

(2021) 08 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : CWPOA No.1749 Of 2019

Gheem Chand

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:

Citation : (2021) 08 SHI CK 0011

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Dalip K. Sharma, Vinod Thakur, Shiv Pal Manhans, Bhupinder Thakur

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following substantive reliefs:-

â??a) That Writ of Mandamus may be issued directing the respondents to grant the pay scale of tailor since the date of appointment to the petitioner,

with further revised pay scale from time to time along with interest.

b) That the petitioner may be held entitled to arrears of pay and all consequential benefits with further revised pay scale from time to time along with interest.â??

2. It is averred that the petitioner was appointed as a Class-IV employee vide order dated 19.08.1985 and was asked to perform the duties of a tailor.

Thereafter vide Office Order dated 03.05.1989, the petitioner was ordered to be transferred to CHC, Kotkhai where he joined on 03.05.1989. But,

shortly thereafter the petitioner was relieved from Kotkhai and directed to report for duty at Ripon Hospital vide order dated 18.07.1989.

3. All throughout this period, the petitioner discharged his duties as a tailor and

acknowledging the performance of duties as tailor by the petitioner, the CMO issued a certificate on 18.04.1990. The petitioner has thereafter annexed certain documents collectively as Annexure P-3 to support his contention that he has been continuously working as a tailor.

4. It is further averred that on 29.08.2005, the petitioner requested respondent No.2 to promote him to the post of tailor against vacant post as he was discharging the duties of a higher post ever since his appointment. However, the request of the petitioner was not acceded to constraining him to file the instant petition.

5. The respondents have contested the petition by filing reply wherein it is averred that the petitioner was appointed as a Class-IV and continued as such till his superannuation on 30.04.2012. The petitioner was neither a trained tailor nor he was ever appointed as tailor which is a skillful job in a different cadre. It is claimed that the post of tailor is Class-III post in different cadre which post was/is required to be filled up in accordance with the provisions of the existing and prevailing Recruitment and Promotion Rules and since the petitioner was not possessed any certificate/diploma of tailoring from a recognized training institute, therefore, the petition deserves to be dismissed.

6. I have heard the learned counsel for the parties and gone through the records of the case which was ordered to be summoned vide order dated 23.07.2021.

7. At the outset, it needs to be noticed that in the documents annexed by the petitioner from Annexures P-1 to P-3, the petitioner all throughout has been shown to be a tailor. These communications range from the year 1989 to 2009.

8. That apart, the records though show the appointment of the petitioner to be that of Class-IV, however, there is an overwhelming records to establish that the petitioner had in fact been working as a tailor.

9. What would be the right of an employee working on a higher post has been dealt with by a Full Bench of the Madhya Pradesh High Court in M.P.

SRTC and another vs. Narain Singh Rathore, 1994 MP Law Journal 959 (FB) wherein it was observed as under:-

“To say that an employee who was asked to work on a higher post for a period on account of exigencies of situation is not asking for

promotion and he is asking only for appropriate classification on the post on which he is working is to ignore both the scheme underlying the rules

relating to classification and the promotion rules. An employee may be asked to work in a higher post for some time on account of administrative

exigencies. He does not thereby acquire a right to the higher post, as long as he has not been promoted by the Competent Authority in accordance

with the regulations or rules and on a consideration of all employees in the feeder categories who are in the field of choice. An employee who is not

entitled to be considered for promotion or who is yet to be considered for promotion and therefore, cannot be deemed to have been promoted, cannot

secure the same end by stating that what he is seeking is classification and not promotion. What cannot be achieved directly cannot be permitted to be

achieved in an indirect manner. It is one thing to say that an employee who has been asked to work in a higher post temporarily must get the

emoluments attached to the higher post; it is quite a different thing to say that he must be regarded as a permanent incumbent of the higher post by

being classified as such. The question of exploitation and unfair labour practice does not arise since it will be the duty of the employer to pay him the

emoluments attached to the higher post as long as he discharges the duties attached to the higher post and on the failure of the employer, it will be

open to the employee to enforce his claim.

10. Notably, the aforesaid judgment has been upheld by the Hon'ble Supreme Court in *Dwarika Prasad Tiwari vs. M.P. State Road Transport*

Corporation and another (2001) 8 SCC 322 (Infra).

11. Whether the persons, who are given higher responsibility and allowed to work continuously over a long period of time can claim salary for the

higher post was considered by the Hon'ble Supreme Court in the following decisions.

12. In *Selvaraj vs. Lt. Governor of Island, Port Blair and others* AIR 1999 SC 838, the Hon'ble Supreme Court considered the very issue and

held as under:-

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn

against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of

course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident

Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look

after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be

transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter.

However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post

though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of

Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently,

on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher

pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee.

This limited relief is required to be given to the appellant only on this ground.â??

13. In Dwarika Prasad Tiwari vs. M.P. State Road Transport Corporation and another AIR 2001 SC 2871, the Honâ??ble Supreme Court held that

period for which the appellants discharged the duties or discharging the duties attached to a higher post, they should be paid emoluments as attached to

that post.

14. In Jaswant Singh vs. Punjab Poultry Field Staf Association and others AIR 2002 SC 231, the Honâ??ble Supreme Court held as under:-

â??11. The High Courts decision in Gobind Singhâ??s case did not direct the promotion of Gobind Singh. What was directed was the payment of

salary and allowances of the post of chick sexer since Gobind Singh had been discharging the duties of that post. Therefore, while the appellants

promotion to the post of chick sexer cannot be upheld, given the fact that the appellant had discharged the duties of a chick sexer, he was at least

entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

12.We accordingly allow the appeal in part. While up-holding the order of the

High Court, setting aside the order of the appellants promotion, we direct the re-spondent authorities to pay the appellant for the pe-riod he rendered service as a chick sexer at the scales of pay together with all allowances to which chick sexers were entitled at the relevant time.â??

15. In State of Punjab and others etc. vs. Rafiq Masih AIR 2015 SC 696, the Honâ??ble Supreme Court stayed the recovery by applying the

principle that the person having been allowed to serve on a higher post is entitled to get salary for the post and in paragraph-11, it was held as under:-

â??11â?|â?|that the employees were entitled to wages, fort the post against which they had discharged their duties. In the above view of the matter,

we are of the opinion, that it would be iniquitous and arbi-trary for an employer to require an employee to re-fund the wages of a higher post, against

which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.â??

16. In view of the aforesaid discussion, the writ petition is allowed and the respondents are directed to grant the pay-scale of tailor to the petitioner

since the date of his appointment along with revisions that have been carried out from time to time along with consequential benefits.

17. However, the actual monetary benefits shall be limited to a period of three years prior to the date of filing of the Original Application i.e. since 1st

March, 2010, as the same came to be filed on 27th February, 2013.

18. These directions be complied with within 90 days, failing which, the petitioner shall be entitled to interest at the rate of 6% per annum.

19. For compliance, to come up on 12.11.2021.