Before G.S. Singhvi & M.M. Aggarwal, JJ.

STATE OF HARYANA,—*Appellant*

versus

BANI SINGH YADAV,—*Respondent*

L.P.A NO. 9 OF 2002

22nd November, 2004

Constitution of India, 1950-Art. 226—Punjab Government National Emergency (Concession) Rules, 1965 (as applicable to the State of Haryana)—Haryana Government Notifications dated 22nd March, 1976 and 9th August, 1976 amending Rules 4(ii) and 2 of 1965 Rules—Appointment of respondent as Clerk after rendering military service of 5 years—Claim for grant of benefit of military service—Government rejecting the claim in view of the amendments made in the Rules—Supreme Court declaring the amended Rules 4(ii) and 2 to be ultra vires and granting benefit of military service—Government granting deemed date as promotion of Assistant and benefit of annual increments to respondent—Denial of arrears of pay on the plea that respondent had not worked on the post of Assistant—Rule of 'no work no pay'—Whether applicable in such a case—Held, no—Respondent making representation immediately after joining the service—Government keeping the representation pending till the amendment of Rules—Government cannot take advantage of its own wrong—Respondent never showed unwillingness to work on the post of Assistant—Respondent held to be entitled to the arrears of pay and allowances.

Held, that the rule of 'no work no pay' is ordinarily applicable to a case in which the employee voluntarily abstains from work and not to a case where he is prevented from doing work by a positive act or omission of the employer. To put it differently, the rule of 'no work no pay' cannot be applied to a case in which the employee is kept away from duty or is prevented or rendered ineligible to discharge duties of the particular post by an act or omission of the employer. The learned single Judge did not commit any error by declaring that the appellant cannot take advantage of its own wrong and by quashing order dated 6th September, 1985 to the extent of denial of arrears of pay and allowances to the respondent for the period from 5th February, 1974 to 7th February, 1979.

(Paras 9 & 19)

Jaswant Singh, Senior Deputy Advocate General, Haryana, for the appellant.

Amit Jain, Advocate, for the respondent.

JUDGEMENT

G.S. SINGHVI, J.

(1) This appeal is directed against order dated 16th July, 2001 passed by the learned Single Judge,—*vide* which he allowed the writ petition filed by respondent—Bani Singh Yadev and quashed the decision of the State Government not to pay him the arrears of salary for the period from 5th February, 1974 to 7th February, 1979 and declared that he shall be entitled to arrears with effect from 5th February, 1974.

(2) The respondent joined Indian Army on 26th October, 1962. He was relieved from the Army on 30th December, 1967. After one year and 9 months, he was appointed as *ad hoc* Clerk in Civil Secretariat, Haryana,—*vide* order dated 22nd September, 1969. His services were regularised on that post with effect from 25th January, 1973. He was promoted as Assistant with effect from 7th February, 1979. In the meanwhile, he made representations for grant of the benefit of military service in accordance with the provisions of the Punjab Government National Emergency (Concession) Rules, 1965 (for short, the Rules), as applicable to the State of Haryana. *Vide* letter dated 31st August, 1976, the concerned authority informed him that he cannot be granted the benefit of military service in view of the amendments made in the Rules,—*vide* Haryana Government notifications dated 22nd March, 1976 and 9th August, 1976. He challenged the decision of the State Government in C.W.P. No. 5717 of 1976 which was dismissed by this Court on 18th March, 1980. The order of the High Court was reversed by the Supreme Court in S.L.P. No. 2550 of 1980 which was disposed of on 5th September, 1984 along with other similar cases. Their Lordships of the Supreme Court declared Rule 4(ii) and Rule 2 of the Rules, as amended by Haryana Government notification dated 22nd March, 1976 and 9th August, 1976 to be *ultra vires* to the Constitution and directed the appellant to prepare the seniority list of the writ petitioner afresh after taking into consideration the military service rendered by him.

(3) In the purported compliance of the direction given by the Supreme Court, the Government of Haryana,—*vide* its order dated 24th June, 1985 granted the benefit of military service i.e., 5 years and 2 days to the respondent and ante-dated his appointment to the post of Clerk with effect from 20th November, 1967. By another order dated 29th July, 1985, date of his promotion to the post of Assistant was ante—dated to 5th February, 1974. Thereafter,—*vide* order dated 6th September, 1985, the State Government granted him the benefit of annual increments on the basis of his deemed date of promotion as Assistant, i.e., 5th February, 1974 but denied the arrears of pay and allowances for the period from 5th February, 1974 to 7th February, 1979 on the ground that he had actually not worked as Assistant during that period.

(4) The respondent challenged order dated 6th September, 1985 to the extent of denial of arrears of pay and allowances for the period from 5th February, 1974 to 7th February, 1979 in C.W.P. No. 3601 of 1987 by contending that the government cannot take advantage of its own wrong of not giving him the benefit of military service in terms of the Rules as they stood prior to the amendments of 22nd March, 1976 and 9th August, 1976.

(5) The appellant contested the writ petition by asserting that the petitioner (respondent herein) is not entitled to the benefit of arrears because he had not worked on the post of Assistant from 5th February, 1974 to 7th February, 1979.

(6) The learned Single Judge relied on an earlier Judgment of this Court in **Charan Dass** *versus* **State of Punjab (1),** and held that the government cannot take advantage of its own wrong by first not giving promotion to the writ petitioner (respondent herein) by taking into consideration the service rendered by him in the army and then denying him the pay and allowances from the deemed date of promotion.

(7) Shri Jaswant Singh, learned Senior Deputy Advocate General fairly admitted that immediately after joining the post of Clerk, the respondent had represented for grant of the benefit of military service and that the matter was kept pending till the amendment

(1) 1980 (3) S.L.R. 702

of Rules 4 and 2,—*vide* Haryana Government notifications dated 22nd March, 1976 and 9th August, 1976 and then his claim was rejected by relying on the amended provisions. He also admitted that in compliance of order dated 5th September, 1984 passed by the Supreme Court the respondent's appointment on the post of Clerk was ante-dated from 22nd September, 1969 to 20th November, 1967 and his promotion to the post of Assistant was ante-dated from 7th February, 1979 to 5th February, 1974 by giving him the benefit of military service, but argued that he is not entitled to arrears of pay and allowances because he had not worked on the post of Assistant from 5th February, 1974 to 7th February, 1979 and the learned Single Judge committed a serious error by directing the payment of arrears to the respondent with effect from 5th February, 1974 ignoring the principle of 'no work no pay'.

(8) Shri Amit Jain, learned counsel for the respondent argued that the learned Single Judge did not commit any error by directing the appellant to pay arrears of pay and allowances to the respondent with effect from 5th February, 1974 because the appellant had illegally deprived the benefit of military service to the respondent. Shri Jain relied on the judgments of this Court in **Sudershan Kumar** *versus* **The State of Haryana and another (2), Avtar Singh** versus **State of Haryana and another (3), Vijay Kumar Verma** *versus* **State of Haryana and others (4), Himmat Singh** *versus* **State of Punjab and others (5),** and **Ram Pal** *versus* **State of Haryana (6),** and argued that the principle of 'no work no pay' cannot be invoked in the respondent's case because he had never shown unwillingness to work on the post of Assistant. He submitted that if the respondent had been promoted to the post of Assistant on due date, he would have immediately joined and discharged duties on that post. Learned counsel submitted that the government cannot advantage of its own wrong by first not giving promotion to the respondent from the due date by taking into consideration his military service and then denying the arrears of pay by invoking the principle of 'no work no pay'.

(2) 1997 (2) R.S.J. 416
(3) 1998 (1) R.S.J. 317
(4) 2002 (3) R.S.J. 694
(5) 2003 (2) R.S.J. 309
(6) 2003 (3) R.S.J. 248

(9) We have given serious thought to the respective arguments. The rule of no work no pay, is ordinarily applicable to a case in which the employee voluntarily abstains from work and not to a case where he is prevented from doing work by a positive act or omission of the employer. To put it differently, the rule of 'no work no pay' cannot be applied to a case in which the employee is kept away from duty or is prevented or rendered ineligible to discharge duties of the particular post by an act or omission of the employer.

(10) The applicability of the aforesaid principle was considered by a learned Single Judge of Kerala High Court in **Alappat Naryana Menon** *versus* **State of Kerala (7).** After taking note of the Judgements of Allahabad, Gujarat amd Myssore High Courts, V. Khalid, J, (as his Lordship then was) laid down the following propositions :—

> "The Government cannot take advantage of a mistake committed by them or an order passed by them in illegal exercise of their power."
>
> "A Government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his. The Governmet's plea that the petitioner was given only a notional promotion is not sustainable in law. What the petitioner got was not a promotion and it is wrong to call this promotion as 'notional' in the context of the peculiar facts and circumstances of this case. The concept of notional promotion cannot enter the realm of discussion in this case. Notional promotion is one which a Government servant gets under particular exigencies of situation, which he claim as of right. Here the petitioner is entitled as of right to get his promotion from 1st April, 1955 and therefore his claim for arrears of salary and other material benefit cannot be denied to him on the plea that what was given to him was only a notional promotion and the policy of the Government is not to give the arrears of salary in such cases."

(11) The same view was reiterated by a Division Bench of Kerala High Court in **Rajappan Nair** *versus* **State of Kerala (8),** in the following words :—

> "It quite often happens that a Government Servant does not get his due promotion on the date he ought to have got it,

(7) 1977 (2) S.L.R. 657
(8) 1984 KLT 141

but later it is given to him with retrospective effect from an earlier date. If for no fault of his, promotion to a Government servant is delayed and it is given to him later with retrospective effect from the date on which it was due, the Govenment servant is naturally entitled to restoration of the benefits which he has lost not on account of his conduct or laches. It is only proper that the Govenment should restore to him all that is lost by way of salary or other emoluments. This is a principle stated by our learned brother Khalid J., in Narayana Menon versus State of Kerala, 1978 K.L.T. 29; a principle concerning which we could not see how any exception could be taken, since the question has been elaborately considered by our learned brother with which we are in respecitful agreement we do no think we should go into this any further."

(12) In **Philomina** *versus* **State of Kerala, (9),** another Division Bench of the Kerala High Court held as under :—

"A distinction must be drawn between cases where a person was unlawfully prevented from working or denied or deprived of his rightful place as a result of an illegal order, the illegality of which was declared by a competent court or is demonstrably manifest and voluntarily admitted by the employer on the one hand, and on the other cases of *bonafide* or innocent errors, which means errors not unreasonalble and wilfully or maliciously committed by the employer. (See the principle stated by Lord Denning M. R. in Education Sec. versus Tameside, (1976) 3 WLR, 641 652-653). In the case of the former, the declaration or admission of illegality may, in given circumstances, wipe out the break in service or the offending act altogether as if it never occurred, and the employee may be entitled to the full benefits of the service which he is in law deemed to have rendered uninterruptedly in the grade in which he was entitled to be, that is not so in the latter where a *bona fide* error or omission in an otherwise valid order made within jurisdiction is subsequently corrected."

(9) 1984 KLT 59

(13) In **Charan Dass versus State of Punjab and another** *(supra),* a learned Single Judge of this Court refused to apply the principle of 'no work no pay' in the cases of retrosepctive promotion and observed :—

> "Once an emplyee is promoted with effect form a retrospective date, he cannot be deprived of the pay and other benefits to which he would have been entitled had he in fact been promoted to the said post on the date on which he has been later promoted. Any condition imposed to the effect that the said employee would not be entitled to the pay and alloweances as a result of the promotion as has been imposed in paragrapgh 2 of the impugned order in this case would be illegal, the reason being that the Government by not promoting such an employee on the date on which he was entitled to be so promoted, cannot take advantage of its own wrong or illegal order in not promoting him and then while conceding the claim of the employee for promotion with retrospective effect it cannot withhold what is due to the said employee on account of such promotion in the matter of pay and allowances."

(14) In **Sudershan Kumar *versus* State of Haryana** *(supra),* a Division Bench of this Court held that the appellant who was not promoted on the due date on account of the pendency of criminal case and was subsequently promoted with retrospecitive effect is entitled to monetary benefits. The proposition of law laid down by the Division Bench reads thus :—

> "It is the admitted position that petitioner had never refused to work on the higher post. Had he refused to work on the higher post in spite of the fact that his promotion and posting order had been issued, it may have been possible for the respondents to contend that petitioner was not entitled to the arrears in the difference of pay on the promoted post. If due to pendency of litigation petitioner was not given the promotion with effect from the due date depriving him of the right to work on the higher post, he cannot be denied the arrears of salary. In a case like the

present one where promotion was denied on account of pendency of litigation and a retrospective promotion is given then the employee would be entitled to the arrears of salary. In such a situation if an employee is promoted from a retrospective date, he should normally deemed to have worked on the higher post entitling him to the payment of arrears of salary."

(15) In **Vidya Parkash Harnal versus State of Haryana (10),** another Division Bench of this Court held as under :—

"Similarly, the argument that the petitioner was not entitled to the grant of emoluments the principle of 'no work no pay' is apparently misconceived based upon wrong notions of law. If a civil servant is not offered the work in which he was legally entitled, he cannot be deprived of the wages for the post to which he subsequently is held entitled to. Permitting such a course to be adopted would be encouraging the imposition of double penalty, this is, firstly by declining the civil servant is right of promotion and secondly by depriving him of the emoluments to which he would have been entitled to upon promotion which subsequently is considered in his favour. Deprivation to work against the post to which a civil servant is entitled on promotion is always at the risk and responsibility of the State and cannot be made a basis or depriving such a civil servant of the emoluments to which he was entitled, had he been promoted in accordance with the rules at the time when he became eligible for such promotion. The courts cannot ignore the magnitude of the sufferings and pain to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this age of skyrocketing prices and non-availability of essential requirements of livelihood. The Court cannot shut its eyes and forget the holocaust of economic deprivation to the petitioner and his dependents. Such a deprivation might have upset the career of the dependents, depriving the society of the Services of such youth and budding

(10) 1995 (3) S.C.T. 785

dependents or children of the petitioner. The executive once being satisfied that a civil servant was entitled to the promotion with retrospective effect cannot deprive him of the benefitsf of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons. The order impugned in this case by which the petitioner/appellant was deprived of his right to claim back wages is admittedly non-speaking without assigning any justification or cogent and specific reason."

(16) The aforesaid decisions have been followed in **Avtar Singh** *versus* **State of Haryana and another** ***(supra);*** **Vijay Kumar Verma** versus **State of Haryana and others (supra); Himmat Singh** *versus* **State of Punjab and others (supra); and Ram Pal** *versus* **State of Haryana** ***(supra)*** and directions were issued to the respondents to give monetary benefits to the petitioners from the deemed date of promotion.

(17) In C.W.P. No. 3709 of 1998—**Daya Nand** *versus* **State of Haryana and another,** decided on 30th July, 1998, another Division Bench of this Court, of which one of us (G. S. Singhvi, J,) was a member, referred to the orders passed in C.W.P. No. 648 of 1985—**Parshadi Lal** *versus* **State of Haryana and another,** decided on 12th July, 1993; C.W.P. No. 16207 of 1995, decided on 12th December, 1996; C.W.P. No. 13788 of 1996 decided on 5th February, 1997; **Mrs. Asha Rani Lamba** *versus* **State of Haryana and others, (11),** C.W.P. No. 245 of 1996—**Nar Singh** *versus* **State,** decided on 9th April, 1996; C.W.P. No.17274 of 1995—**Mam Raj** *versus* **State of Haryana,** decided on 14th May, 1996, C.W.P. No.1234 of 1996, decided on 10th December, 1996; C.W.P. No. 15385 of 1997—**B. R. Sharma** *versus* **State of Haryana and others,** decided on 6th January, 1998, C.W.P. No.10773 of 1997—**Satnam Singh** *versus* **State of Punjab,** decided on 3rd February, 1988 as also the judgments in **Vidya Parkash Harnal** versus **State of Haryana** *(supra)* and **Avtar Singh** *versus* **State of Haryana** *(supra)* and laid down the following proposition :—

"The principle of no work no pay can be invoked by the employer to deny wages or pay to the employee only in

(11) 1983 (1) S.L.R. 400

those cases in which the employee voluntarily abstains from dischargingh the duties assigned to him/her. It cannot be applied in the cases in which the employee/workman is kept away from duty or is prevented or rendered ineligible to discharge duties of a particular post due to an act or omission of the employer."

(18) In **Union of India** *versus* **K. V. Jankiraman, (12),** the Supreme Court unequivocally rejected the plea of the government thta the principle of no work no pay should be applied to all the cases of retrosepective promotion and observed :—

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of no work no pay is not applicable in case such as the present one where the employee although is wiling to work is kept away from work by the authorities for no fault of his this is not a case where the employee retails away from work for his own reasons, although the work is offered to him."

(19) By appliying the ratio of the above noted judgments and orders to the facts of this case, we hold that the learned Single Judge did not commit any error by declaring that the appellant cannot take advantage of its own wrong and by quashing order dated 6th September, 1985 to the extent of denial of arrears of pay and allowances to the respondent for the period from 5th February, 1974 to 7th February, 1979.

(20) In the result, the appeal is dismissed. Interim order dated 8th January, 2002 is vacated. The appellant is directed to release the arrears payable to the respondent within a period of 3 months from today, failing which he shall be entitled to get interest at the rate of 9% from the date of this order.

(21) Copy of the order be given dasti on payment of the fee prescribed for urgent application.

R.N.R.

(12) AIR 1991 S.C. 2010