



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

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**CWP-7965-2021 (O&M)
Date of decision: 24.03.2025**

Manphul Singh Saini

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Suresh Ahlawat, Advocate for the petitioner(s).

Mr. Tapan Kumar, DAG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the instant writ petition is for directing the respondents to pay the difference of salary between the accrual drawn and deemed date of promotion as Sub-Divisional Clerk (S.D.C.), Accounts Clerk and Deputy Superintendent w.e.f. 04.03.1975, 07.09.1979 and 24.11.1995 respectively along with all consequential benefits with interest @ 18% per annum.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner was initially appointed as a Clerk on 14.03.1967 on Adhoc basis and later on, he was regularly selected by the erstwhile S.S.S. Board vide letter No.2R-01-01-1971 dated 12.08.1971 and he joined the same Department on the same post. The petitioner served the department for a period of 41 years with an unblemished record of service and worked to the complete satisfaction of his superiors till his superannuation on 31.01.2008. He contends that at the time of joining the respondent/department, his



services were governed by the erstwhile PWD (I.B.) Circle Clerical Establishment Rules, 1955. Prescribed passing of the departmental exam before further promotion from Clerk to S.D.C. which was successfully cleared in the month of December-1972. In the year 1975, when the promotions were made from Clerk to the post of S.D.C., the petitioner was however not promoted despite being fully eligible, for the reasons best known to the respondents, even though his juniors were promoted to the said post. Numerous representations were submitted by the petitioner but all in vain. Thereafter, in the year 1979, the same juniors were further promoted to the post of Accounts Clerk from S.D.C. and eventually to the post of Deputy Superintendent but the claim of the petitioner was yet again ignored. The petitioner submitted a complaint before the Lokayukta as well as before other Forums whereupon the authorities were directed to conduct an inquiry into the matter. It was thus noticed that the Superintending Engineer (S.E.), Jind mis-pleaded and wrongly recommended the case of juniors by concealing the record of the petitioner. The respondents thus acceded to the request of the petitioner and granted him three deemed date of promotions i.e. firstly as S.D.C. and thereafter as Accounts Clerk and Deputy Superintendent w.e.f. the dates referred to in the preceding paras vide letter dated 29.07.2019.

3. Learned counsel appearing on behalf of the petitioner contends that even though the respondents have re-calculated the pensionary benefits on the basis of deemed dates of promotion, however, the actual benefits



from the date of deemed promotion had not been released. He contends that an unsuccessful representation had been submitted by the petitioner for grant of said benefits followed by a legal notice through his counsel on 12.03.2021 to implement the letter dated 29.07.2019 but no decision was taken, hence, the instant writ petition has been filed.

4. He submits that the office noting attached as Annexure P-2, received from the respondent-Department under the RTI Act, 2005, clearly show that the violation was on the part of the Superintending Engineer (S.E.), Jind and the petitioner cannot be put to a disadvantage for the same. The petitioner was already prejudiced by denial of the benefits of an actual promotion when his juniors were promoted and is being deprived yet again of the actual benefits that would have accrued to him. Reliance is placed by him on the judgment of this Court in the matter of **‘Jagjit Kumar Batra Vs. State of Punjab and others’** reported as **2022 (3) SCT 348**. Para 10 thereof reads thus: -

“10. Further, Instructions (Annexure R-2/1) cannot be pressed where the employee was ready and willing to perform the duties and it is not a case where promotion of the petitioner was denied by the respondent-Corporation under some ambiguity. Where the fault of not promoting an eligible employee is upon the respondent-Corporation, there Instructions (Annexure R-2/1) cannot be put into operation so



as to deny the arrears of the said promoted post of Accounts Officer with retrospective effect to the petitioner.”

5. Reliance is also placed on the judgment passed by this Court in the matter of **‘Sunder Dass Vs. Haryana Power Generation Corporation Ltd. and another’** reported as **2012 (3) SCT 397**. Relevant paras thereof read thus:

“12. Articles 14 and 16 of the Constitution of India mandate equality before law as also equality of opportunity in matters of public employment. The petitioner is vested with a right of a fair consideration as regards promotion is concerned. There is not even a whisper as regards any adverse service record of the petitioner and neither has such a plea been raised by the HPGCL either in the pleadings or at the time of hearing. Under such circumstances, the petitioner is clearly vested with a right to seek promotion to the post of Deputy Superintendent w.e.f. 4.4.2002 and to the post of Superintendent w.e.f. 8.8.2005.

13. For the reasons recorded hereinabove, the order dated 13.3.2007 (Annexure P7) is set aside to the extent it confers the benefit of promotion to the petitioner on the post of Deputy Superintendent only with immediate effect. The petitioner is, accordingly, held entitled to a notional promotion to the post of Deputy Superintendent w.e.f. 4.4.2002. Consequently, he is also entitled to a notional promotion to the post of Superintendent



w.e.f. 8.8.2005. The petitioner is also held entitled to all consequential benefits. Since the petitioner has retired on 30.6.2007 upon attaining the age of superannuation, it is further directed that the revised retiral benefits be also released to him within a period of three months from the date of receipt of a certified copy of this order.”

6. Reliance is also placed on the judgment passed by this Court in the matter of **‘Sheelawanti Vs. HVPNL and others’** reported as **2017(3) SCT 36** to contend that the financial benefits on account of retrospective promotion cannot be denied solely on the ground that he had actually not worked when the fault was entirely on the part of the respondent-Department and the junior persons were granted extra pay while a senior person has been declined the same benefits. The relevant extract thereof reads thus:

“2. Brief facts are that husband of the petitioner joined the services of the erstwhile Haryana State Electricity Board on 7.3.1980. His services were terminated on 16.10.1992. He challenged the same by filing a civil suit which was decreed on 21.4.1997 and his termination order was set aside and the respondents were directed to give all consequential benefits to him. Ultimately, that decree was maintained upto the Supreme Court. However, on the same charges, he was again charge sheeted and he challenged the same by way of CWP No.15771 of 2002 which was allowed on 25.8.2003 and that charge sheet



was quashed. During this interregnum, services of number of employees junior to the husband of the petitioner were regularized. Ultimately, husband of the petitioner filed a civil suit claiming regularization from the date services of his juniors were regularized. That civil suit was dismissed on 5.2.2009. He filed first appeal but died during the pendency thereof. Ultimately that claim was allowed by the respondents during the pendency of RSA No.1315 of 2011 and in judgment dated 3.2.2014, it was held as follows :-

" Faced with the above, learned counsel for the appellant-plaintiff also fairly states that in view of the above said order passed by the competent authority, he does not intend to press this appeal any further and the same may be disposed of as having been rendered infructuous. However, he submits that liberty may be granted to the plaintiff-appellant to pursue her other remedies, in accordance with law. This request has not been opposed by the learned counsel for the respondents. In view of the above said statements made by learned counsel for the parties, liberty sought by the appellant is granted. Appeal stands disposed of accordingly."

Subsequent to this, the husband of the petitioner moved a representation dated 3.2.2014 claiming that, among other



reliefs, he was also entitled to be promoted from the date his junior was promoted. By the impugned order, as mentioned above, all other prayers were accepted and as regards the date of promotion that was also given to him but only notional benefits thereof were given. By the present writ petition, the petitioner claims that the actual benefits of the posts of Assistant Forman and Junior Engineer had also to be granted to her husband, in view of the above facts.

3. *The only justification given for the refusal, by learned AAG Haryana, is that the husband of the petitioner had not actually worked on that post. It cannot be lost sight of the fact that as a result of the fault of the respondents, a person junior has been granted extra pay while a senior person has been declined the same benefit on the ground that she has not worked on the said post. The premise on which reliance is sought to be placed by the State is extremely one sided and self serving. In **Ramesh Kumar v. Union of India and others**, AIR **2015 SC 2904**, the Supreme Court held as follows :-*

"11. The respondents have advanced the argument that the denial of pay and allowances is on the principle of "no work no pay" and no injustice has been done to the appellant since he has not actually worked in the promotional post of Naib Subedar during the aforesaid



period. It was submitted that the benefit of pay and allowances was rightly awarded w.e.f. 13.11.2000, the date on which the appellant actually assumed the rank of Naib Subedar but his seniority was maintained so as to protect his interest in his further promotions.

12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case.

*In **State of Kerala & Ors. vs. E.K. Bhaskaran Pillai**, (2007) 6 SCC 524, this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-*

`... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50



per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.'

13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work



no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

4. *In my opinion, facts of the present case are covered by the aforesaid decision. Consequently, I allow this writ petition. The respondents are directed to pay the entire arrears within three months from the date of receipt of a certified copy of this order. In case the amount is not paid within the stipulated period, the respondents would be liable to pay the amount with interest @ 12% pa from the date/s the amount/s fell due."*

7. Reference is also made to the judgment passed by this Court in the matter of '**Gian Singh Vs. State of Punjab and others**' reported as **2010 (4) SCT 726** wherein a similar proposition of law was laid down.

8. Learned State counsel contends that the benefits of actual salary w.e.f. the deemed date of promotion to the actual date of promotion cannot be been extended to the petitioner since he has not actually worked against the said post and that the notional benefits already stand released to him. It



is further submitted that the petitioner had actually worked on the post of S.D.C. w.e.f. 04.03.1975 and no other order for further promotion from the post of S.D.C. had ever been issued thereafter up to his date of superannuation. He was thus continuously paid the salary as applicable to the post of S.D.C. w.e.f. 04.03.1975 till the date of his retirement i.e. till 31.01.2008. It is contended that on account of 'no work no pay', the actual benefits of promotion to the post of Accounts Clerk and Dy. Superintendent cannot be disbursed to the petitioner. He does not dispute the order granting notional benefits to the petitioner; however, it is contended that the petitioner himself was not willing to take further promotion as Accounts Clerk and had submitted his unwillingness to accept the promotion on 05.07.1995. Thereafter, his ACP was seized whereupon he accepted the promotion from SDC to Accounts Clerk on 10.01.1998. However, after grant of ACP scale, he again gave up his promotion from the post of SDC to Accounts Clerk vide his undertaking dated 17.11.1998. It is thus contended that it was not a case where the promotion had wrongly not been extended to the petitioner, rather he himself voluntarily gave up his further promotion to the post of Accounts Clerk twice, hence, it was not possible to further promote him as Dy. Superintendent at that time. It is thus not a case of petitioner having been left out for promotion as Dy. Superintendent and rather the lapse is attributable solely to the petitioner and is his own making. Once, he was offered actual promotion to the said post and he having chosen not to work, he cannot contend that he was unfairly denied the opportunity



to work on the said post due to lapses committed by the respondents. He thus cannot claim disbursement of actual benefits.

9. Learned State counsel places reliance on the judgment passed by this Court in the matter of **‘Ram Murti Sharma Vs. Punjabi University, Patiala and others’** reported as **2020 (1) SCT 422**, where the arrears had been denied on the ground of ‘No Work No Pay’, since the retrospective promotion was granted on notional basis due to change in seniority. The operative part thereof reads thus:-

*“17. In **Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others, 1990 (3) SCC 472**, the Hon'ble Supreme Court held that there is neither equity nor justice in favour of employees to award them emoluments of higher posts with retrospective effect when the employees did not work on the said post. Hon'ble Supreme Court further held that no work no pay principle is attracted where the employees have not worked on a higher post, but have only been granted retrospective promotion/appointment.*

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19. Even the Division Bench of this Court in **Prem Kumar Chauhan Vs. Punjab State Electricity Board and others, 2008 (4) SLR 635**, after considering the law on the grant of arrears on retrospective promotion, has held that consequential



benefits cannot be claimed as a matter of right on getting retrospective promotion/appointment. The relevant part of the said judgment is as under:

*"In **Union of India v. K.V. Janakiraman (1991) 4 SCC 109**, it was held that where an employee is completely exonerated and gets promotion under a sealed cover procedure, he was entitled to consequential benefits of promotion. However, in **Telecommunication Engineering Services Association and (India) another v. Union of India and another 1994 Supp. (2) SCC 222**, the said judgment was distinguished and it was held that where due date of promotion on revision of seniority was given as a result of decision of Court and notional promotion was given with retrospective effect, consequential benefits did not automatically follow. In **Varinder Kumar & ors. v. Avinash Chandra Chadha & ors. AIR 1991 SC 958**, it was held that where promotion is given on the basis of quota and rota rule and a date of deemed appointment is given with retrospective effect, consequential benefits did not follow. In **Paluru Ramkrishnaiah and others v. Union of India and another AIR 1990 SC 166**, it was held that where an employee did not work on promotional basis, he could*



not claim consequential benefits on getting retrospective date of promotion.

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*4. In **State of Kerala and others v. E.K. Bhaskaran Pillai (2007) 6 SCC 524**, it was observed that no hard and fast rule could be laid down about denying consequential benefits on the principle of no work no pay. There are exceptions when the Courts have granted monetary benefits also. Where a person is wrongly denied his due, full benefits may be given."*

10. Responding to the above, learned counsel appearing on behalf of the petitioner contends that the petitioner had forgone his promotion because the due entitlement was not extended to him at the time when due and the respondents kept him at a lower grade than his juniors. Hence, the petitioner was not at fault in forgoing his promotion. He stated that the respondents having acknowledged their lapses and faults, granted the notional benefits to the petitioners by revising the pension and other financial benefits but the actual benefits too ought to have been released in his favour.

11. Neither any other argument has been raised nor any other judgment has been cited by the respective parties.

12. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith



the instant petition, with their able assistance.

13. The respondents although acknowledged during departmental proceedings that the petitioner was senior to certain persons who had been granted promotion prior in point of time to him, it is also noteworthy that the respondent-Department had initiated the process of actual promotion of the petitioner from the post of S.D.C. to Accounts Clerk. The admissible benefits against the post of S.D.C w.e.f. 04.03.1975 had been disbursed to him from the said date upto his superannuation and the dispute, pertains only to the subsequent promotions to the post of Accounts Clerk and thereafter as Dy. Superintendent. The petitioner claims that he was entitled to be promoted as Accounts Clerk on 07.09.1979 i.e. the date on which his juniors were promoted and to the post of Dy. Superintendent on 24.11.1995, however, there is no denial of the facts pleaded in the written statement and emphatically argued by the respondent-State that at the time when the respondent-State passed orders of promotion of the petitioner to the post of Accounts Clerk, he gave up his promotion. Since the benefit of ACP was stopped, on the petitioner forgoing his promotion to the post of Accounts Clerk, he accepted the said promotion on 10.01.1998 and thereafter, again gave it up alongwith an undertaking dated 17.11.1998. The promotional avenue for promotion to the post of Dy. Superintendent mandated having worked as an Accounts Clerk and since the petitioner chose to give up his promotion as Accounts Clerk, he was not eligible to be promoted to the post of Dy. Superintendent on actual basis.



14. The aforesaid factual aspects averred in the reply on merits have not been controverted by the petitioner by filing any replication/rejoinder, hence, the said factual aspects remain uncontroverted. Undisputedly, the petitioner had been given actual benefits to the post of S.D.C. w.e.f. 04.03.1975 but his grievance remains that he was not promoted to the post of Accounts Clerk on 07.09.1979. Significantly, when the respondents passed the order of promotion to the post of Accounts Clerk, the petitioner gave up his promotion order and relinquished the same even on the second occasion. Even though the petitioner contends that he gave up the said promotion because the juniors had earlier been granted the next higher promotion, however, I find that such an argument defies all logic. There was no occasion for an employee to give up his promotion merely because juniors had been granted higher promotion. Had the petitioner taken up the said promotion and worked on the said post, he may have still objected against the promotion being denied to him, however, he chose not to raise any dispute about the denial of promotion to him even till his retirement. Although the petitioner claims that he had submitted certain representations, however, a perusal of the information obtained by the petitioner under the RTI Act makes a reference only of a representation of 17.07.2019. A mere general assertion has been made that the petitioner had submitted numerous representations, however, no detail of any nature and in any manner has been furnished in any of the pleadings or any proof from the official communication as to whether any such representation was submitted



by the petitioner against being denied the benefits accrued in his favour. The only first recorded representation established to have been submitted by the petitioner pertains to 17.07.2019 i.e. after more than 11 ½ years of his superannuation.

15. The totality of circumstances reflects that it was seemingly a case where the petitioner had voluntarily opted to forgo his promotion to the post of Accounts Clerk and not accept the same even at a belated stage. It reflects that the petitioner actually did not wish to seek his promotion to the next higher post and instead intended to work on the post of Sub-Divisional Clerk (S.D.C.) only. The undertaking submitted by the petitioner on 05.07.1995 and 17.11.1998, which have been appended alongwith the present writ petition also shows that no grievance had been espoused by the petitioner even therein that he had been denied or deprived of any promotion by the authorities or that he did not accept the promotion in protest against not being given his rights. The communication rather shows that a voluntary option was exercised by the petitioner in not accepting the promotion to the post of Accounts Clerk and forgo the same. Hence, it stands established that the petitioner never actually intended to seek the benefit of promotion at that stage and is claiming the same after a lapse of more than 11 ½ years after his superannuation.

16. The denial of an actual promotion hence cannot be said to be entirely attributable to the respondent-authorities themselves. The contemporaneous act and conduct of the petitioner rather substantiates the



submission of the respondents that the petitioner was himself not willing to accept the promotion.

17. Further, the judgments relied upon by the petitioner in support of his case do not pertain to a situation where an employee had also chosen to forgo his promotion when offered on two separate occasions and yet the High Court chose to grant the benefit of an actual disbursement of the financial benefits in those cases. Hence, the said judgments are not applicable to the facts of the present case.

18. An employee cannot plead victimization and unfair denial of promotion once he has himself opted to forego his promotion. It cannot thus be said that the petitioner was always ready and willing to discharge duties against the promotional post and was deterred from doing so due to acts attributable to the employer. Where the same is not established, the settled legal maxim 'no work no pay' shall set in and the actual benefits for the said period may be denied to such employee.

19. Taking into consideration the totality of circumstances as well as the conduct of the petitioner about forgoing his promotion, I find that the claim for release of actual benefits from retrospective dates is not only highly belated at this stage but it is also due to acts attributable to the petitioner himself.

20. The present writ petition is accordingly **dismissed**.

21. At this stage, learned counsel appearing on behalf of the petitioner contends that the respondents have released even the notional



benefits of revised pension and other such benefits in July-2022 even though the respondents acknowledged their lapse in the year 2019 itself, hence, he may be granted the compensatory interest in lieu thereof.

22. Learned State counsel submits that as no prayer has been made in the present petition in this regard, hence, in the event of the petitioner submitting a claim to the respondents, a decision shall be taken thereupon. However, I find that relegating the petitioner for such a limited relief for a fresh round of litigation would not serve any interest of justice. I, therefore, deem it appropriate to direct the respondent to award interest @ 6% per annum to be calculated, after an expiry of period of three months from the date of submission of representation i.e. 17.07.2019 by the petitioner till disbursement of the revised pensionary benefits within a period of three months of receipt of a certified copy of this order, failing which, the petitioner shall be held entitled to the interest @9% per annum for the period thereafter, which such additional financial liability may be recovered by the Government from the erring official.

(VINOD S. BHARDWAJ)
JUDGE

24.03.2025

Mangal Singh

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