



238

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

CWP-5472-2016 (O&M)

Date of Decision : 20-01-2025

KANSHI RAM**.....Petitioner****VERSUS****STATE OF PUNJAB AND ORS.****.....Respondent(s)****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Ashok Kumar Khunger, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that he worked on the post of Sub Divisional Engineer even while holding the substantive rank of the Junior Engineer hence, the petitioner is entitled for the grant of benefit of the salary for the post of Sub Divisional Engineer for the period he has discharged the duties of the said post.

2. Learned counsel for the petitioner submits that the claim raised by the petitioner has been declined by the respondents by totally cryptic and non-speaking order dated 01.07.2013 (Annexure P-5) hence, the same is liable to be set aside.

3. Learned counsel for the respondents submits that the petitioner was given the charge of a higher post but with the clear condition that the same will be in his own pay scales and no other benefit will be given of the said higher post including pay hence, the claim of the petitioner for salary of the post of Sub Divisional Engineer is arbitrary and illegal.

4. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

5. It is a conceded fact that the petitioner has discharged the duties of the higher post of Sub Divisional Engineer, though on officiating basis while working on the post of Junior Engineer. That being so, the petitioner will be entitled for the salary for the post of which he has actually discharged the duties.

6. Further, merely that the respondents have mentioned that the said officiating on the higher post will be done by the petitioner in his own pay scale and substantive rank and no additional allowances will be admissible, the same will not come to the rescue of the respondent-State. Once, the petitioner has been made to discharge the duties of a promotional post, the petitioner is also entitled for the salary for the promotional post. The said question of law has already been settled by the Hon'ble Supreme Court of India in Civil Appeal No.5546 of 1995 titled as ***"Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma"***, decided on 29.04.1998. The relevant paragraph 8 of the judgment is as under:-

"8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer-I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The

*respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer-I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy . It would, therefore, be unenforceable in view of **Section 23** of the Contract Act”*

7. Learned counsel for the respondent-State has not been able to rebut the settled principle of law.

8. Keeping in view the above, the present petition is allowed and the respondents are directed that for the period, the petitioner has discharged the duties for the post of Sub Divisional Engineer, he be paid the salary of the said post.

9. Let the said order be complied within a period of 8 weeks from the receipt of copy of this order.

10. Pending application, if any, also stands disposed of.

20-01-2025

Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO