
(2009) 11 P&H CK 0001
In the Punjab And Haryana At Chandigarh

Mrs. Ranbir Gujral

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Citation : (2010) 157 PLR 257

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Though the petitioner had filed this writ petition claiming number of reliefs but now the issue has narrowed down and the present writ petition has been pressed only for payment of salary to the petitioner for a period she had officiated as Principal of Regional Teachers Training Institute.

2. After passing Matric and Intermediate, the petitioner had joined the Nursing Training Course at Rajendera Hospital, Patiala. Having completed the course, she was registered as Midwife. Subsequently, she passed B.Sc. Nursing from Post Graduate Medical & Research Education Institute, Chandigarh. She was promoted as Ward Sister and Sister Tutor and was appointed in School of Nurses General Hospital, Bhiwani on 22.1.1972. While studying the course of M.Sc. Nursing, the petitioner was promoted as District Public Health Nurse in November, 1980. Though she was holding this post as a substantive one, she was detailed to officiate as Principal of Regional Training Institute (Center) Barwala at Fatehabad on 12.6.1984. Copy of this order is placed on record as Annexure P-4. The petitioner in this manner had continued to officiate as Principal of the Institute up to 10.12.1992, when she was posted to perform the duty of her substantive post. On this basis, it is pleaded that the petitioner would be entitled to salary of Principal for the period she had officiated the said post. This prayer of the petitioner, however, is strongly opposed by the State.

3. Mr. Rathee in this regard would refer to Rule 4.13 of Punjab Civil Services

Rules (hereinafter referred to as "Rules") as applicable to the State of Haryana to urge that the petitioner would not be entitled to any pay and allowances in addition to her pay for the post, which she was substantially holding. In addition, the counsel would also point out to Annexure R-7 to show that the prayer of the petitioner was rejected on 20.9.1988 but this order has not been challenged either in the writ petition or otherwise. In the absence of this challenge, as per the counsel, this part of the prayer as now pressed cannot be granted. The State counsel has otherwise also argued that the petitioner is not eligible to be promoted to the post of Principal and this post was required to be filled by direct recruitment and not by promotion. Accordingly, he pleads that prayer for grant of pay and allowances for the period the petitioner had officiated as Principal cannot be allowed.

4. In support of the claim of the petitioner, the counsel has relied upon the judgment in the case of Smt. P. Grover v. State of Haryana 1983 (2) SLR 734. It has been held by the Hon'ble Supreme Court that if promotion is on acting basis then the officer is entitled to salary of such higher post. Refusal of salary in this case was held illegal. Counsel has referred to the case of Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, to say that any condition, which is unsustainable cannot be imposed and if done would be in violation. This would be in response to the plea raised by the State that the petitioner had agreed to work and salary of her own post when she was made to officiate as Principal. Reference is also made to Balbir Singh Dalai and Ors. v. State of Haryana and Anr. 2002 (3) RSJ 530. In this case, it is held that once a person is appointed to hold full charge of the duties of the higher post, even in addition to duties of his own post, he has to be allowed pay admissible as he is entitled to officiate in the higher post.

5. The question thus to be seen is whether the petitioner would be entitled to the pay scale applicable to the case that of Principal of College on the ground that she has been made to officiate on the said post. The ratio of the law laid down in the case of P. Grover (supra) apparently is not applicable to the facts of the present case. That was a case of acting promotion and not of officiating charge. The petitioner has not been given any acting promotion in this case. Rather the case of the respondent is that the prayer made by the petitioner would be against the provisions of Rule 4.13. This rule provides as under:

4.13 (1) Subject to the provisions of rules 4.22 and 4.23, 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 of those 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 or would hold a lien had his lien not been suspended:

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 would hold a lien had his lien not been suspended, or on a scale of pay identical therewith.

6. Even in the case of Balbir Singh Dalai (*supra*), the petitioners therein were granted current duty charge for doing the work of the post of Sub Divisional Officers, which are the promotional posts of the feeder cadre being Junior Engineers. Subsequently, they were promoted on regular basis to that post. Their claim of pay for the promoted post was made on the ground that they had performed the duties of the said post on being appointed as a current duty charge. That is also a different situation than one is prevailing in the present case. Rule 4.13 clearly provides that Government employee, who is appointed to officiate on a post shall not draw pay higher than that his substantive pay in respect of a permanent post unless the post in which he is appointed to officiate is one of those 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 the tenure post. The petitioner has not placed any material on record to satisfy the requirement of this Rule, which would entitle her to claim pay for that period for the post for which she was made to officiate. Since the claim of the petitioner is not being declined on the ground that any condition was imposed while requiring her to officiate on this post, the ratio of the law laid down in the case of Hari Om Sharma and Ors. (*supra*) would not call for any discussion. This limited claim thus made and pursued by the petitioner cannot be granted.

The writ petition is dismissed.