a gainful reference can be made to **R.N. Aggarwal vs. Punjab State Electricity Board**, 2004 (3) RSJ 593, wherein it was observed that an employee cannot be allowed to suffer on account of any arbitrary action, whims and fancies of the executive authorities and deprived of monetary benefits when his claim for retrospective promotion is found justified in law; **Vijay Kumar vs. State of Haryana and others** 2002(3) RSJ 694, a case of retrospective promotion involving an issue of seniority and pay fixation from the date when his junior had been promoted but had not been granted arrears of pay on account of he not having worked on the post of lecturer and the Division Bench while allowing the writ petition directed the arrears of salary to be released w.e.f. 07.09.1987 holding there to be squarely the fault of the respondent Department in not promoting him to the senior post; **Darshna Devi vs. State of Punjab and others**, 2024 NCPHHC 48757, there being no challenge to it, holding such principle to be not inflexible

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and to not apply when an employee unjustly kept away from work, for no fault of his, relying on Union of India vs. K.V. Jankiraman, 1991(4) SCC 109, wherein it was observed and held that such principle is not a rule of thumb, there being exceptions to it and the Division Bench of this Court in **HVPNL, Panchkula and others vs. Smt.Sheelawanti**, 2019(1) SCT 58, by relying on the judgment of Apex Court in Ramesh Kumar vs. Union of India and others AIR 2015 SC 2904, upheld the judgment impugned observing that the writ petition had been rightly allowed as such principle of ‘no work no pay’ was not applicable, as the respondent at fault in not considering the case of the appellant therein for promotion and consequently not allowing him to work on the post carrying a higher pay scale.

6. On a cumulative consideration of the matter, the present petition deserves to be and is hereby allowed. The needful be done within a period of three months.

(AMAN CHAUDHARY)
JUDGE

22.05.2025

ashok

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