

*Before Permod Kohli, J.*

**J.C. AGGARWAL,—Petitioner**

*versus*

**HARYANA STATE FEDERATION OF COOP. WHOLESALE  
CONSUMER STORES LTD.,—Respondents**

CWP No. 3103 of 2007

10th September, 2010

*Constitution of India, 1950—Art. 226—Claim for arrears of pay—Persons junior to petitioner promoted—High Court quashing seniority list—Petitioner granted deemed date of promotion with effect from date when his junior was promoted—Arrears of pay denied on ground that petitioner did not actually work on promotional post—Whether petitioner entitled to arrears of pay from deemed date of promotion—Held, yes—Petition allowed.*

*Held*, that the writ petition filed by the petitioner was allowed,—*vide* order dated 16th February, 2001. The judgment dated 16th February, 2001 was challenged in LPA No. 2003 of 2001 by the respondent-Federation which resulted into dismissal. During the pendency of the LPA, the petitioner was promoted as Assistant Manager with immediate effect,—*vide* order dated 10th March, 2004. However, the petitioner was granted deemed date of promotion with effect from 23rd August, 1979 i.e. the date when S.C. Jain was promoted but was denied the arrears,—*vide* order dated 19th October, 2005. The petitioner is aggrieved of the order dated 10th October, 2005 to the extent arrears are refused. The only ground for denying the arrears to the petitioner is that he did not actually work on the post of Assistant Manager and thus, he is not entitled to arrears of salary. The controversy is squarely covered by a Division Bench judgment of this Court in the case of **State of Haryana versus Bani Singh Yadav, 2005(1) SCT 355**. Hence, this petition is allowed and the impugned order dated 19th October, 2005 to the extent it has denied arrears of pay to the petitioner is quashed.

(Paras 3, 4 & 6)

Namit Kumar, Advocate, *for the petitioner.*

Vijay Pal, Advocate, *for the respondents.*

(Permod Kohli, J.)

**PERMOD KOHLI, J. (ORAL)**

(1) The petitioner joined the Haryana State Federation of Consumers Cooperative Stores Ltd. (hereinafter referred to as "the Federation") as Storekeeper on 10th January, 1977. Various posts like Storekeepers, Assistants, Clerks and Salesman in various Central Cooperative Consumers Stores were being filled up by their respective managements at their own level and were having different pay scales and eligibility etc. With effect from 23rd April, 1979, employees of all the Consumer Stores were merged in the Cadre of the Federation and their administrative control was taken over from their respective management by the respondent-Federation. In May, 1979, though a tentative seniority list was prepared and the petitioner was placed at Sr. No. 19 of the seniority list, some of the employees from other management who became members of the service of the Federation on implementation of the Common Cadre Rule and were drawing less salary, were placed over and above the petitioner. Aggrieved of the action of the respondent-Federation, the petitioner filed CWP No. 3847 of 1987 challenging the seniority list dated 28th December, 1987 and also sought promotion as Assistant Manager with effect from the date one S.C. Jain junior to the petitioner was promoted. This writ petition was allowed,—*vide* order dated 16th February, 2001 with the following directions :—

"Taking into consideration all these facts, the petitioner could not be treated as junior to respondents No. 2 to 7. He should have been equated senior to those respondents in the seniority list Annexure P-5 prepared by respondent No. 1.

For the aforesaid reasons, this writ petition is partly allowed. The seniority Annexure P-5 is quashed. The petitioner be treated as senior to respondents No. 2 to 7 and the seniority list be re-issued and prepared accordingly....."

(2) In so far as the claim for promotion is concerned, following directions were issued :—

"So far as his prayer to promote him to the post of Assistant Manager with effect from the date his junior have been promoted is concerned, the same is left open to be considered by respondent No. 1 because according to respondent No. 1 he did not possess

five years experience when R.R. Kaushik was promoted as Assistant Manager on 4th February, 1981. The petitioner will, however, be at liberty to approach the competent authority with regard to his claim for promotion which will be considered within a period of six months from the date of filing of representation, if any.”

(3) The aforesaid judgment was challenged in LPA No. 2003 of 2001 by the respondent-Federation which resulted into dismissal. During the pendency of the LPA, the petitioner was promoted as Assistant Manager with immediate effect,—*vide* order dated 10th March, 2004 (Annexure P-2). However, the petitioner was granted deemed date of promotion with effect from 23rd August, 1979 i.e. the date when S.C. Jain was promoted but was denied the arrears,—*vide* order dated 19th October, 2005 (Annexure P-4). The petitioner is aggrieved of the order dated 19th October, 2005 (Annexure P-4) to the extent arrears are refused. The only ground for denying the arrears to the petitioner is that he did not actually work on the post of Assistant Manager and thus, he is not entitled to arrears of salary.

(4) It is agreed to by the learned counsel for the parties that the controversy is squarely covered by a Division Bench Judgment of this Court in the case of **State of Haryana versus Bani Singh Yadav (1)**, wherein following observations have been made :—

“14. By applying 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.”

(5) Similar observations have been made by another Division Bench of this Court in the case of **Karnail Singh versus Punjab State Electricity Board and Ors. (2)** as under :—

“7. Therefore, for the failure of the authorities to consider the case for promotion of the petitioner at the appropriate time and

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(1) 2005 (1) S.C.T. 355

(2) 2006 (3) S.C.T. 276

consequently preventing him from working and also not to opt for the sealed cover procedure in case departmental proceedings were pending, the petitioner cannot be denied the monetary benefits of the higher posts of Internal Auditor to which promotion has already been granted by way of deemed date of promotion.”

(6) In view of the above, this petition is allowed and the impugned order dated 19th October, 2005 (Annexure P-4) to the extent it has denied arrears of pay to the petitioner is quashed. Consequently, the respondent is directed to release the arrears of salary to the petitioner from the deemed date of promotion within a period of three months.

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