

Before Kanwaljit Singh Ahluwalia, J.

GIAN SINGH,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP No. 14157 of 1994

18th August, 2010

Constitution of India, 1950—Art.226—Appointment of petitioner as a Clerk—Department recording wrong date of joining of petitioner in seniority list due to mistake—Juniors promoted to post of Senior Assistant—Petitioner submitting repeated representations—Department realizing their mistake granting notional promotion with retrospective effect—Delay in promotion of petitioner—Denial of arrears of pay on ground that petitioner had not actually worked as Senior Assistant—Principle of ‘no work no pay’—Not applicable—No fault on part of petitioner—Petitioner held entitled to arrears of pay and financial benefits from date of his promotion.

Held, that there is no fault on the part of the petitioner. From the first opportunity available, petitioner had been agitating that his date of joining had been wrongly shown in the seniority list and furthermore, his juniors had been promoted but he had been ignored. Finally, the authorities, having realized their mistake, appointed an Enquiry Officer to rectify the grievance and the petitioner was given notional promotion,—*vide* order dated 10th August, 1992 retrospectively with effect from 19th March, 1982. Even if it is assumed that petitioner was not entitled to seniority with effect from 1982, it is case of respondents that petitioner had to be granted notional promotion with retrospective effect. Therefore, it was wrong on the part of the respondents to deny the arrears of pay and financial benefits to the petitioner, which ought to have accrued to him from the date of his promotion.

(Para 13)

R.K. Dadwal, Advocate, *for the petitioner.*

J.S. Puri, Additional Advocate General, Punjab for the State.

KANWALJIT SINGH AHLUWALIA, J.

(1) Petitioner-Gian Singh was posted as a Senior Assistant at Primary Health Centre, Sarhali, District Amritsar. By way of this writ petition, he has assailed the order dated 10th August, 1992 (Annexure P-7), whereby he was promoted to the post of Senior Assistant in the pay-scale of Rs. 570-15-600/20-700/25-950/30-100-1080 retrospectively with effect from 19th March, 1982 notionally. One of the conditions contained in the promotion order was as under :

- “1. He will not be entitled to claim any arrear of pay etc as Assistant from the date of promotion to the date he actually joins duty at his new place of posting as he had not actually worked as Assistant (now designated as Senior Assistant).”

(2) Grievance of the petitioner is that since delay in promotion was caused due to a wrong committed by the official respondents and that there being no fault on his part, he cannot be denied consequential benefits of his promotion, including arrears of pay etc., to which he is entitled with effect from 19th March, 1982, the date on which he was due for promotion. Therefore, by way of present writ petition, quashing of the above said portion of the promotion order (Annexure P-7) has been sought for along with the order dated 29th December, 1992 (Annexure P-8), whereby representation of the petitioner was rejected by the Director, Health and Family Welfare, Punjab. The petitioner has also sought quashing of the order dated 1st June, 1994 (Annexure P-10), whereby it was communicated to him that the Secretary, Health and Family Welfare, Punjab had declined his representation/appeal dated 22nd February, 1993,—*vide* office Memo, dated 18th March, 1994.

(3) This writ petition formulates an important question of law to be answered by this Court, which can be noticed as under :

The principal of ‘no work no pay’, having been recognized and acknowledged by the Courts, whether the same is subject to exceptions for the grant of arrears, monetary and consequential benefits, where notional promotion is granted to an employee with retrospective effect ?

(4) Before an attempt is made to answer this question, it will be necessary to narrate brief facts of the case.

(5) The petitioner avers that he was appointed as a Clerk on 15th May, 1962 on regular basis in the Health and Family Welfare Department in pursuance of his selection by the Subordinate Services Selection Board, Punjab, Chandigarh. On circulation of the seniority list, it surfaced that due to a mistake of the officials of the respondent-Department, the date of joining of the petitioner in the Department was wrongly recorded as 30th November, 1965 and he was placed lower in the seniority list. Immediately thereafter, the petitioner submitted a representation (Annexure P-1) dated 12th February, 1980 to the authorities, the relevant portion of which reads as under :

"It is requested that I joined my duty as a Clerk on 15th May, 1962 in V.J. Hospital, Amritsar on regular basis. But in the seniority list of Clerks and Store keepers my date of appointment has been mentioned as 30th November, 1965. I worked as a Clerk from 15th May, 1962 to 30th November, 1965 duly selected by S.S.S. Board, Punjab Chandigarh. But now the posts of Store Keepers have been encadereed with Clerks. It is therefore requested that date of joining service may kindly be corrected as 15th May, 1962 instead of 30th November, 1965 for which I shall be highly thankful to you."

(6) The representation (Annexure P-1) submitted by the petitioner, in which the above said facts were detailed, was not considered by the authorities and on 19th March, 1982, various officials of the Department, who were junior to the petitioner, were promoted,—vide order (Annexure P-2). This immediately prompted the petitioner to submit another representation (Annexure P-3) on 16th November, 1982. This representation reiterated the fact that date of joining of the petitioner in the Department has been wrongly shown as 30th November, 1965 instead of 15th May, 1962 and due to the fault on the part of the respondents, he has been denied his due promotion. Since the representations (Annexure P-1 and P-3) dated 12th February, 1980 and 16th November, 1982 respectively were ignored, the petitioner was compelled to file an appeal against the seniority list of clerical cadre through proper channel. The appeal so filed has been annexed as Annexure P-4.

(7) It is pleaded in the writ petition that the petitioner had to repeatedly issue reminders to the authorities on 22nd February, 1985 ; 4th August, 1987 ; 8th February, 1989 ; 25th April, 1990 ; 30th July, 1990 ; 25th July, 1991 and 26th November, 1991 for redressal of his grievance.

(8) Finally, the authorities did yield to the continuous correspondence made by the petitioner and appointed Dr. Nasib Chand Mann, Deputy Director (Dental) as an Enquiry Officer, who,—*vide* letter (Annexure P-5) dated 26th November, 1992, called the petitioner for personal hearing. The authorities realized the mistake on their part and corrected the date of joining of the petitioner as 15th May, 1962 instead of 30th November, 1965. As a consequence thereof,—*vide* order dated 10th August, 1992 (Annexure P-7) the petitioner was promoted as Senior Assistant. As stated earlier, the order of promotion stated that promotion of the petitioner was notional and retrospective with effect from 19th March, 1982 but he was not held entitled to arrears of pay etc. as an Assistant from the date of his promotion. The representation and appeal filed by the petitioner were rejected. Details to this effect have already been given in the earlier part of this judgment.

(9) In the written statement, it is stated that the petitioner was appointed as a Storekeeper with effect from 22nd November, 1965 and earlier thereto he had joined on 15th May, 1962 as an Apprentice Clerk at a fixed stipend of Rs. 60 per month and that appointment had no relevance with the regular post and its seniority. It is further stated that the petitioner was not assigned the seniority by counting the service rendered by him as an Apprentice. However, it was not disputed that due to the error on the part of the respondents, promotion orders were not issued, when the juniors to the petitioner were so promoted. Hence, he had to be promoted.—*vide* (Annexure P-7) on 10th August, 1992 retrospectively with effect from 19th March, 1982.

(10) During the course of arguments, no explanation has come forward as to why the petitioner was not promoted on 19th March, 1982 and why his promotion was withheld. This Court is satisfied from the facts that without any fault or mistake on the part of the petitioner, he was promoted after more than ten years, i.e. on 10th August, 1992 retrospectively

with effect from 19th March, 1982. It is apparent from the record that for redressal of grievance *qua* date of seniority of the petitioner an Enquiry Officer had been appointed, who after reconciliation of the record, found merit in the representations of the petitioner.

(11) Mr. J.S. Puri, Additional Advocate General, Punjab appearing for the State, to justify the order of notional promotion and denial of arrears of pay and consequential benefits to the petitioner, has placed reliance upon the decision of Hon'ble the Apex Court rendered in '**Union of India versus B.M. Jha (1)**' wherein it was held that arrears of salary cannot be granted in case of retrospective promotion in view of the principle of 'no work no pay'.

(12) A Division Bench of this Court, to which I was a party, in '**Sports Authority of India and another versus Central Administrative Tribunal and another**' Civil Writ Petition No. 14998 of 2009 decided on 6th November, 2009, had considered the contentions advanced by counsel for the State and the ratio of law laid down in **B.M. Jha's case** (*supra*) and had held as under :—

"There can be no quarrel with the proposition that ordinarily arrears of salary cannot be granted in case of retrospective proposition. Two short questions, which arise for our consideration, are (a) whether there can be any exceptions to the principle of "no work no pay" and (b) whether the case of respondent No. 2 is covered by any such exceptions.

*In this regard it will be imperative to analyze the various judgments rendered on this issue by the Supreme Court of India as well as various High Courts. This question was considered by the Supreme Court in the case of '**Union of India versus K.V. Jankiraman**' 1991(4) S.C.C. 109 wherein it was urged by the Union of India that the normal rule is "no work no pay" and therefore a person cannot be allowed to draw the benefits of a post, the duties of which he has not discharged. While rejecting the contention, the Hon'ble Supreme Court held as under :*

'24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person

cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. *We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work on pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him.'*
(Emphasis supplied)

Similarly in the case of 'Vasant Rao Roman versus Union of India' 1993 (2) S.L.R. 289, also an exception was made to the principle of "no work no pay". It was observed by the Hon'ble Supreme Court that admittedly neither the appellant had been put under suspension nor any disciplinary proceedings were pending against him. On the contrary, he had been made to suffer on account of administrative reasons for which he was not responsible. Therefore, in view of the aforesaid facts it was held that not allowing the arrears of emoluments to the appellant cannot be justified. To the same effect is the decision of the

Supreme Court in the case of 'Harbans Singh versus Union of India', 1995 S.C.C. 471 on which reliance has been placed by the tribunal while granting relief to the respondent No. 2.

The argument urged by the learned counsel for the petitioner was also rejected by a Division Bench of this Court in the case of 'Vidya Parkash Harnal versus State of Haryana', 1995(3) S.C.T. 785 wherein it was held as under :—

'Similarly, the argument that the petitioner was not entitled to the grant of emoluments on the principle of "No work, no pay" is apparently misconceived and based upon wrong notions of law. If a civil servant is not offered the work to 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, that is, firstly by declining the civil servant his 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 for 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 the pains 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 dependants. Such a deprivation might have upset the career of the

dependants, depriving the society of the services of such youth and budding dependants 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 benefits of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons.'

Another Division Bench of this Court in the case of 'State of Haryana versus Bani Singh Yadav' 2005(2) S.L.R. 622 after discussing the various judgments rendered by this court on this point laid down the following principle :

'The principle of no work no pay can be invoked by the employer to deny wages or pay to the employee only in those cases in which the employee voluntarily abstains from discharging 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.'

Even other High Courts have recognized the exceptions to the principle of 'no work no pay'. In the case of 'Manohar Burde versus Union of India', 2003 (4) S.C.T. 519 Bombay High Court held as under :—

'The ordinary and the general rule is no pay for no work and, therefore, an incumbent who has not worked on a particular post, would not be entitled to the pay for same. On the basis of notional promotion given, such incumbent, obviously, shall be entitled to re-fixation of his present pay. This is done to ensure that his present salary would not be less than his juniors. In the peculiar facts and circumstances of the case, if an

incumbent has been wrongfully denied his lawful claim of promotion and is made to suffer on account of administrative reasons for which he was not responsible, the Court in such case keeping in view peculiarity of the facts and circumstances obtaining therein may order payment of arrears when the incumbent is given promotion as was done in Vasant Rao Raman's case.

More recently, the exceptions to the principle of 'no work, no pay' have been recognized by the Hon'ble Supreme Court in the case of 'State of Kerala versus E.K. Bhaskaran Pillai' 2007(6) S.C.C. 524 wherein it has been held that :

*'We have considered the decisions cited on behalf of both the sides. 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 sometime full benefits with retrospective 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 supplied)

Relying on the aforesaid decision, a Division Bench of this Court of which one of us was a member (Ahluwalia J.) has held in the case of 'Prem Kumar Chauhan versus Punjab State Electricity Board' 2008(4) S.L.R. 635 that where a person is wrongly denied his due, full benefits may be given. Similarly, another Division Bench of this Court in the case of 'Kanwaljeet Singh versus State of Haryana' 2008(6) S.L.R. 212 after placing reliance on E.K. Bhaskaran Pillai's case has held that :

'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... 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.'

The perusal of the aforesaid authorities make it clear the principle of 'no work, no pay' cannot be treated as an inflexible principle to which there are no exceptions. It has been consistently held that when the employee has been wrongly denied the promotion for no fault of his due to some lapse on behalf of the employer, the principle of 'no work, no pay' will have no application. Therefore, the question as to

whether there are any exceptions to the principle of 'no work, no pay' will be replied in the affirmative. The second question will also be answered in the affirmative as in the present case admittedly the respondent No. 2 was denied promotion for no fault of his. As has already been pointed out, respondent No. 2 was denied the promotion as his name was omitted from the seniority list due to inadvertence which has been admitted by the petitioner employer. Therefore, the principle of 'no work, no pay' will have no application in the present case. For this reason, the impugned order does not warrant any interference."

(13) This Court is of the opinion that on facts of the present case, judgment rendered in **Sports Authority of India's case** (*supra*) is fully applicable. There was no fault on the part of the petitioner. From the first opportunity available, petitioner had been agitating that his date of joining had been wrongly shown in the seniority list and furthermore, his juniors had been promoted but he had been ignored. Finally, the authorities, having realized their mistake, appointed an Enquiry Officer to rectify the grievance and the petitioner was given notional promotion,—*vide* order dated 10th August, 1992 (Annexure P-7) retrospectively with effect from 19th March, 1982. Even if it is assumed that petitioner was not entitled to seniority with effect from 1982, it is case of respondents that petitioner had to be granted notional promotion with retrospective effect. Therefore, it was wrong on the part of the respondents to deny the arrears of pay and financial benefits to the petitioner, which ought to have accrued to him from the date of his promotion.

(14) Hence the present writ petition is accepted. The Clause of promotion order, which states that the petitioner will not be entitled to arrears of pay, is hereby quashed and the respondents are directed to calculate the arrears of pay and refix the salary of the petitioner. The arrears, so calculated be paid to the petitioner within three months from the date of receipt of a certified copy of this order. As the petitioner has retired, it is further directed that his pension be redetermined accordingly.