

as a party to the proceedings before him and afford him reasonable and adequate opportunity to project the case on behalf of the Company (in liquidation). Respondent no. 2 shall not proceed to sell any of the properties/assets of the company (in liquidation) without hearing the Official Liquidator till he decides the question of the status of the property of the Company (in liquidation). The Official Liquidator shall keep this Court informed about the proceedings before respondent no. 2.

(27) With the aforesaid directions and observations, this petition is disposed of.

R.N.R.

Before M.M. Kumar and Jitendra Chauhan, JJ.

KANWALJEET SINGH,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 14790 of 2007

14th August, 2008

Constitution of India, 1950—Art. 226—Non-consideration of case for promotion to rank of Sub Inspector—High Court directing to decide representation—Retrospective promotion granted—Claim for payment of arrears for ante-dated promotion—Denial of—Challenge thereto—Principle of ‘no work no pay—Not applicable in such a case—No fault of petitioner—Inequitable to first deny promotion for more than three years and then also to deny arrears of salary—Petition allowed—Petitioner held entitled to arrears of salary.

Held, that in cases where the respondents have wrongly denied due promotion to their employee then in that eventually he should be given full benefit including monetary benefit and the principle of ‘no work no pay’ would not govern the issue. Applying those principles

to the facts of the present case it becomes evident that the petitioner being senior was entitled to be considered for promotion in July, 2003 along with his juniors but the respondents failed to do so. On the filing of representation by him and issuance of direction by this Court, his case has been decided. Accordingly, he has been given retrospective promotion with effect from 30th July, 2003 as Sub Inspector. There is no intervening factor imputing any fault to the petitioner providing a factor, which may result in reducing or denying the arrears of salary to the petitioner. It would be inequitable to first deny him promotion for more than three years and then also to deny him the arrears of his salary. The principle of 'no work no pay' would not be attract to the facts of the present case. Accordingly, the order dated 8th March, 2007 is liable to be set aside to the extent it denies the arrears of salary for the ante-dated promotion.

(Para 5)

C.L. Katyal, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana, *for the respondents.*

M.M. KUMAR, J.

(1) The petitioner has been promoted on List 'E',—*vide* order dated, 8th March, 2007 (P-2) with effect from 30th July, 2003, passed by the respondents. Accordingly, he stands promoted to the rank of officiating Sub-Inspector with effect from the aforementioned date. The petitioner has challenged the order to the extent it stipulates non-payment of arrears for the ante-dated promotion, which are restricted only with effect from 20th February, 2007.

(2) Brief facts of the case necessary for disposal of the writ petition are that the petitioner was initially appointed as Assistant Sub-Inspector in the Haryana Police in the Ist Battalion H.A.P. at Ambala on 12th July, 1999. In July 2003, ASIs of H.A.P., who were junior to the petitioner, were promoted to the rank of Sub Inspector with effect from 30th July, 2003. It is appropriate to mention that the petitioner was temporarily transferred to Ambala Range, District Panchkula but he was repatriated on 16th July, 2006. The case of the petitioner for promotion

to the rank of Sub-Inspector was not considered probably for the reason that he was temporarily transferred to Ambala Range (Panchkula). He represented to the Inspector General of Police, H.A.P. Madhuban, claiming that as per seniority he was entitled to grant of promotion to the rank of Sub Inspector because persons junior to him were promoted. He had also claimed all consequential benefits. When the claim of the petitioner was not considered, he filed C.W.P. No. 1600 of 2007. The writ petition was disposed of on 1st February, 2007 with the directions to the respondents to decide the petitioner's representation. On 8th March, 2007, the claim of the petitioner was accepted with the stipulation that he was not to be entitled for the monetary benefits from 30th July, 2003, which were to be admissible to him from 20th February, 2007.

(3) In response to the notice of motion having been issued, the respondents have filed the reply by pleading the principle of 'no work no pay'. However, it is not disputed that the petitioner has been granted ante-dated promotion with effect from 30th July, 2003. Obviously, the aforementioned date is the date of promotion of the juniors of the petitioner.

(4) Having heard learned counsel for the parties we are of the considered view that this writ petition deserves to succeed. The petitioner was illegally denied promotion with effect from the date persons junior to him were given promotion. In para 2 of the writ petition the petitioner has asserted that when he was transferred to Ambala Range from H.A.P. Ist Battalion, Ambala City, ASIs junior to him in seniority in his cadre of H.A.P. were promoted to the rank of Sub-Inspector and his case was not considered. The averments made in para 2 of the writ petition have not been denied in the corresponding para of the written statement. In other words, it is conceded position that the rightful claim of the petitioner was denied to him for a period of more than three years. The petitioner suffered on account of his non-promotion and is also made to suffer by the stipulation in his promotion order by refusing to give him arrears of salary. The suffering of the petitioner in this manner cannot be countenanced. It is not a case where there was dispute regarding seniority and promotion could not have been given because of uncertainty on the issue of seniority as per the law laid down by

Hon'ble the Supreme Court in the case of **State of Haryana versus O.P. Gupta (1)**. However, Hon'ble the Supreme Court in the case of **State of Kerala versus E.K. Bhaskaran Pillai, (2)**, has held that the principle of 'no work no pay' cannot be regarded as a rule of thumb and grant of full back wages in certain eventualities is inoperative particularly when promotion is wrongly denied. In para 4, their Lordships' have made reference to various judgments rendered by the Supreme Court in the case of **Paluru Ramkrishnaiah versus Union of India, (3)** ; **Virender Kumar versus Avinash Chndra Chadha, (4)** ; **A.K. Soumini versus State Bank of Travancore, (5)** ; **Union of India versus Tarsem Lal, (6)** ; **Union of India versus K.V. Jankiraman, (7)** ; **State of A.P. versus K.V.L. Narasimha Rao, (8)** ; **Vasant Rao Roman versus Union of India (9)** ; **State of U.P. versus Vinod Kumar Srivastava (10)** ; and **O.P. Gupta's** case (supra) and held as under :—

“.....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

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- (1) (1996) 7 S.C.C. 533
 - (2) (2007) 6 S.C.C. 524
 - (3) (1989) 2 S.C.C. 541
 - (4) (1990) 3 S.C.C. 472
 - (5) (2003) 7 S.C.C. 238
 - (6) (2006) 10 S.C.C. 145
 - (7) (1991) 4 S.C.C. 109
 - (8) (1999) 4 S.C.C. 181
 - (9) 1993 Supp. (2) S.C.C. 324
 - (10) (2006) 9 S.C.C. 621

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.” (emphasis added)

(5) It is, thus, evident from the aforementioned principle that in cases where the respondents have wrongly denied due promotion to their employee then in that eventuality he should be given full benefit including monetary benefit and the principle of ‘no work no pay’ would not govern the issue. Applying those principles to the facts of the present case it becomes evident that the petitioner being senior was entitled to be considered for promotion in July 2003 alongwith his juniors but the respondents failed to do so. On the filing of representation by him and issuance of direction by this court in C.W.P. No. 1600 of 2007, decided on 1st February, 2007 (P-1), his case has been decided. Accordingly, he has been given retrospective promotion with effect from 30th July, 2003 as Sub Inspector. There is no intervening factor imputing any fault to the petitioner providing a factor, which may result in reducing or denying the arrears of salary to the petitioner. It would be inequitable to first deny him promotion for more than three years and then also to deny him the arrears of his salary. The principle of ‘no work no pay’ would not be attracted to the facts of the present case. Accordingly, the order dated 8th March, 2007 (P-2) is liable to be set aside to the extent it denies the arrears of salary for the ante-dated promotion.

(6) For the reasons aforementioned, this petition succeeds. Order dated 8th March, 2007 (P-2) to the extent it denies the arrears of salary to the petitioner, is hereby quashed. The petitioner is held entitled to the arrears of salary from 1st August, 2003 to 20th February, 2007. All the arrears shall be paid to the petitioner within a period of one month from the date of receipt of a certified copy of this order.

(7) The writ petition stands disposed of in the above terms.

R.N.R.