

(2022-4)208 PLR 001
 PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice G.S. Sandhawalia and Mr. Justice Vikas Suri.
 RAM DHAN PANDIR – Appellant,
 versus
 HARYANA STATE AGRICULTURAL MARKETING BOARD and others – Respondents.
 LPA No. 1308 of 2017 (O&M)

Service matter - Pay which is payable while performing the duties in higher/promotional post - 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 - Appellant had continued with the current duty charge for the period from 26.06.2014 up to the date of his superannuation and the officiating charge was never withdrawn till he retired from service, and he was fully eligible to be promoted as Engineer-in-Chief - Held entitled to grant of regular pay scale attached to the post of Engineer-in-Chief for the period he discharged duty of the said post entailing higher responsibilities, on current duty charge alongwith interest on the arrears, at the rate of 6% p.a. - *Pritam Singh Dhaliwal v. State of Punjab and another*,⁵ (2004) 6 SLR 758 (DB), relied . [Para 16]

Cases referred to:

1. (2012-1)165 PLR 778 (F.B.) *Subhash Chander v. State of Haryana*
2. AIR 1983 SC 1060, *P. Grover v. State of Haryana*
3. 1999 (2) SCT 286, *Selvaraj v. Lt. Governor of Island, Port Blair*
4. 2002 (4) SCT 422, *Balbir Singh Dalal v. State of Haryana*
5. (2004) 6 SLR 758 (DB), *Pritam Singh Dhaliwal v. State of Punjab*
6. LPA-1491-2016 decided on 27.11.2019, *State of Haryana v. Sita Ram*
7. (2013) 4 SCC 152, *Arindam Chattopadhyay v. State of W.B.*
8. (2017) 9 SCC 395, *State of Punjab v. Dharam Pal*

Mr. R.K. Malik, Senior Advocate with Mr. Sunil Hooda, for the appellants. Mr. Padam Kant Dwivedi, for the respondents.

Vikas Suri, J. - (Reserved on : 25.04.2022, Pronounced on : 06.07.2022) - This Letters Patent Appeal has been preferred against the judgment dated 14.03.2017 passed by the learned Single Judge in CWP- 22498-2015 titled *Ram Dhan Pandir vs. Haryana State Agricultural Marketing Board and others*, whereby limited relief was granted to the writ petitioner, to consider his name for promotion to the post of Engineer-in-Chief from 26.06.2014 i.e. the date when current duty charge to the said post was given to him. It was further directed that the said exercise was to be done within a period of three months. It was also directed that if the writ petitioner's grievance is redressed to the extent that he was eligible for promotion to the post of Engineer-in-Chief w.e.f. 26.06.2014, in that event, he would be entitled for difference of pay during the period from 26.06.2014 to 31.05.2015.

2. The appellant had raised two fold grievance before the Letters Patent Bench at the time of preliminary hearing. It was claimed – (i) that the appellant was entitled to be promoted in the year 2010 which has been declined by the learned Single Judge, and (ii) the appellant having been granted the current duty charge of the post of Engineer-in-Chief in his own pay scale without any extra remuneration vide order dated 26.06.2014 (Annexure P-12), which could not be done and he would be entitled to regular pay structure attached to the said post. Notice of motion was issued to the limited extent qua denial of regular pay structure admissible to the post of Engineer-in-Chief for which the appellant had been assigned the current duty charge. The relevant part in that regard of the aforesaid order dated 04.10.2017, reads as under:-

".....Promotion is not a matter of right and only entitles a consideration. Therefore, the plea of the appellant that he ought to be considered promoted on the fiction of law is misplaced and therefore, the argument is discarded. However, in so far as the second grievance of the appellant qua the denial of regular pay structure admissible to the post of

Engineer-in- Chief for which he had been assigned the current duty charge that would merit consideration.

Notice of motion only to this limited extent for 23.04.2018.

Notice re: condonation of delay also."

3. The facts in brief, relevant for consideration of the aforesaid issue, are that the appellant-writ petitioner had joined service as Sub Divisional Officer (SDO), by way of direct recruitment on regular basis in the year 1980 and thereafter, earned his promotion as Executive Engineer w.e.f. 7/1985 and then as Superintending Engineer w.e.f. 23.07.2003. On 05.10.2010, though the writ petitioner was given current duty charge of Chief Engineer but the same was withdrawn on 31.12.2010 (Annexure P-2) because disciplinary proceedings against him were under contemplation. Admittedly, in the disciplinary proceedings, he was exonerated and let off with a warning to be careful in future, vide orders dated 29.07.2013 (Annexures P-4 and P-5). Consequent to the same, vide order dated 06.12.2013 (Annexure P-7), he was promoted as Chief Engineer on regular basis w.e.f. 03.06.2013 with the condition that fixation of pay is notional and no arrears would be payable. Representations were made by him claiming promotion from 2010, the date on which the respondents had resorted to depute one Mr. J.S. Suhag, as at the relevant time disciplinary proceedings against the writ petitioner were pending. The said representations did not find favour with the authority and were, thus, rejected on 26.03.2015 (Annexure P-18). In the meantime, the appellant-writ petitioner was given the current duty charge of Engineer-in-Chief on 26.06.2014, being the senior most Superintending Engineer. The said appointment was in terms of consideration by the Administrative Committee (respondent No.2). Item No.2 relating to the consideration of the writ petitioner in the meeting held on 09.06.2014, reads as under:-

"Item No.2 Regarding assignment the duties of Engineer- in-Chief

After due deliberations, the committee observed that the present incumbent Shri Chaman Lal would be going on deputation to the Central govt. and many mega projects and civil works such as IIHM Ganaur, roads, development of mandis etc. were in full swing. Therefore, in this view of the matter, the committee decided that for the expeditious and timely completion of the development works, current duty charge of E.I.C. be given to Shri R.D. Pandir, who is the senior most Chief Engineer. The committee further observed that after giving current duty charge of E.I.C., then one post of Chief Engineer would become vacant and as per Service Rules, out of two Chief Engineers, one has to be taken on deputation. Therefore, the committee decided that till a suitable officer on deputation was available, the current duty charge of Chief Engineer be given to Shri Amar Singh, who is the senior most Superintending Engineer.

The meeting ended with a vote of thanks to the chair."

4. On attaining the age of superannuation, the appellant-writ petitioner retired from service on 31.05.2015. In the backdrop of above factual matrix, it was claimed before the writ court that he was entitled for notional pay fixation and arrears of pay for the post of Chief Engineer from 27.12.2010 as well as is entitled for regular pay scale attached to the post of Engineer-in-Chief from 26.06.2014 to 31.05.2015 i.e. up to the age of attaining superannuation.

5. The learned Single Judge rejected the aforesaid claims except for the limited relief on account of the fact that the writ petitioner had discharged duties of the post of Engineer-in-Chief from 26.06.2014 to 31.05.2015. The respondents were directed to consider his name for promotion from the date on which his name was considered for posting him as Engineer-in-Chief w.e.f 26.06.2014, whether he was eligible for promotion to the said post or not. The said exercise was directed to be completed within three months and the decision was to be communicated to the writ petitioner. It was further ordered if the respondents found the writ petitioner eligible for promotion to the post of Engineer-in-Chief w.e.f 26.06.2014, in that event the writ petitioner was entitled for difference of pay during the period from 26.06.2014 to 31.05.2015.

6. We have heard learned counsel for the parties and with their able assistance perused the paper-book.

7. Learned counsel for the appellant would submit that the present appeal deserves to succeed qua the issue of entitlement of regular pay structure admissible to the post of Engineer-in-Chief, which was held by the appellant as current duty charge, till he retired from service. It is urged that it is well settled principle of law that the incumbent holding current duty charge, even if it were to be as an additional charge, then the higher pay attached to the higher post for additional work involving higher responsibilities, deserves to be paid. It is also submitted that there is no service rule that prohibits grant of regular pay scale attached to the higher post, in the present circumstances. Reliance has been placed on the Full Bench judgment of this Court in *Subhash Chander v. State of Haryana and others*,¹ (2012-1)165 PLR 778 (F.B.), which had considered the provisions of Punjab Civil Service Rules while examining the proposition and answered the question framed by the reference order, which reads as under:-

"Whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale without being substantively appointed to such post."

8. The relevant paragraphs of the said judgment read as under:-

10. A perusal of the Rule 4.13 of the Rules would show that if officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post on which an employee holds a lien or would have held a lien had his lien has not been suspended then he would draw pay higher than his substantive post in respect of a permanent post. Sub-Rule 2 of Rule 4.13 of the Rules makes it abundantly clear that the officiating appointment on a post is not to be regarded assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post on which he holds lien. In other words, if the officiation is on a post carrying the same pay scale then it would not be considered to have duties and responsibilities of greater importance than attaching to the post, an employee is holding on a substantive basis. A perusal of the clause 2 of Note 4 makes it further clear that a fortuitous officiating promotion of some one junior in a cadre to a Government employee who is out of the regular line would not earn him the right to draw pay higher than his substantive pay. This provision takes care of an eventuality when on account of administrative exigency, the higher post falls vacant and the employee available in the feeder cadre at station may not be the senior most but he is asked to officiate on the vacancy caused on account of administrative exigency like retirement, death or promotion it would not then ensure the benefit of such a junior employee. However, if the officiating promotion exceeds three months then the officer concerned may be granted the pay of higher post, which is further mandated by clause 5 (iv) of Note 4.

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14. We wish to make it clear that the Rules laid down by us would not cover a case where a fortuitous officiating promotion is given to an employee working in the lower cadre on account of administrative exigency resulting in vacancy of a higher post. For illustration, if the post of Sub Division Officer is a feeder cadre for promotion to the post of Assistant Executive Engineer then on vacancy caused by retirement, death or promotion etc., the promotion of the Sub Division Officer available at the station on the post of Assistant Executive Engineer would not earn him higher pay scale because it is a fortuitous circumstance unless he is senior enough to stake his claim for regular promotion. The aforesaid principle has been laid down by their Lordships' of Hon'ble the Supreme Court in the case of *Ramakant Shripad Sinai Advalpalkar v. Union of India*, 1993(3) S.C.T 586 : 1991 (Suppl. 2) SCC 733.

15. We are further of the view that Rule 4.13 of the Rules would virtually sound like the principle laid down in the judgment of Hon'ble the Supreme Court in *Smt. P. Grover v. State of Haryana*, AIR 1983 Supreme Court 1060. In that case, an employee in the State of Haryana was given promotion as acting District Education Officer about two years before her superannuation. The order giving her promotion as an acting District Education Officer recited a condition that she was to draw salary in her own pay scale which meant that her

scale would continue to be that of the post of Principal, Higher Secondary School. Accordingly, their Lordships' of Hon'ble the Supreme Court accepted the claim of Smt. P. Grover as if the principles laid down in Rule 4.13 of the Rules have been applied. The concluding para of the 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 superadded 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 was 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 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 was no Class-I posts 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 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.”

16. The argument of learned State counsel based on the judgment rendered in *R.K. Aggarwal's case* (supra) would not require any detail consideration because there was serious dispute concerning seniority of the officers in the cases where disputes concerning seniority are involved. The officiating charge may not earn the fixation of higher pay scale for the post on which the officer is officiating. However, in the present case, there is no dispute of such nature. We are also not impressed with the argument that somewhere in 2006, the petitioner was charge-sheeted and, therefore, regular promotion has to be taken into account only from 27.10.2008 (P-10) and the salary is also required to be fixed in the higher grade from that date alone. The aforesaid argument is liable to be rejected for more than one reason. Firstly, the petitioner has been discharging the duties on a higher post of Secretary w.e.f. 2.11.1996/ 11.12.1996 (P-1). If any, charge-sheet in 2006 was issued then it was at a stage when the petitioner was discharging his duties as Secretary, therefore, the argument would have no effect insofar as the present case is concerned and the judgment in *R.K. Aggarwal's case* (supra) would have no application.

17. In view of the above, the question posed in para No. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

9. Per contra, Mr. Dwivedi has sought to justify the judgment passed by learned Single Judge inasmuch as claim of the writ petitioner for higher pay for the period of current duty charge has

been rejected. Learned counsel for the respondents would contend that the entitlement of the regular pay scale attached to the post of Engineer-in-Chief would only arise from the date of promotion on regular basis and not otherwise. It is submitted that as such it was only a temporary arrangement on account of many mega projects and development works then being in full swing. It is further submitted that the order dated 26.06.2014 (Annexure P-12), entrusting current duty charge specifically provided that the same was in the own pay scale of the writ petitioner without any extra remuneration and as such was bound by the same.

10. The aforesaid arguments to justify denial of benefit of higher pay scale to the appellant are contrary to a plethora of judgments of the Apex Court as well as of this Court and thus, the present letters patent appeal deserves to be accepted to that limited extent. Perusal of the record would also go on to show that the appellant-writ petitioner continued to officiate on the post of Engineer-in-Chief, appointed pursuant to the order dated 26.06.2014 (Annexure P-12) and till his superannuation the officiating charge was never withdrawn.

11. The reference answered by the Full Bench of this Court has been consistently followed by numerous Single and Coordinate Benches, besides the said judgment being a binding precedent. The Full Bench has also taken into consideration the judgments rendered by the Apex Court in *Smt. P. Grover v. State of Haryana*, ²AIR 1983 SC 1060 and *Selvaraj v. Lt. Governor of Island, Port Blair*, ³1999 (2) SCT 286, which had accepted and applied the principle of quantum meruit and the State's obligation to pay emoluments in the higher pay scale for work actually performed on the superior post, though in officiating capacity. The decision rendered by a coordinate Bench in *Balbir Singh Dalal v. State of Haryana*⁴, 2002 (4) SCT 422, was also considered wherein the principle was reiterated that a person appointed to hold duties on full charge basis of a higher post in addition to the duties of his own post, was held entitled and allowed the pay admissible as if he was appointed to officiate in the higher post.

12. 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 v. State of Punjab and another*, ⁵(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. In the present case also the factual matrix is similar. The appellant had continued with the current duty charge for the period from 26.06.2014 up to the date of his superannuation on 31.05.2015 and the officiating charge was never withdrawn till he retired from service, and he was fully eligible to be promoted as Engineer-in-Chief.

13. Reference can also be made to the judgement by another coordinate Bench passed in LPA-1491-2016, titled *State of Haryana v. Sita Ram*⁶, 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 v. State of W.B.*, ⁷(2013) 4 SCC 152 and *State of Punjab v. Dharam Pal*, ⁸(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.

14. In view of the above, we are of the considered opinion that the present Letters Patent Appeal deserves to be allowed to the limited extent that the appellant-writ petitioner is held entitled to grant of regular pay scale attached to the post of Engineer-in-Chief for the period he discharged duty of the said post entailing higher responsibilities, on current duty charge w.e.f.

26.06.2014 to 31.05.2015. The appellant would also be entitled to interest on the arrears, at the rate of 6% p.a. from the date it became due till its payment. The respondent-board is directed to make payment of the aforesaid amount to the appellant within a period of three months, failing which interest would be calculated at the rate of 9% p.a. till its realisation.

15. Accordingly, this intra-court appeal is partly allowed in the above terms and resultantly, the judgment passed by the learned single Judge is modified to that extent.

Sd/- G.S. Sandhawalia, J.

SS - *Appeal partly Allowed*