

*Before Tejinder Singh Dhindsa, J.*

**DEEPSINGH SAHOTA—Petitioner**

*versus*

**STATE OF PUNJAB AND ANOTHERS—Respondents**

**CWP No. 19580 of 2001**

July 03, 2013

*Constitution of India, 1950 - Art. 226 - Writ Jurisdiction - Service Law - Petitioner given current duty charge of higher post and discharged duties as such till attaining the age of superannuation - Claimed pay and emoluments of higher post and challenged deduction from gratuity by the State Government sought to be made after appointment to the said post set aside by the High Court - Held, an employee called upon by the State Government to work against higher post would be entitled to pay and emoluments of such post - Writ Petition allowed*

*Held*, that the question as regards entitlement to the pay and emoluments in relation to a higher post against which the employee has discharged his duties, be it on an officiating basis, is no longer res-integra. It is by now well settled that an employee who has been called upon by the State Government to work against the higher post would be entitled

to the pay and emoluments of such post. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in " Smt. P.Grover v. State of Haryana and another", AIR 1983 SC 1060. As such, there would be no justifiable basis with the State Government to deny to the petitioner the pay and emoluments of the post of Director, Agriculture for the period 30.11.1999 to 31.12.2000 as he has admittedly discharged the duties of such post during such period. On the same very reasoning, even the deduction of the amount of `16,380/- cannot sustain. Even though the order of regular promotion of the petitioner, dated 19.7.2000, had been set aside by a Division Bench of this Court on 10.10.2000 in Civil Writ Petition No.9362 of 2000, yet there is no escape from the fact that the petitioner had worked against the higher post for the period in question.

(Para 5)

*Further held*, that for the reasons recorded above, the petition is allowed. The petitioner is held entitled to the pay and allowances of the post of Director for the period he had worked on such post i.e. from 30.11.1999 to 31.12.2000 with all consequential benefits. Even the deduction of `16,380/- from the gratuity of the petitioner is held to be bad and such amount shall stand refunded to him. Let these directions be carried out within a period of two months from the date of receipt of a certified copy of this order.

(Para 8)

K.S. Khchar, Advocate, *for the petitioner*.

Pankaj Mulwani, Deputy Advocate General, Punjab.

### **TEJINDER SINGH DHINDSA, J.**

(1) Factually, it is not disputed that the petitioner while working as Deputy Director in the Department of Agriculture, State of Punjab was given the current duty charge of the post of Director w.e.f. 30.11.1999. Subsequently, vide order dated 19.7.2000, the petitioner was promoted to such post on regular basis in the pay scale of Rs. 18600-22100. The order of regular promotion of the petitioner to the post of Director dated 19.7.2000 came to be impugned by filing Civil Writ Petition No.9362 of 2000, titled as "Dr.Mewa Singh Sonar v. State of Punjab and another". A Division

Bench of this Court on 10.10.2000 set aside the regular promotion of the petitioner to the post of Director taking notice of the stand of the State Government that the matter was under re-consideration of the State Government. However, it was directed that since the private respondent therein (present petitioner) had been holding the current duty charge of the post of Director even prior to the passing of the regular promotion order, he would continue to hold such charge till regular selection is made by the State Government. Petitioner as such continued to hold the current duty charge of the post of Director till he attained the age of superannuation on 31.12.2000.

(2) The instant writ petition has been filed raising a claim that since the petitioner had discharged the duties of the post of Director from 30.11.1999 to 31.12.2000 (including the period 19.7.2000 to 9.10.2000 on regular basis), he was entitled to the pay and emoluments of the post of Director with all consequential benefits. Further challenge in the petition is to the action of the respondent-authorities in having made a deduction of an amount of Rs.16,380/- purportedly on account of the order of regular promotion to the post of Director, dated 19.7.2000 having been set aside by this Court in Civil Writ Petition No.9362 of 2000.

(3) The claim of the petitioner has been resisted by the State in terms of adverting to the order dated 3.11.2000 at Annexure P4 whereby a stipulation had been entered that the petitioner was being given the current duty charge of the post of Director, Agriculture, Punjab without any extra remuneration. In a nut-shell, the stand of State Government is that since the petitioner has been given the current duty charge of the higher post in addition to his own duties while holding the substantive post of Joint Director, Agriculture, he was not entitled to any extra remuneration. Still further, the deduction of Rs.16,380/- was justified on the basis that the regular promotion order having been set aside, the petitioner was not even entitled to the pay scale admissible to the post of Director against which he had worked on a regular basis for the period 19.7.2000 to 9.10.2000.

(4) Learned counsel for the parties have been heard at length and pleadings on record have been perused.

(5) The question as regards entitlement to the pay and emoluments in relation to a higher post against which the employee has discharged his duties, be it on an officiating basis, is no longer res-integra. It is by now well settled that an employee who has been called upon by the State Government to work against the higher post would be entitled to the pay and emoluments of such post. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in "*Smt. P. Grover versus State of Haryana and another*" (1). As such, there would be no justifiable basis with the State Government to deny to the petitioner the pay and emoluments of the post of Director, Agriculture for the period 30.11.1999 to 31.12.2000 as he has admittedly discharged the duties of such post during such period. On the same very reasoning, even the deduction of the amount of Rs.16,380/- cannot sustain. Even though the order of regular promotion of the petitioner, dated 19.7.2000, had been set aside by a Division Bench of this Court on 10.10.2000 in Civil Writ Petition No.9362 of 2000, yet there is no escape from the fact that the petitioner had worked against the higher post for the period in question.

(6) The heavy reliance placed by the learned counsel appearing for the State upon the stipulation contained in the order vesting the current duty charge of the post of Director, Agriculture to the effect that he would not be entitled to any extra remuneration, is wholly mis-conceived. The Government in its capacity as a model employer cannot be permitted to raise such an argument and to enforce such a condition whereby, on the one hand, it is putting an official to discharge the duties on higher posts with greater responsibility and, on the other hand, seeking to deny him his entitlement to the salary of such post. A similar issue came up for consideration before the Hon'ble Supreme Court in "*Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma*" (2), wherein the respondent had been promoted as Junior Engineer-I in the year 1990 and had been continuing on that post without being paid salary for the post, and the State had chosen to deny emoluments of such post on account of an undertaking having been given by him that on account of such promotion given purely on stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. Holding the respondent to be entitled

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(1) AIR 1983 SC 1060

(2) 1998(3) S.C.T. 90

to the pay and emoluments of the higher post against which he had been called upon to officiate as a stop-gap arrangement, it was observed in the following terms:

*".....An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy."*

(7) As such, the stipulation on which reliance has been placed on behalf of the State to deny the petitioner the pay and emoluments of the post of Director for the period in question is of no consequence.

(8) For the reasons recorded above, the petition is allowed. The petitioner is held entitled to the pay and allowances of the post of Director for the period he had worked on such post i.e. from 30.11.1999 to 31.12.2000 with all consequential benefits. Even the deduction of '16,380/- from the gratuity of the petitioner is held to be bad and such amount shall stand refunded to him. Let these directions be carried out within a period of two months from the date of receipt of a certified copy of this order.

(9) In the light of the facts of the present case, the petitioner is also held entitled to interest @ 6% per annum from the date of filing of the present writ petition till the date of actual disbursement.

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*S. Gupta*