

Ramesh Chander Vs. State of Haryana and Others

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Court : Punjab and Haryana

Decided On : Aug-19-2013

Appellant : Ramesh Chander

Respondent : State of Haryana and Others

Judgement :

IN THE PUNJAB & HARYANA HIGH COURT, CHANDIGARH Civil Writ Petition No.11667 of 2010 Date of decision:

19. 08.2013 Ramesh Chander Petitioner Versus State of Haryana and others Respondents CORAM: HON'BLE Mr.JUSTICE RAJIV NARAIN RAINA Present: Mr.R.K.Arora, Advocate, for the petitioner.

Mr.Sunil Nehra, Sr.DAG, Haryana ***** 1.

To be referred to the Reporters or not?.

2. Whether the judgment should be reported in the Digest?.

RAJIV NARAIN RAINA, J.

(Oral) Mr.Arora presses his alternative prayer for grant of relief of pay scale and salary of the higher post of Store Purchase Officer (SPO) from the date when the petitioner was given current duty charge of the post though in his own pay scale and with the rider that he would not claim seniority or any other service benefits on

this account.

With the passing of the order dated 1st December, 1998, the petitioner discharged full duties and responsibilities of the higher post of SPO.

He continued to discharge those duties till 11.6.2006 when the CDC charge was withdrawn from the petitioner.

When the current duty charge was withdrawn from the petitioner, he approached this Court by filing CWP No.13035 of 2006.

Vide order Kumar Paritosh 2013.08.23 14:42 I agree to specified portions of this document CWP No.11667 o

2. dated 19.12.2006, a Division Bench of this Court disposed of the writ petition with liberty to the petitioner to approach the respondents for relaxation of the eligibility condition for promotion to the higher post, in accordance with the Rules.

In the process of complying with the directives of the Court, the respondent department granted relaxation to the petitioner vide order dated 21.7.2009 (P-8) where after he was promoted to the post of Store Purchase Officer on regular basis.

The petitioner retired from service on reaching the age of superannuation on 31.10.2009.

Mr.Arora very fairly does not press his case for regular promotion for the period he held the current duty charge since during that period, he, admittedly, was not qualified.

It was, later on, that the relaxation was granted by the government and he was promoted to the higher post substantively.

However, for the pay scale of the higher post and salary, Mr.Arora claims the same on the basis of the actual value of services performed and relies on a decision of the Full Bench of this Court in Subhash Chander v.

State of Haryana, 2012 (1) Rs.442 to urge that where an employee is appointed to officiating post involving discharge of duties and responsibilities of greater importance, then, those attaching to the lower post substantively held, the current duty charge-employee would be entitled to salary of his officiating post in the higher grade.

This will be true where the current duty charge is given to an employee with independent charge and responsibility to shoulder and discharge duties of greater importance, especially having served for a substantial period from 1998 to 2006, the length of CDC service itself ipso facto giving rise to a presumption of discharge of full fledged officiating authority though with no right to hold the post.

The petitioner, in the considered view of this Court, will be entitled Kumar Paritosh 2013.08.23 14:42 I agree to specified portions of this document CWP No.11667 o

3. to difference of arrears of salary calculated in the pay scale of the post of Store Purchase Officer.

On the other hand, Mr.Nehra submits that the petitioner accepted the order dated 1st December, 1998 without demur and did not press his claim till he filed the present writ petition.

He would, therefore, be bound by the terms of the order and would not be entitled to any other service benefits on account of CDC.

Heard learned counsel for the parties.

There is substance in the argument of Mr.Arora based on the decision of the Full Bench of this Court in Subhash Chander v.

State of Haryana, the terms of CDC and the rider put in the order cannot take away the burden of the State to pay salary of the higher post after having used the petitioners services as a Store Purchase Officer permitting him to exercise full authority and discharge duties and responsibilities of the promotional post over a long period of time.

The origin of the entitlement to higher pay scale in such circumstances lies on the well accepted principle of quantum meruit.

In this view of the matter, this court is of the view that the petitioner would also have also a legitimate expectation that he will be entitled to the higher pay on discharge of duties of higher office and that the fetters in the CDC order cannot be construed as binding in a case where charge of current duty is spread over 8 long years. After all, the qualification rule was ultimately relaxed in favour of the petitioner to earn him promotion to the CDC post itself which could have been so done in 1998 itself or any time thereafter and not to have waited so long.

Consequently, this writ petition is partly allowed.

A mandamus is issued to the respondents to calculate and pay the difference of arrears of Kumar Paritosh 2013.08.23 14:42 I agree to specified portions of this document CWP No.11667 o

4. salary to the petitioner for the period he actually worked on current duty charge on the post of Store Purchase Officer.

Let the monetary benefits under this order be paid to the petitioner within a period of 3 months from the date of receipt of a copy of this order.

No costs.

(RAJIV NARAIN RAINA) August 19, 2013 JUDGE Paritosh Kumar Kumar Paritosh 2013.08.23 14:42 I agree to specified portions of this document

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