



CWP-17276-2018

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

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CWP-17276-2018 (O & M)
Date of decision: 04.03.2025

Ashu Garg

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rohit Kataria, Advocate for ,
Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Amarpeet Singh Bains, AAG, Punjab.

Mr. Manish Kumar Singla, Advocate and
Ms. Shikha Singla, Advocate,
for respondent No.3.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for directing the respondents to release the difference of pay of the post of Sr. Scale Stenographer and Personal Assistant, to the petitioner; to fill up the post of Personal Assistant in terms of Rule 7 of the Punjab Civil Secretariat (State Service) Class-III Rules, 1976 and to declare respondent No.3 to be ineligible to hold the post of Sr. Scale Stenographer.

2. Learned counsel for the petitioner, on instructions, restricts his claim only with regard to the higher pay for the period he worked on current duty charge as Personal Assistant and states he is not seeking for it



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to be counted for any other purpose, as also give up all other prayers made in this case.

3. The petitioner, who was working as Senior Scale Stenographer, was assigned the current duty vide order dated 29.12.2016, Annexure P-15, and continued performing the duties of the higher post till 27.07.2018. There was no condition mentioned with regard to the emoluments to be paid to him for the said post.

4. Learned State counsel resists the claim only on the premise that no approval was taken by respondent No.2 from the revenue department before giving the current duty charge to the petitioner, which cannot be countenanced as the same is a matter *inter se* the departments, nonetheless the petitioner discharged the duties of higher post, regarding which a gainful reference can be made to the dictum in **State of Punjab vs. B.K. Dhir**¹, which is intrinsically applicable to the present facts inasmuch as, the respondent therein was not paid the salary while having made to officiate on a higher post, wherein Hon'ble the Supreme Court while affirming the order of the Division Bench of the High Court observed that it was incumbent upon the Department to pay him the salary for the period he had worked on the said post, even despite the condition imposed in the order that he would do so without any extra emoluments.

¹ (2017) 9 SCC 337



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5. In **Subhash Chander vs. State of Haryana and others**, 2012(1) PLR 778, it was held that when an employee is appointed to a post with greater responsibilities than the substantive role, they are entitled to the salary of the higher position. Despite the promotion order specifying the salary be drawn in the employee's own pay scale, it was ruled that this condition could not override the entitlement to the elevated pay of the said post, relevant paras whereof read thus:

“15. We are further of the view that Rule 4.13 of the Rules would virtually sound like the principle laid down in the judgment of Hon'ble the Supreme Court in Smt. P. Grover v. State of Haryana, AIR 1983 Supreme Court 1060. In that case, an employee in the State of Haryana was given promotion as acting District Education Officer about two years before her superannuation. The order giving her promotion as an acting District Education Officer recited a condition that she was to draw salary in her own pay scale which meant that her scale would continue to be that of the post of Principal, Higher Secondary School. Accordingly, their Lordships' of Hon'ble the Supreme Court accepted the claim of Smt. P. Grover as if the principles laid down in Rule 4.13 of the Rules have been applied. The concluding para of the judgment reads as under :

"3. We mentioned that she was promoted as an acting District Education Officer with effect from July 19, 1976. The order of promotion contained a superadded condition that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order was extending her services recited that she was an acting District Education Officer, but contained a super added condition that her pay would not be more than the maximum of the principal's grade. Smt. Grover claims that having been promoted as District Education



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Officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Article 136 of the Constitution. The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt. P. Grover after she was promoted to act as District Education Officer. All that was said in the counter-affidavit was that there was no Class-I posts available and therefore she was not entitled to be paid the salary of District Education Officer. We, are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education Officer a Class-I post, on an acting basis. Our attention was not invited to any Rule which provides that promotion on an Acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed), we must hold that Smt. Grover is entitled be paid the salary of a District Education Officer from the date she was promoted to the post, that is, July 19, 1976, until she retired from service on August 31, 1980. The appeal is accordingly, allowed with costs."

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17. In view of the above, the question posed in para No. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has



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been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.

18. Accordingly, the writ petition is disposed of in the above terms.”

6. In the same vein, the Division Bench in LPA-1629-2023 decided on 06.11.2023 titled as **State of Haryana and another vs. Pardeep Narayan**, belabored that an endeavour to canvass non-entitlement to the pay of the higher post based on a condition imposed as an impediment must be deprecated and deemed unenforceable, as it is exploitative and unilaterally imposed by the State, which held a dominant position.

7. In view of the above, the present petition is disposed of in terms of **Subhash Chander** (supra), with a direction to release the amount due within a period of three months, alongwith interest @ 6 per annum.

04.03.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

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