



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

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RSA-1792-1994

Date of Decision : 28.01.2026

State of Haryana

.....Appellant

Versus

Milap Chand

...Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Priyavrat Parashar, A.A.G., Haryana for the appellant.

Mr. J.S. Virk, Advocate for the respondent.

NAMIT KUMAR, J. (ORAL)

1. The instant Regular Second Appeal has been preferred by the State of Haryana impugning the judgment and decree dated 13.01.1994, passed by learned Additional District Judge, Karnal, whereby the judgment and decree dated 18.02.1993, passed by learned Sub Judge 1st Class, Karnal, has been reversed and the claim of the respondent/plaintiff has been accepted and further directed to grant the respondent/plaintiff pay scale equal to the Driver of Road Roller.

2. The brief facts of the case are that the respondent/plaintiff was appointed as a T-mate on 18.04.1977 and was thereafter assigned the work of Paver Operator. It is not in dispute that he continuously performed the duties of a Paver Operator, as duly recorded in para 14 of the Trial Court judgment, which reads thus :-

“14. PW1 Milap has stated in his statement on oath that he is operating paver since his appointment which averment is supported by documents ex. P2 to P6. It has not been disputed by defendant that plaintiff is operating paver. On the other hand defendant has claimed in para



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no.8 of written statement that nature of duty of plaintiff is to maintain, operate and repair paver. While paver is claimed to be a motor vehicle by plaintiff it is claimed to be a machine by defendant and question arises whether paver is a motor vehicle or a machine.”

3. The learned Trial Court rejected the claim of the respondent/plaintiff for grant of pay and allowances for the post of Paver Operator. However, learned Appellate Court, upon due consideration, accepted the said claim by recording a finding that once the respondent/plaintiff is discharging duties identical to the post of Driver of Road Roller, therefore, he is entitled for the pay and allowances attached to the post of Driver. Aggrieved against the said judgement and decree passed by 1st Appellate Court, the State of Haryana filed the instant appeal.

4. Vide order dated 08.02.1995, the matter was heard and admitted and operation of the decree under appeal was stayed until further orders.

5. Learned State counsel submits that the respondent/plaintiff entered in the government service on 18.04.1977 on work charge basis and regularized as T-mate in the year 1983. The respondent/plaintiff was getting the same pay scale as drawn by other T-mates of PWD as per revised pay scale made applicable by the State of Haryana. He further submits that the respondent/plaintiff was never appointed as Paver Operator as there was no post of Paver Operator under the appellant/State of Haryana. He further submits that the post of Paver Operator and Driver are not identical and Paver does not fall under the category of vehicle because it is not required to be registered and no



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licence is required to operate the same. He also submits that the nature of duty of respondent/plaintiff is to repair, operate and maintain Paver and he does not have identical nature of duty as Driver. Therefore, the suit filed by the respondent/plaintiff deserves to be dismissed.

6. Per contra, learned counsel for the respondent/plaintiff submits that the respondent/plaintiff entered in the government service on 18.04.1977 as T-mate but subsequently, after a short period, he was appointed as Paver Operator with identical duties as those of Driver of government vehicle, however, he was given salary of a lower post instead of the post of Paver Operator or Driver. Therefore, the judgment and decree passed by learned Additional District Judge, Karnala is perfectly valid and is legal and liable to be upheld.

7. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

8. It is a well settled proposition of law that a person is entitled for pay and allowance of the post on which he is discharging his duties. The similar issue has already been considered by this Court in ***Sukhpreet Singh and others Vs. Punjab State Power Corporation Limited and others : 2024 NCPHHC 9924*** wherein it has been observed as under :-

“xx xx xx xx xx

8. *The petitioners, who were working as Assistant Accounts Officers, have been posted against the posts of Accounts Officers after they had rendered service of more than 05 years as Assistant Accounts Officers. Once the petitioners have performed the duties of the posts of Accounts Officers, they cannot be denied the pay scale of the said post. The condition that the petitioners shall be placed in their own pay scale of Assistant Accounts Officer*



without any financial benefit is totally arbitrary and not sustainable.

9. *The Hon'ble Supreme Court in its judgment passed in **Smt. P. Grover's case (supra)** has held that the officer promoted to higher post on acting basis is entitled to salary of such higher post. The relevant para of the said 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 super-added 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 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 officer, she was entitled to the pay of a District Education 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 were no Class-I post 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 to 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.”

10. To the same effect is the judgment of the Hon’ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma : 1998 AIR (SC) 2909**. In the said case the employee was promoted as Junior Engineer-I in stop-gap arrangement and he had given the undertaking 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 said argument was rejected by Hon’ble Supreme Court and it was held that the Government being model employer cannot be permitted to make such an argument.

11. Similarly in the case of **Selva Raj Vs. Lt. Governor of Island, Port Blair : 1999(2) S.C.T. 286** the employee looked after the duties of higher post and he worked though temporarily and in an officiating capacity, however, it was held that he was entitled to draw salary attached to the higher post during the time he actually worked on that post. To the same effect are the judgments passed in **State of Punjab and another Vs. Dharam Pal : 2017 AIR SC 4438; Gurmej Singh Vs. State of Punjab : 1995 (3) S.C.T. 279; Balbir Singh Dalal and others Vs. State of Haryana and another : 2002(4) S.C.T. 422 and Pritam Singh Dhaliwal Vs. State of Punjab and another : 2004(6) SLR 758**.

12. In view of the above factual position and the law laid down in the above said judgments, the present petition is allowed and the respondents are directed to release the pay and allowances of the post of Accounts Officers w.e.f. the date the petitioners have assumed the charge of Accounts Officers, with all consequential benefits within a period of three months from the date of receipt of certified copy of this order.”

9. The abovesaid judgment has been upheld by the Hon’ble Division Bench of this Court in **L.P.A. No.1061 of 2024 titled as**



‘Punjab State Power Corporation Limited, Patiala Vs. Sukhpreet

Singh and others’ decided on 30.04.2024 : 2024 NCPHHC 59356, by

recording the following findings :-

“xx xx xx xx xx

2. *The learned Single Judge while allowing the writ petition had granted the benefit of pay and allowances of the higher post of Accounts Officer from the date the writ petitioners assumed the charge as such with all consequential benefits which were payable within a period of three months. The reliance by the learned Single Judge as such was upon the various judgements of the Apex Court as well as this Court which hold the field. The said judgements read as under:-*

“State of Punjab and another Vs. Dharam Pal : 2017(4)S.C.T. 460; Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma : 1998(3) S.C.T. 90; Selva Raj Vs. Lt. Governor of Island, Port Blair : 1999 (2) S.C.T. 286; Smt. P. Grover Vs. State of Haryana : 1983(4) SCC 291; Pritam Singh Dhaliwal Vs. State of Punjab and another : 2004(4) S.C.T. 403; Balbir Singh Dalal and others Vs. State of Haryana and another : 2002(4) S.C.T. 422 and Gurmej Singh Vs. State of Punjab : 1995(3) S.C.T. 279.”

3. *Learned counsel for the appellant has tried to convince us that the writ petitioners were estopped as such since their posting orders specifically said that they would be working on their own pay scale without any financial benefits and, therefore, having accepted the said posting orders way-back in 2013, they could not agitate for their grievances.*

4. *We are not convinced with the said argument. It is settled principle that the employer is always in a position of dominance and, therefore, merely because the said incorporation had been made in the order as such would not estop the writ petitioners from seeking their legal rights as such. Having taken the work and the responsibility of a higher post, the model employer should have gracefully acceded to the request and the demand of the higher pay/emoluments for the post which they held charge. It is*



also not disputed that thereafter they have also earned their promotions to the said post and in such circumstances once having the requisite qualifications also there was no escape for the appellant, but to dole out the necessary financial benefits.

5. The Full Bench judgement of this Court in **Subhash Chander Vs State of Haryana and others**, 2012(1) RSJ 442 also granted the said benefit as such that if the additional charge is given then the higher pay attached to the higher post for additional work involving higher responsibilities deserves to be paid. The above well settled legal proposition is being consistently followed till date. Reference is made to another judgment of the coordinate Bench in **Pritam Singh Dhaliwal vs. State of Punjab and another**, (2004) 6 SLR 758 (DB). In the said case, higher pay had been claimed for having performed the duties of Deputy Director of Panchayat/Additional Deputy Commissioner (Development) from time to time pursuant to the orders passed by the Government while holding a lower substantive post i.e. District Development and Panchayat Officer. It was held therein 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, the said person would be entitled to the higher pay i.e. the pay which is payable while performing the duties in higher/promotional post. In the said case also, the petitioner therein had continued to work on the higher post in officiating capacity till his superannuation.

6. Reference can also be made to the judgement by another coordinate Bench passed in LPA-1491-2016, titled **State of Haryana vs. Sita Ram**, decided on 27.11.2019, wherein the issue was of holding current duty charge of the post of BDPO in the pay-scale of Social Education and Panchayat Officer. The incumbent in that case continued working as such on the higher post on current duty charge, but was paid the salary of Social Education and Panchayat Officer, his substantive post. After considering and applying the ratio and dictum of the judgments of the Apex Court in **Arindam Chattopadhyay vs. State of W.B.**, (2013) 4 SCC 152 and **State of Punjab vs. Dharam Pal**, (2017) 9 SCC 395, the Division Bench declined to exercise jurisdiction against challenge to the writ petition having been allowed, whereby the petitioner therein was held



entitled to the salary for the higher post for the period he held current duty charge.

7. It is never the case as such that the writ petitioners were ineligible for promotion to the said post and rather it has been averred that they would be considered for regular promotion as per their eligibility and seniority. In such circumstances, we are of the considered opinion that the judgement of the learned Single Judge as such does not suffer from any infirmity which would warrant interference.

8. The appeal being meritless, accordingly, stands dismissed.”

10. In view of the abovesaid factual matrix and the law laid down in the judgments referred to hereinabove, this Court does not find any illegality, perversity or infirmity in the judgment and decree dated 13.01.1994, passed by the Ist Appellate Court, whereby the claim of the respondent/plaintiff has been accepted and direction has been issued to grant him the pay scale equal to the post of Driver of Road Roller. Consequently, the instant appeal being devoid of merit is hereby dismissed.

11. However, the respondent/plaintiff shall be entitled to the pay scale of the post of Driver w.e.f. 13.05.1988, the date of institution of the suit and the appellants are directed to release the said benefits in favour of the respondent/plaintiff, within a period of three months from the date of receipt of certified copy of this order.

28.01.2026
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No