

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 2032 of 2020

1. The Union of India through the Director General, Department of Posts, Dak Bhawan, Sansad Marg, P.O. & P.S. Sansad Marg, New Delhi-110001.
2. The Chief Postmaster, General, Jharkhand Circle, Ranchi, P.O. Doranda, P.S. Doranda, Ranchi-2.
3. The Director of Accounts (Postal), Patna, P.O. G.P.O. Patna, P.S. Kotwali Thana, Patna, Bihar.
4. The Senior Accounts Officers, Admin. I, Patna. P.O. G.P.O. Patna, P.S. Kotwali Thana, Patna, Bihar.

Petitioner nos. 1 to 4 duly represented Assistant Post Master General, in the Office of Chief Post Master General, Jharkhand Circle, P.O. Doranda, P.S. Doranda, Ranchi-2.

... .. **Petitioners**

Versus

Ratan Kumar Kapoor, S/o Late Triloki Nath Kapoor, Resident of D/141, P.C. Colony, Kankarbagh, Working as Assistant Accounts Officer I.C.O (SB), O/o the Chief Postmaster General, Jharkhand Circle, P.O. Doranda, P.S. Doranda, Ranchi-2.

Presently residing at: C/o- Sri Ashok Kumar, Assistant Accounts Officer, Gauri Shankar Nagar, P.O. & P.S. Doranda, Ranchi.

... .. **Applicant/Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Petitioners : Mr. Anil Kumar, ASGI

Mr. Abhijeet Kumar Singh, Adv

For the Respondent : Mr. Sunil Kumar Mahto, Advocate

Mr. Kishore Kumar Mishra, Advocate

Order No. 12: Dated 21st March, 2024
Per Sujit Narayan Prasad, J:

Prayer:

1. The instant writ petition has been filed under Article 226 of the Constitution of India directing against order dated 16.02.2018 passed by learned Central Administrative

Tribunal, Patna Bench, Patna at Circuit Court, Ranchi in O.A. No. 051/185/2016 whereby and whereunder while allowing the Original Application, the writ petitioners, who were respondents in Original Application, have been directed to pay the difference of back wages/remuneration between AO and Assistant Accounts Officer w.e.f. 11.01.2016 to the date the applicant has performed duties of AO, ICO (SB), Circle Office within a period of three months from the date of receipt of copy of order.

Brief Facts of the case:

2. Brief facts of the case, as per the pleadings available on record, reads as under:

3. The applicant, who was initially appointed in Postal Department, was promoted to the post of Assistant Accounts Officer (AAO) in PB-2 of Rs. 9300-34800 with Grade Pay of Rs. 4800/- under SCF (10%) quota against the vacancy earmarked for UR category w.e.f. 03.02.2015, vide office order dated 17.03.2015 issued by the Assistant Chief Accounts Officer Admn-1, Office of the Director of Accounts (Postal), Patna G.P.O. Vide order dated 16.12.2015, the applicant was transferred to Jharkhand Circle on the vacant post of A.O ICO (SB) in the Office of Chief Post Master General, Jharkhand Circle. Thereafter, through partial modification, the revised terms and conditions, in connection with transfer

of the applicant vide order dated 16.12.2015, were issued vide corrigendum dated 17.12.2015, according to which, the applicant was directed to look after the duties and post of AO till further orders without any extra remuneration, however, he was allowed to claim TA/DA as per admissible rules.

4. It is stated that the applicant took charge of the post of Senior Accounts Officer on 11.01.2016. Thereafter, the applicant was rendering his service uninterruptedly as Senior Accounts Officer and as such, he was performing the duties of Internal Financial Advisor (IFA) of the Chief Post Master General, Jharkhand Circle. In this regard, various office orders dated 25.04.2016, 3.06.2016 and 19.08.2016 are relied upon by the applicant.

5. Pursuant thereto, the applicant submitted repeated representations dated 16.2.2016, 10.3.2016 and 8.8.2016 requesting the competent authority for fixation of his pay and Grade Pay of Rs. 5400/-, as he has been posted to the post of AO/Senior AO, ICO (SB), Jharkhand Circle, and he has been performing the duties of the post of AO cadre in obedience of order dated 16/17.12.2015 of respondent-authority.

6. The applicant further placed reliance on the order passed in O.A. No. 7 of 2013 in the case of *Mahesh Chandra Rai vs. UOI & Ors* passed by the Tribunal in which it was held that the applicant is entitled for remuneration as claimed.

But no decision was taken on the representation so submitted by the applicant. Therefore, the applicant approached the learned Tribunal by filing the Original Application ventilating his grievance, which was allowed vide order dated 16.02.2018 directing the respondents-UOI to pay the difference of back wages/remuneration between AO and Assistant Accounts Officer w.e.f. 11.01.2016 to the date the applicant has performed duties of AO, ICO (SB), Circle Office within a period of three months from the date of receipt of copy of order, which is the subject matter of instant writ petition.

7. It is evident from the factual aspect that the respondent-applicant while performing duty as Assistant Accounts Officer (AAO) in substantive capacity was asked to perform duty in officiating capacity on the vacant post of Accounts Officer, ICO (SB) in the Office of Chief Post Master General, Jharkhand Circle w.e.f 16.12.2015.

8. Thereafter, the applicant-respondent took charge of the post of Senior Accounts Officer on 11.01.2016. The applicant has submitted repeated representations requesting the competent authority for fixation of his pay and Grade Pay of Rs. 5400/-, as he has been posted to the post of AO/Senior AO, ICO (SB), Jharkhand Circle and since then he has been performing the duties of the post of AO cadre, but it did not

evoke any response, against which, the original application being O.A. No. O.A. No. 051/185/2016, which was allowed, against which the instant writ petition has been filed by the respondents-Union of India.

Grounds raised by petitioners-UOI:

9. Mr. Anil Kumar, learned ASGI, appearing for the petitioners-respondents while assailing the impugned order has taken the following grounds:

I. The very basis of the order whereby and whereunder the applicant was directed to perform his duty wherein specific condition has been made that such direction to discharge the duty of Account Officer till further orders has been made without any extra remuneration but the aforesaid condition has not been taken into consideration by the learned tribunal, hence the impugned order suffers from patent illegality.

II. The applicant-respondent once accepted the aforesaid order dated 17.12.2015 and as such it is not available for him to turn around and seek direction for disbursement of arrears of salary for the aforesaid period for which he performed the duty of Accounts Officer even though specific condition is there which has also not been questioned at any

point of time. As such in view of the aforesaid condition and the same having been accepted by the respondent-applicant he cannot be held entitled to get the pay-scale attached with the Accounts Officer, but this aspect of the matter has also not been taken into consideration by the learned tribunal.

III. Ground has been taken that the judgment which has been relied upon i.e., ***State of Punjab Vs. Dharam Pal [(2017) 9 SCC 395]*** and ***State of Punjab Vs. B.K. Dhir [(2017) 2 SCC (L&S) 847]*** is on different facts but without examining the same, it has been applied in this case. Hence on this ground also the order passed by learned Tribunal requires interference by this Court.

Grounds raised by Original Applicant- respondent:

10. Learned counsel for the respondent-Original Applicant have taken following ground in defending the order passed by learned tribunal:

I. The condition although is there 'without any remuneration' but such condition is not fit to be considered denying the pay-scale attached with the Accounts Officer/Sr. Accounts Officer reason being that the applicant the moment has been handed over the accountability of higher post, then as per

the law laid down by Hon'ble Apex Court in the case of ***State of Punjab Vs. Dharam Pal (supra)*** and ***State of Punjab Vs. B.K. Dhir (supra)***, the respondent-applicant has become entitled to get the pay-scale attached to the higher post till he holds the said post. The learned tribunal taking into consideration the law laid down by Hon'ble Apex Court in those cases has passed the order directing the respondents-writ petitioners to release the arrears of salary, which cannot be said to suffer from error.

II. The argument, which has been advanced that the condition which has been stipulated in the rule that without any extra remunerations the aforesaid aspect of the matter has already been taken into consideration by Hon'ble Apex Court in the case of ***State of Punjab Vs. Dharam Pal (supra)*** and hence the learned tribunal while applying the ratio in this case has not committed any error.

Analysis:

11. This Court, after having heard learned counsel for the parties, is required to answer the following issues:

Issues framed:

- I.** *Whether the original applicant is held entitled to the pay-scale attached to the higher post of Accounts Officer/Sr. Accounts Officer in pursuance to order passed by the authority asking to discharge the duty of higher post while he holds the substantive post of the Assistant Accounts Officer?*
- II.** *Whether the entitlement of the original applicant which has been found to be in favour of the respondent-applicant can be said to be contrary to the provision of rule 49 of the Fundamental Rule read with rule 35 thereof?*
- III.** *Whether the order passed by the learned tribunal in the facts and circumstances of the present case can be said to be different to that of the consideration having been made by Hon'ble Apex Court in the case of **State of Punjab Vs. Dharam Pal (supra)** and **State of Punjab Vs. B.K. Dhir (supra)**?*

Provisions of Law:

12. Since all the issues are inter-linked, therefore, they are taken up together to be discussed hereinbelow.

13. But before considering the said issues it needs to refer herein the relevant provisions as applicable in the facts of the present case i.e., rule 49 of the fundamental rules. Department of Personnel & Training (Do.P&T) has issued instructions from time to time regarding combination of

appointments for holding charge of one or more posts and regulation of pay in such cases. These instructions incorporated in Fundamental Rule 49 {FR 49} have been consolidated hereunder for reference and guidance:

“F.R. 49 *The Central Government may appoint a government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows: -*

(i) Where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the Competent Authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post;

(ii) Where a Government servant is formally appointed to hold dual charges of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge provided that, if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay;

(iii) Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the highest post, if he holds charge of more than two posts, in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding ¹[45] days but not exceeding 3 months provided that if in any particular case, it is considered necessary that the Government servant

should hold charge of another post or posts for a period exceed 03 months, the concurrence of the ¹[Department of Personnel and Training] shall be obtained for the payment of additional pay beyond the period of 03 months;

(iv) Where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed ²[Rs. 2,25,000];

(v) No additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge;

(vi) If compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the Central Government may fix provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts”.

14. Thus, it is evident that Rule 49 empowers the Central Government to appoint a government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time “under the Government.” The Rule also stipulates the circumstances and the extent to which the Government servant shall be entitled to additional pay on formal appointment to hold full additional charge of another post under Government.

15. Fundamental Rule 49 (i) in unequivocal terms speaks that when an officer is required to discharge all the duties of the other post including the statutory functions, steps should be taken to process the case for getting the approval of the

Competent Authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed additional remuneration as indicated in FR 49.

16. It further requires to refer herein that Fundamental Rules 49 takes care of a condition if the provision as contained under 49(i), (iii) and (v) will be taken together. It is evident that the Fundamental Rules 49 provides that the Central Government has got power to appoint a government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government and his pay is to be regulated as follows.

17. The provision as contained under FR 49(iii) provides that where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the highest post, if he holds charge of more than two posts, in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 45 days but not exceeding 3 months provided that if in any particular case, it is considered necessary that the Government servant

should hold charge of another post or posts for a period exceed 03 months, the concurrence of the Department of Personnel & Training shall be obtained for the payment of additional pay beyond the period of 03 months.

18. The provision of Rule Fundamental Rule 49(v) provides that no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge.

19. It is, thus, evident that in a situation if the Government servant is appointed to hold charge of one of other post(s), he shall be entitled to get the pay-scale attached to higher post. In addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 45 days but not exceeding 3 months. However, additional pay shall be admissible to the government servant who is entitled to get additional pay, who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge.

20. Rule 35 of the Fundamental Rules is also required to be dealt with, which reads as under:

“F.R. 35 *The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules.”*

21. The reference of Rule 35 is required to be made since in view of provisions of Fundamental Rules 49 as under 49(i), it has been provided that if the public servant is appointed to officiate in the higher post unless the Competent Authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post.

Judicial Pronouncements:

22. This Court, after having discussed the aforesaid statutory provision also needs to refer herein the judicial pronouncement of Hon'ble Apex Court on the subject so as to appreciate the findings recorded by learned tribunal since the learned tribunal has passed the impugned order while allowing the prayer based upon the judgment passed by Hon'ble Apex Court in the case of ***State of Punjab Vs. B.K. Dhir (supra) and the State of Punjab Vs. Dharam Pal (supra)***.

23. In the case of ***State of Punjab Vs. B.K. Dhir (supra)***, at paragraph 2 thereof, the extract of order passed by learned Division Bench of Punjab & Haryana High Court passed in LPA No. 198 of 2003 has been referred, which reads as under:

"2. "Having thoughtfully considered the rival contentions, we find merit in the prayer of the appellant and are of the view that his case is squarely covered by the ratio of the judgment in Pritam

Singh Dhaliwal case [Pritam Singh Dhaliwal v. State of Punjab, 2004 SCC OnLine P&H 1428]. It was not a case where the appellant had laid a claim to promotion on the basis of the officiating status conferred on him, but had prayed only for the pay which was admissible to incumbents working on the said posts and performing similar duties. Resultantly, therefore, if the respondents had extracted work from him as Joint Director and Additional Director, he would certainly be entitled to pay as is admissible to the regular incumbents working on the said posts, regardless of any condition that may have been sought to be imposed upon him.”

24. The Hon'ble Apex Court, in the said judgment, however, has considered the fact about adjudication of the issue by the Punjab and Haryana High Court wherein the concerned employee has been held entitled to salary of the post of Joint Director and Additional Director, Panchayats for the period he worked as such.

25. Before the Division Bench of the Punjab and Haryana High Court the State has taken the stand that the view of the learned Single Judge was correct inasmuch as the orders passed posting the appellant on officiating posts incorporated a condition that he would continue to draw his pay in the pay scale of Deputy Director, Panchayat and no extra financial benefit would be given to him for the officiating charge. Additionally, it was asserted that the officer concerned had submitted to the said terms and conditions and not raised any protest.

26. The matter fell for consideration before the Hon'ble Apex Court and while considering the issue, reference has been made to the judgment rendered in *State of Punjab and Another v. Dharam Pal (Supra)*, in which, at paragraph 22 it has been held as under :-

“22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in P. Grover [(1983) 4 SCC 291] and Hari Om Sharma [(1998) 5 SCC 87]. As far as the authority in A. Francis [(2014) 13 SCC 283] is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma [(1998) 5 SCC 87] and resultantly we hold that the view expressed by the High Court is absolutely impeccable.”

27. The Hon'ble Apex Court, in view of the decision rendered in ***P.Grover (Smt) v. State of Haryana and Another [(1983) 4 SCC 291], Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and Others [(1998) 5 SCC 87]*** and ***A. Francis v. Management of Metropolitan Transport Corporation Limited, Tamil Nadu [(2014) 13 SCC 283]*** has been pleased to hold that the issue of eligibility to hold the post was not taken before the High Court and the appeal was disposed of taking into consideration the fact that when the respondent had worked in the officiating post and has been granted the benefits by the High Court, he should be

extended the said benefit by making an observation that had there been a contest on the eligibility of the respondent, possibly the matter would have been different and taking note of the situation, the order passed by the Punjab and Haryana High Court has been declined to be interfered with.

28. We have also gone across the judgment rendered in yet another case by the Hon'ble Apex Court on the issue i.e., ***State of Punjab and Another v. Dharam Pal (Supra)*** wherein controversy involved was regarding disbursement of salary in course of discharging duty in the officiating capacity. The provision of Rule 4.13 and 4.22 of Punjab Civil Services Rules has been considered by the Hon'ble Apex Court.

29. We, after close scrutiny of the provisions as contained in Rule 4.13 and 4.22 (Pay of Officiating Government Employees) prevalent in the State of Punjab, have found therefrom that the provisions as contained under Rule 89 and 103 of the Jharkhand Service Code, 2001 are *pari materia*.

30. For ready reference both the provisions are being referred hereunder :-

“4.13. (1) Subject to the provisions of Rules 4.22 to 4.24, a government employee who is appointed to officiate in a post shall not draw pay higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which he is appointed to officiate is one enumerated in the Schedule to

this Rule or unless the officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post on which he holds a lien:

Provided that the competent authority may exempt from the operation of this Rule, any service which is not organised on a time-scale basis and in which a system of acting promotions from grade to grade is in force at the time of the coming into force of these Rules:

Provided further that the competent authority may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions of this Rule and subject to such conditions as the competent authority may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide and may thereupon be granted the same pay (whether with or without any special pay, if any, attached to such posts) as they would have received if still in the ordinary line. (2) For the purpose of this Rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien, or on a scale of pay identical therewith.”

4.22. *The competent authority may appoint one government employee to hold substantively, as a - 20 - temporary measure or to officiate in, two or more independent posts at one time. In such cases, the government employee shall draw the highest pay to which he would be entitled if his appointment to one of the posts stood alone:*

Provided that the employee must fulfil the requisite qualifications and conditions for services for both the posts.”

31. The Hon'ble Apex Court, after considering the aforesaid provisions of law, has been pleased to hold at paragraph 13 to the effect that as the respondent herein was holding higher posts and further, he was performing the duties of higher

responsibility attached to the posts, the conclusion has been arrived at that the Rules do not bolster the proposition advanced by the learned counsel for the State. Paragraph 13 reads as hereunder: -

“13. On a careful scrutiny of the aforesaid prescription, it is perceptible that the said Rule envisages a different situation altogether. The present factual matrix is quite different. We are inclined to so hold as the respondent herein was holding higher posts and further he was performing the duties of higher responsibility attached to the posts. Thus analysed, we arrive at the conclusion that the Rules do not bolster the proposition advanced by the learned counsel for the State.”

32. However, reference herein also needs to refer herein the judgment rendered by Hon’ble Apex Court in the case of **A. Francis v. Management of Metropolitan Transport Corporation Limited, Tamil Nadu (supra)** that judgment has been rendered taking into consideration the judgment rendered in **Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and Others (supra)** has been pleased to hold at paragraph 22 that the fact in the Francis case has to rest on its own facts and thereafter it has been clarified that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position and further holding therein that the controversy is covered by the ratio laid down in **Secretary-cum-Chief Engineer v. Hari**

Om Sharma (supra) and it has been held that the view expressed by the High Court is absolutely impeccable.

33. The factual aspect involved in the said case was that the respondent of the said case, namely, Dharam Pal, was promoted as Superintendent Grade-II (in officiating capacity) with a condition stipulated in the order that the official work in the own pay scale and above promotion shall be subject to the recommendation of the Departmental Promotion Committee as would appear from paragraph – 7 and 8 of the aforesaid judgment, which read as hereunder :-

“7. In the beginning, it is seemly to state that there is no factual dispute with regard to the appointments or the posts. That being the position, we think it appropriate to refer to the orders of appointment as Ms Babbar, learned counsel for the appellant State of Punjab, would harp on the same. The order dated 9-12-2004 reads as follows:

“ORDER

On the retirement of Smt Chand Prabha, Superintendent Grade I on 31-7-2004 the post of Superintendent Grade I had become vacant. On that vacant post Shri Kewal Singh, Superintendent Grade II is promoted as Superintendent Grade I in his own scale.

On account of promotion of Shri Kewal Singh, Superintendent Grade II as Superintendent Grade I and on account of proceeding on earned leave of Shri Bhinder Singh, Superintendent Grade II w.e.f. 7- 9-2004 Shri Ashwani Kumar Senior Assistant (Officiating Superintendent Grade II) and Shri Dharam Pal (Officiating Superintendent Grade II) are promoted as Superintendent Grade II.

The officials will work in their own pay scale and above promotions will be subject to the recommendations of the Departmental Promotion Committee. On the approval of the above committee they will be given financial benefits.

On the basis of these orders the officials will not claim any seniority, etc.” On the basis of the aforesaid order, the respondent functioned as the officiating Superintendent Grade II.

8. *As stated earlier, while he was officiating on the said post, he was promoted on officiating basis to function in the post of Superintendent Grade I. The relevant portion of the said order reads as follows:*

“The officials will work in their earlier own pay scale and above promotions will be subject to the recommendations of the Departmental Promotion Committee. On the approval of the above committee they will be given financial benefits. On the basis of these orders the officials will not claim any seniority, etc.”

34. The case since is under the department of posts for which the provision of fundamental rules is applicable.

35. This Court in order to assess the ratio as has been laid down by Hon’ble Apex Court in the case of **State of Punjab Vs. B.K. Dhir (supra) and State of Punjab Vs. Dharam Pal (supra)** wherein the consideration of pari material rule of Rule 49 has been taken note and based upon the same, the judgment has been rendered, is of the view that the provision as applicable in the case of present petitioner as per the fundamental rules needs to be appreciated. Further for the reason that learned Addl. S.G.I also has relied upon the provisions of Rule 49 of the Fundamental Rules, which has been quoted hereinabove.

36. This Court after assessing the provision upon which the judgment passed in **State of Punjab Vs. Dharam Pal (supra)** has been rendered, which is based upon the

provision as contained under the Service Code applicable in the State of Punjab the public servant belonging to the State Government, as provided under Rule 4.22 and Rule 4.23 is *pari materia* to the provision as contained under Fundamental Rule 49 particularly III and V thereof.

37. The Hon'ble Apex Court since in the case of ***State of Punjab Vs. Dharam Pal (supra)*** has been pleased to hold that in case of the discharge of duty in the post higher than the substantive being held by the concerned public servant then for the period for which the such public servant has been asked to discharge his duty he will become entitled to get the pay-scale attached to the said post.

38. This Court, therefore, is of the view that the judgment rendered by Hon'ble Apex Court in the case of ***State of Punjab Vs. Dharam Pal (supra)*** covers the case of the respondent-original applicant.

39. Since herein also it would be evident from the order by which the respondent-original applicant has been directed to discharge his duty is that although the respondent-original applicant was holding the substantive post of Assistant Accounts Officer, but he was asked to discharge duty of the higher post but with the rider that no additional pay will be admissible of the post on which he is being directed to discharge duty i.e., Accounts Officer/Sr. Accounts Officer.

For ready reference, the content of said letter is quoted hereunder as:

“In partial modification of this office order no. Admn 1/155 connection with the transfer of Sri Ratan Kumar Kapoor, AAO/PCD to office of the CPMG, Jharkhand Circle, Ranchi to work as Accounts Officer (in charge)/ICOSB. The revised terms and conditions are as follows:

1. **Sri Ratan Kumar Kapoor, AAO/PCD will look after the duties of the post of Accounts Officer till further orders without any extra remuneration.**
2. *He will be entitled to TA/DA as per admissible rules.*

The rest will remain same.”

40. The said order since stipulates that the respondent-original applicant is to discharge duty to the higher post although not on substantive basis rather as a temporary measure. But there is no direction to discharge duty to the said higher post in addition to the duty which is to be discharged on substantive post. Meaning thereby the respondent-original applicant has been directed even though he was holding the substantive post of Assistant Accounts Officer not in addition to the discharge of duty to the Assistant Accounts Officer but exclusively to discharge duty to the post of Accounts Officer.

41. In view of the specific stipulation made in the aforesaid order and coming back to the provision of Rule 49 in particular under III and V it is evident that in such circumstances even the rule provides that such public servant is to be allowed to the pay of higher posts. As such

this Court is of the view that based upon the factual aspect particularly the order by which the respondent-original applicant was directed to discharge duty on temporary measure to the post of Accounts Officer is held to be admissible the pay-scale of the higher post of Accounts Officer till he has already held the post, in view of the judgment passed in the case of State of Punjab Vs. Dharampal (supra).

42. The argument has been advanced by learned ASGI by referring to the condition as stipulated in order dated 17.12.2015 that there is specific stipulation made therein that there will be no admissibility of higher pay. As such submission has been made that since the condition is there in the order itself that the respondent-original applicant will not be entitled for pay-scale attached to the higher post, hence the respondent-original applicant will not be entitled to claim the pay-scale of the post of the Accounts Officer.

43. But even this issue has been dealt with by Hon'ble Apex Court in the case of **State of Punjab Vs. B.K. Dhir** (supra) wherein the issue of condition has been considered and the Hon'ble Apex Court has laid down that in case of any condition making the entitlement of the pay-scale attached to the higher post in such circumstances will not be proper.

44. After having discussed the factual aspect and legal position, as above, and coming back to the order passed by learned Tribunal, this Court has found that the original application has been allowed basing upon the principle laid down by Hon'ble Apex Court in the case of **State of Punjab and Another v. Dharam Pal (Supra) and State of Punjab v. B.K. Dhir (Supra)**.

45. It need to refer herein that the identical matter has been decided by the Division Bench of this Court in the case of **The State of Jharkhand & Ors Vs. Baneshwar Rabidas [LPA No. 735 of 2019]** by putting reliance upon the judgment rendered in the cases of **State of Punjab and Another v. Dharam Pal (supra)** and **State of Punjab v. B. K. Dhir (supra)** holding therein as under:

*“We have considered the factual aspect involved in the given case wherein also the writ petitioner has been directed to perform his duty as Superintending Engineer (Current Charge) for the period from 26.07.2007 till 25.07.2011 and thereafter asked to perform his duty as Chief Engineer (Current Charge) for the period from 26.07.2011 till his superannuation on 30.04.2013, however with the condition that he will work in his earlier own pay scale and his promotion will depend upon the final decision to be taken for regular promotion and, therefore, according to our considered view, the factual aspect involved in **State of Punjab and Another v. Dharam Pal (Supra)** is almost similar to the instant case as also the provision of Rule which is the subject matter of the argument advanced on behalf of the parties is also *pari materia*, as has been*

*referred hereinabove, therefore, the ground which has been agitated by the appellant-State for reversal of the order passed by the learned Single Judge that as because the writ petitioner has never been granted promotion to the post of Superintending Engineer and Chief Engineer, rather he was holding the post in the substantive capacity of Executive Engineer and as such, he is not entitled to get the pay scale of the post of Superintending Engineer and Chief Engineer, is not acceptable to this Court taking into consideration the fact that the issue has already been dealt with by the Hon'ble Apex Court in the case of **State of Punjab and Another v. Dharam Pal (Supra)**.*

Therefore, this Court is of the view that the learned Single Judge since has come to a conclusion holding the writ petitioner entitled to get the pay scale of the post of Superintending Engineer and Chief Engineer as also for fixation of pension on the basis of the last pay drawn i.e., the pay scale attached to the post of Chief Engineer, therefore, the order passed by the learned Single Judge suffers from no infirmity.”

46. It further needs to refer herein that the respondent-State of Jharkhand has preferred SLP against the aforesaid order before the Hon'ble Supreme Court being Special Leave to Appeal (C) No(s). 4104 of 2022 which has been dismissed vide order dated 16.03.2022.

47. Therefore, this Court, on the basis of discussion made hereinabove, is of the view that if in the facts and circumstances, particularly the order passed by the authority [the writ petitioner herein] directing the respondent-original applicant to perform duty as Accounts Officer on a temporary measure, the claim of the salary attached to the

post of Accounts Officer, if it is being claimed the same has been held to be proper and in that view of the matter, the learned tribunal has passed order directing the respondent, the writ petitioners herein to release the arrears of difference of pay/remuneration for the period for which the respondent-applicant has discharged his duty to the post of Accounts Officer on temporary measure.

48. This Court is exercising the power of judicial review of an order passed by the learned tribunal and the law is well settled as per the judgment rendered in ***L. Chandra Kumar v. Union of India and Others***, reported in **(1997) 3 SCC 261** whereby and whereunder the power of judicial review has been dealt with which is to be exercised by the High Court in exercise of power conferred under Article 227 of the Constitution of India, for ready reference the relevant paragraph of the aforesaid judgment is being quoted and referred hereunder as :-

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this

jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

45. This Court after having discussed the fact as also the legal position is now proceeding to discuss about the scope of judicial review conferred to the High Court under Article 226 of the Constitution of India.

46. In ***Hari Vishnu Kamath vs. Ahmad Ishaque and Ors., AIR 1955 Supreme Court 233***, the Hon'ble Supreme Court has held in paragraph no.21 as under:-

“With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Writ of certiorari will also be issued when the Court or Tribunal acts illegally in the

exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari.”

47. In **Sawarn Singh and Anr. vs. State of Punjab and Ors., (1976) 2 SCC 868** their Lordships, while discussing the power of writ under Article 226 of the Constitution of India for issuance of writ of certiorari, has been pleased to hold at paragraph nos.12 and 13 as hereunder:-

“12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra).

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to

admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

48. In **Heinz India (P) Ltd. and Anr. vs. State of U.P. and Ors., (2012) 5 SCC 443**, their Lordships have been pleased to hold at paragraph nos.66 and 67 as hereunder:-

“66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant “the feel of the expert” by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.

67. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra this Court held that decision of a tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed.”

49. In the case of **West Bengal Central School Service Commission & Others Vs. Abdul Halim & Others reported**

in (2019) 18 SCC 39, their Lordships have been laid down pleased to hold at paragraph no. 30 that the power of the judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning, Para-30 of the aforesaid judgment reads as under:-

“30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the fact of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the fact of the record, as held by this Court in Satyanarayan Vs. Mallikarjuna reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.”

50. In the case of **T.C. Basappa Vs. T. Nagappa reported in (1955) 1 SCR 250**, their Lordship hold that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the

proceedings. The relevant portion of the aforesaid judgment is quoted hereunder: -

“10. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the fact of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. ...”

51. This Court considering the judgment rendered by Constitution Bench of Hon'ble Apex Court and taking into consideration the scope of judicial review is of the view that the order which has been passed by learned tribunal as impugned in this writ petition as per the discussion made herein above cannot be said be faulted with.

52. Accordingly, the instant petition lacks merit and is dismissed.

53. Pending Interlocutory Application(s), if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

A.F.R.

Alankar/-