



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

206

RSA-1565-1998 (O&M)

Date of decision: 04.02.2026

Des Raj Prabhakar (deceased) through his LRsAppellant

Versus

Municipal Corporation, Ludhiana and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Himanshu Sharma, Advocate
for the appellant.

Mr. Ashish Verma, Advocate
for respondent No.1.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. The instant Regular Second Appeal has been filed by the appellant/plaintiff impugning the judgment and decree passed by the learned First Appellate Court dated 28.01.1998, whereby the judgment and decree dated 21.04.1995 passed by the learned Trial Court has been set aside and the suit of the appellant/plaintiff has been dismissed. Parties to the *lis* hereinafter shall be referred to by their original position before the learned Trial Court.

2. The brief facts of the case are that the plaintiff was working as Assistant Superintendent and was posted with the Municipal Corporation, Ludhiana. With effect from 01.07.1977, he was assigned the duties of the higher post of Superintendent, which he continued to discharge upto 06.09.1987. He was thereafter promoted on

regular basis to the post of Superintendent with effect from 07.09.1987 and retired as such on 30.09.1988. Subsequently, he instituted a civil suit claiming the pay scale attached to the post of Superintendent from 01.07.1977 to 06.09.1987, which was decreed by the learned Trial Court, vide its judgment dated 21.04.1995 by recording the following findings :-

“Issues No.1, 2 & 3

6. All these issues are inter connected and can be discussed together, conveniently. There is no dispute between the parties that the plaintiff joined the Municipal Committee in the year 1946. There is hardly any dispute between the parties that he retired from the service of Municipal Corporation, Ludhiana on 30.09.1988 as Superintendent. Desraj plaintiff when appeared as (PW5) stated that he started performing the duties of Superintendent with effect from 01.07.1977 and continued performing the same till his retirement on 30.09.1988. He further stated that he worked as Superintendent from 01.07.1977 to 30.09.1988 but was not paid the salary and allowances of the post of Superintendent from 01.07.1977 to 06.09.1987. On the other hand, he was paid the salary and allowances of the post of Assistant Superintendent though he worked as Superintendent. Ex. P4 is a copy of the note which was put up by the establishment Superintendent M.C. Ludhiana. In this note, it was clearly stated by the establishment Superintendent that as per the report of the Senior Accounts Officer, the plaintiff worked as Superintendent from 01.07.1977 to 30.09.1988 in his own pay scale as Assistant Superintendent. It was further stated in this note that since the post of Superintendent was lying vacant, the claim of Desraj Prabhakar, plaintiff regarding the pay and allowances attached to the post of Superintendent for the period in question was genuine. During the period 01.07.1977 to 30.09.1988 the post of Superintendent was lying vacant in the M.C. Ludhiana as is evident from the reply to interrogatories submitted by the defend-ants. Ex.P7 to Ex.P11 are the copies of establishment check register, prepared by the officials of the Municipal Corporation on the basis of record maintained in the regular course of its business. These documents were duly proved through the evidence of Bodh Raj (PW2) and Tarsem Lal Junior Assistant, M.C. (PW3) Ex.P7 is a copy of the establishment check register for the year 1983-84. It is mentioned therein that Des Raj plaintiff

was promoted as Octroi Superintendent in the leave vacancy of Harchand Singh. Ex.P5 is a copy of the establishment check register for the year 1984-85- It is evident from this copy that order No.215 dated 31.07.1984 with effect from 01.08.1984 Desraj joined the duty as Superintendent against the post of Pran Nath, Superintendent Ex P9 is a copy of the establishment check register for the year 1985-86. According to this document, Desraj Prabhakar was shown to be posted as Octroi Superintendent grade 1. Ex.P10 is a copy of the establishment check register, for the year 1986-87 according to which the the plaintiff was shown to be posted as Octroi Superintendent. Ex.P11 is a copy of the establishment check register according to which the plaintiff was shown to have been transferred Superintendent M.C. Amritsar. It was admitted by Tarsem Lal Junior Assistant (PW3) that there was only one post of Teh Bazari Superintendent in the budget. Ex.PW5/10 is a copy of the office order dated 26.07.1988 according to which the plaintiff was shown as Water Rate Superintendent. Ex.PW5/11 is a copy of another order dated 20.07.1983 vide which Desraj was directed to take over as Tax Superintendent. Ex-PW5/12 is a copy of the order dated 07.04.1983 vide which the plaintiff was transferred as Licence Superintendent.. Ex.PW5/13 is a copy of another order dated 23.07.1986 vide which it was made clear that Desraj Prabhakar, plaintiff was directed to work as Tax Superintendent also in addition to his duties as Octroi Superintendent. Ex.PW5/14 is an order dated 26.02.1988 in which the plaintiff was shown as Teh Bazari Superintendent. PW5/15 is a copy of the order dated 07.09.1987 vide which Desraj Prabhakar was directed to work as Teh Bazari Superintendent. In none of these documents it is made clear that the plaintiff was only deployed to work as Superintendent in his own pay scale of Assistant Superintendent. In case, the plaintiff had only been deployed to work as Superintendent in his own pay scale, the order in this regard could be produced. It is a matter of common knowledge that the official act are normally done in black and white. As and when the plaintiff was posted as a Superintendent and was transferred as such, from one branch to another branch, orders must have been passed in writing. Those orders never saw the light of the day. It means that the defendants have withheld the best evidence in their possession. An adverse inference can be drawn that had those orders been produced, the same would not have supported the case of the defendants. In the written statement, the defendant did not deny the factum that the plaintiff worked as Superintendent from 01.07.1977 to 30.09.1988. Pardeep Kumar, Establishment Superintendent when appeared as

(DW1) stated that in the pronincialised cadre 50% posts of Superintendents were to be filled through direct recruitment and 50% through promotion. He did not state even a single word in his statement that the plaintiff was not posted as Superintendent from 01.07.1977 to 30.09.1988 and did not perform the duties of Superintendent during this period. There is nothing on the record to show that the plaintiff was only deployed to work against the post of Superintendent from 01.06.1977 to 06.09.1987 in his own pay scale. It is therefore, proved from the evidence on record that the plaintiff remained posted as Superintendent from 01.07.1977 to 30.09.1988 in the Municipal Corporation, Ludhiana and the Municipal Corporation, Amritsar and he performed the duties of a Superintendent, during this period.

7. *The next question that arises for consideration is as to whether the plaintiff was entitled to be paid the salary and allowances of the post of Superintendent for the period 01.07.1977 to 06.09.1987 as the pay and allowances for the period 07.09.1987 to 30.09.1988 of the post of Superintendent have already been paid to him. Since, it has been held by me that the plaintiff remained posted as Superintendent from 01.07.1977 to 30.09.1988 and he performed the duties of Superintendent from 01.07.1977 30.09.1988 he became entitled to the salary and allowances attached to the post of Superintendent for the period in question. There is no dispute about the factum that the post of Superintendent carries higher responsibilities and higher pay than the post of the Assistant Superintendent. It was for the Municipal Corporation to fix the pay of the plaintiff as Superintendent under Rule of 4.4 of the Punjab Civil Services Rules Volume 1 Part 1. If other persons who were posted as Superintendent, were being paid the salary attached to the posts, the plaintiff was also required to be paid the salary and allowances of the post of Superintendent for performing the same duties as were being performed by other incumbents as Superintendent. The principle of law is that there should be equal pay for equal work. If the defendants failed to submit the case of the plaintiff, who was otherwise eligible for being promoted as Superintendent with effect from 01.07.1977 to the Government or failed to fix his pay under Rule 4.4 of the Punjab Civil Services Rules Volume I Part I then the plaintiff cannot be blamed for that. The plaintiff is, therefore, entitled to the pay and allowances of the post of Superintendent from 01.07.1977 to 06.09.1987.*

8. *The next question that arises for consideration is as to whether the plaintiff is entitled to the rendition of accounts. It was submitted by the Law Officer on behalf of*

the defendants that the suit for rendition of accounts was not maintainable. He further submitted that the alleged amount due to the plaintiff against the defendants is precisely ascertainable and as such the plaintiff was not required to file a suit for rendition of accounts. The submission of the Law Officer does not appear to be correct. It has been held by me above that the plaintiff remained posted as Superintendent from 01.07.1977 to 30.09.1988 and he actually performed the duties of the post of Superintendent. He was also paid the salary and allowances of the post of Superintendent from 07.09.1987 to 30.09.1988 but he was not paid the salary and allowances from 01.07.1977 to 06.09.1987 as Superintendent. It was not within the means of the plaintiff to ascertain the pay and allowances due to him, as Superintendent for the aforesaid period, against the Municipal Corporation, Ludhiana. During this period, scale of the post of Superintendent might have been revised many a time and instalments of dearness allowances might have been given a number of times. The accounts, therefore, spread over a large number of years and are of complicated nature. It is on the basis of the accounts which are maintained by the Municipal Corporation, Ludhiana that the amount. can be ascertained. The principle of law laid down in Firm Ram Dev Jai Dev V/s Seth Kaku (1950 P.L.R. 31) was to the effect that suit for accounts is not necessarily confined between a principle and agent. Wherever, it is necessary in order to ascertain the amount of money, due to the plaintiff, he may ask the court to pass a preliminary decree for accounts to be taken by or under the supervision of the court. In Anant Ram V/s M/s.Spedding Dinga (AIR 1960 Punjab 415) the principle of law laid down is that there is not doubt that a suit for accounts is an extraordinary remedy, which is available to the plaintiff under special circumstances. Such a remedy, is frequently resorted to in suits between the principal and agent, between partner and other persons, between whom there is fiduciary relationship and privity of contract. The remedy is not confined to suits between principal to suits, between principal and agent or between partners. In equity a suit for accounts is entertainable, where there are circumstances of special complication, necessitating the taking of accounts. The principle of law, laid down, in the aforesaid. authorities, is fully applicable to the facts of the instant case. The circumstances, in the instant case, are of special complication, necessitating the taking of accounts. It was not possible for the plaintiff to ascertain the amount which was due to him, from the defendants from 01.07.1977 to 06.09.1987 as the accounts are in the possession of the defendants. Under these circumstances,

the claim of the plaintiff could not be satisfied without going into the accounts maintained by the defendants. The suit for rendition of accounts, in my opinion, is maintainable.

9. *Since, it has been by me above, that the circumstances of the case, present special complication, warranting the taking of accounts, the plaintiff is entitled to the rendition of accounts from the defendants as the later are the accounting parts for the period 01.07.1977 to 06.09.1987.*

10. *In view of the above discussion, Issue Nos. 1 to 3 are decided in favour of the plaintiff and against the defendants.”*

3. The defendants had also taken the plea that the suit was barred by limitation, however, the said plea was rejected by learned Trial Court under issue No.3A by observing that the suit having been filed on 19.03.1991 was well within time and said findings were also affirmed by the First Appellate Court. The observations recorded by the Trial Court on the issue of limitation are as under:-

“Issue No.3A

11. An objection was taken by the defendants that the suit was barred by limitation. The plaintiff was paid the pay and allowances attached to the post of Superintendent from 07.09.1987 to 30.09.1988. He kept on reminding, in writing, the defendants, that he was entitled to the pay and allowances, attached to the post of Superintendent for the period during which he worked as such. The claim of the plaintiff, was ultimately rejected vide memo dated 02.04.1990 which was received by the plaintiff on 23.04.1990. Under these circumstances, cause of action, accrued to the plaintiff, to seek rendition of accounts on 23.04.1990. The present suit having been filed on 19.03.1991 is well within time. This issue is decided against the defendants and in favour of the plaintiff.”

4. Aggrieved against the abovesaid judgment and decree passed by the learned Trial Court, the defendants/respondents filed the First appeal before the learned Additional District Judge, Ludhiana,

which was accepted and the judgment passed by the learned Trial Court was set aside and the suit of the plaintiff was dismissed. The learned First Appellate Court reversed the findings recorded by the learned Trial Court primarily on the ground that although the plaintiff had been assigned the additional duties of the post of Superintendent, but he continued to draw salary in his substantive pay scale. Therefore, he was not entitled for the pay scale attached to the post of Superintendent. Aggrieved thereby, the instant Regular Second Appeal has been filed by the plaintiff.

5. Learned counsel for the appellant/plaintiff contends that the learned First Appellate Court erred in law in reversing the well-reasoned findings of the learned Trial Court, which had correctly held that the plaintiff discharged the duties of the post of Superintendent from 01.07.1977 to 06.09.1987 and was thereafter regularly promoted. It is further submitted that the denial of the pay scale of the higher post merely on the ground that the plaintiff continued to draw his substantive pay scale, is contrary to settled principles of service jurisprudence, as an employee assigned and made to perform duties of a higher post cannot be deprived of the pay and allowances attached thereto. Consequently, the impugned judgment of the First Appellate Court is liable to be set aside and the judgment of the learned Trial Court is liable to be restored.

6. *Per contra*, learned counsel for respondent No.1/defendant contended that the judgment and decree passed by the learned First Appellate Court is legal, valid, and based on a correct appreciation of the evidence on record. It is further submitted that the plaintiff was

never substantially appointed or promoted to the post of Superintendent during the period in question and was merely assigned the additional duties as a time gap arrangement. Since the plaintiff continued to draw salary in his own pay scale and no formal order granting the pay scale of the post of Superintendent was ever issued by the competent authority, he is not entitled to claim the pay and allowances of the higher post. Therefore, the judgment and decree passed by the learned First Appellate Court do not call for any interference by this Hon'ble Court and is liable to be upheld.

7. I have heard learned counsel for the parties and perused the record.

8. The matter stands admitted on 17.02.2000.

9. The law on the issue is well settled that an employee, who has been assigned the duties of the higher post, cannot be denied pay and allowances of the higher post. This Court in ***Sukhpreet Singh and others Vs. Punjab State Power Corporation Limited and others : 2024 NCPHHC 9924***, while considering the similar issue, has held 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.”

10. 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 Dalai 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."*

11. Keeping in view the above, the claim of the plaintiff was rightly accepted by the learned Trial Court and it was held that the plaintiff is entitled for the pay and allowances of the post of Superintendent from 01.07.1977 to 06.09.1987, which has wrongly been reversed by the learned First Appellate Court.

12. So far as the issue of limitation in the present case is concerned, the issue No.3A was answered in favour of the plaintiff and it was rightly held by the learned Trial Court that the suit filed by the plaintiff is within limitation and the said finding was also affirmed by the learned First Appellate Court, vide impugned judgment and decree.

13. In view of the above facts and circumstances and settled position of law, it stands concluded that once an employee is duly assigned by the competent authority to discharge the duties and responsibilities of a higher post and has in fact performed such duties, the employer cannot deny the pay and allowances attached to the higher post. Taking work from an employee against a higher post without extending the corresponding financial benefits is arbitrary, unreasonable and unsustainable in the eyes of law. Consequently, the said findings recorded by the learned First Appellate Court are totally perverse and are liable to be reversed, for the reason that the learned Trial Court, while adjudicating Issue Nos.1 to 3, had thoroughly examined the entire documentary evidence placed on record by both the parties and has rightly concluded that the plaintiff has in fact discharged the duties of the post of Superintendent continuously from 01.07.1977 to 06.09.1987 and during the said period he had assigned the duties of 'Superintendent Grade-I' on multiple times, as is evident from various transfer/posting orders (Ex.P/5, Ex.PW5/10 and Ex.PW5/11 etc.) issued by the Municipal Corporation, Ludhiana, from time to time, and thereafter he was regularly promoted as Superintendent with effect from 07.09.1987 and during the abovesaid period in question, even the post of Superintendent Grade-I in the Municipal Corporation, Ludhiana also remained vacant, which is an admitted fact and cannot be ignored while considering claim of the appellant.

14. Accordingly, the instant Regular Second Appeal is allowed. The judgment and decree passed by the learned First Appellate

Court dated 28.01.1988, is set aside and that of the learned Trial Court is restored. Let the necessary benefits be released to the LR's of the plaintiff/appellant within a period of three months from the date of receipt of certified copy of this order.

14. Pending applications, if any, stand disposed of.

04.02.2026

Vinay

(NAMIT KUMAR)
JUDGE

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