

(2018) 08 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No.1193 of 2017(O&M

HVPNL, Panchkula and others

APPELLANT

Vs

Smt. Sheelawanti

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Citation : (2018) 08 P&H CK 0001

Hon'ble Judges : KRISHNA MURARI, CJ;ARUN PALLI, J

Bench : Division Bench

Advocate : Puneet Jindal, Varun Goyal

Final Decision : Dismissed

Judgement

1. For the reasons stated in CM-2472-LPA-2017, delay of 61 days in filing the appeal is condoned and application stands disposed of.

2. This intra-Court appeal under Clause X of the Letters Patent has been filed by the appellants/respondents in writ petition challenging the judgment

and order dated 08.02.2017 passed by learned single Judge allowing the writ petition with a direction to the appellants to pay entire arrears of salary

for the promotional post.

3. We have heard Mr. Puneet Jindal, learned senior counsel appearing for the appellants.

4. Facts relevant for the purposes of the present case, in a nutshell, can be summarised as under.

5. Services of the husband of respondent herein while in service of the erstwhile Haryana State Electricity Board were terminated on 16.10.1992. The

termination order was challenged by him by filing a civil suit which was decreed by trial court vide judgment and decree dated 21.04.1997. The

termination order was set aside and the defendants in the suit (appellants herein) were directed to give all consequential benefits. The said judgment and decree was maintained up to the Honâ??ble Supreme Court.

6. After reinstatement, the husband of the respondent was again served with a charge-sheet based on the same charges which was challenged before

this Court by filing CWP No.15771 of 2002 which was allowed vide judgment and order dated 25.08.2003 and the charge-sheet was quashed. The

judgment attained finality as it was not challenged. While this litigation was going on, a number of employees junior to husband of respondent were

regularised. He again had to file a civil suit claiming regularisation from the date the services of his juniors were regularised. The suit came to be

dismissed on 05.02.2009. The said dispute travelled to this Court in the form of RSA-1315-2011. However, in the meantime, husband of the

respondent died during the pendency of the first appeal before the lower Appellate Court. During the pendency of appeal, the appellants passed an

order regularising the services of the respondentâ??s husband with effect from 24.09.1992, the date from which his juniors were regularised.

Resultantly, a statement was made in second appeal that in view of order passed by competent authority, the appellants did not intend to press the

appeal any further and the same be disposed of as having been rendered infructuous with liberty to pursue other remedies available in accordance

with law. The RSA was disposed of in terms of the above statement made on behalf of appellants.

7. After disposal of RSA, a representation was made by respondent herein claiming that among other reliefs her husband was also entitled to be

promoted from the date his juniors were promoted. By means of the order impugned in the writ petition dated 27.08.2014, the husband of the

respondent was given deemed promotion on notional basis as Assistant Foreman with effect from 18.09.1997, as Foreman from 10.05.2003 and

thereafter as Junior Engineer with effect from 10.09.2008, which were the dates when persons immediately junior to him were promoted to the said

post. Relief prayed for in the writ petition was that actual benefits were liable to be given with effect from the date the promotions were made.

8. The learned single Judge, finding that husband of the respondent herein was entitled to be paid actual benefits, allowed the writ petition and

commanded the respondents to pay the arrears within three months from the date of receipt of certified copy of the order. It is this order of the

learned single Judge which has been assailed in the present appeal.

9. Shri Jindal, learned senior counsel for the appellants, has vehemently contended that husband of the respondent was given notional promotion but

actual benefits in terms of salary and other allowances were not paid for the reason that he had not worked during this period. It is further submitted

that on the principle of "no work no pay" he is not entitled for the said payments. Reliance in support of the contention has been placed on a

judgment of the Hon'ble Apex Court in Gurpal Singh vs. High Court of Judicature of Rajasthan, (2012) 13 Supreme Court Cases 94. In the said

case after considering the facts and circumstances, the Hon'ble Apex Court held that petitioner therein was entitled to full pay and allowances

from the date of the judgement rendered by the Delhi High Court. However, in case of promotion, it was held that the petitioner was entitled to be

considered for promotion notionally from the date when an officer junior to him was promoted. Relying upon the aforesaid observations of the

Hon'ble Apex Court in the said judgment, it has been contended that in the case in hand also the husband of the respondent was rightly given

notional promotion and he was not entitled for payment of actual benefits.

10. We are of the considered opinion that the judgment relied upon by learned senior counsel for the appellant s, for the proposition urged before us, is

not at all applicable inasmuch as the aforesaid directions were issued by the Hon'ble Apex Court in the facts of that case and no ratio was laid

down to be followed in all other cases.

11. On the contrary, learned single Judge while allowing the writ petition has placed reliance upon a later judgment of the Hon'ble Apex Court in

the case of Ramesh Kumar vs. Union of India and others, AIR 2015 SC 2904 wherein after considering the principle of "no work no pay" and

certain other earlier judgments it has been observed as under :-

"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."

After considering the law on the subject, the ratio of the said judgment is contained in paragraph 13 of the Reports which is quoted hereinbelow:

"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 alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

12. The Honâ??ble Apex Court has made a categorical observation, which has been quoted hereinabove, that the principle of â??no work no

payâ?? would not be attracted where respondents were at fault in not considering the case of the appellant for promotion and in not allowing the

appellant to work on the post carrying a higher pay scale. Applying the aforesaid ratio laid down by the Honâ??ble Apex Court, we find that learned

single Judge , in the facts and circumstances of the case, has rightly allowed the writ petition and no fault can be found with the impugned judgment

which may require any interference.

13. The LPA is devoid of merits and accordingly stands dismissed.

14. No order as to costs.