

Before Harpreet Singh Brar, J.

SATNAM SINGH AND OTHERS—Petitioners

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 7204 of 2023

February 26, 2026

Constitution of India, 1950—Art. 14—Indian Contract Act, 1872— S. 23—Punjab Agricultural Produce Market Act, 1961—S. 42—Constitution of India, 1950—Arts. 226, 227—Petitioners (Junior Engineer and Pump Operators) sought salary in the higher scale for posts of SDO and Junior Engineer for the period worked as Additional Charge and consequential benefits.

Whether an employee working on higher post on additional charge basis is entitled to salary of higher post? Whether such entitlement can be defeated by a condition imposed in the order of additional charge?

An employee who works on higher post, whether on promotion, officiating basis, stop-gap arrangement or additional charge is entitled to salary attached for the period he discharges duty. Principle of quantum meruit applies. Any condition or undertaking to the contrary is against public policy and unenforceable under Section 23 of Contract Act. State, as model employer, cannot enforce unconscionable conditions.

There can be no estoppel against law or against fundamental rights. The condition imposed is contrary to law, mere acceptance by the employee cannot validate it. Salary in the higher scale for period worked on additional charge basis granted with interest at the rate of 6% per annum. Petition allowed.

Held, that in the light of the above his court observes that:-

- (i) An employee who works on a higher post, whether on promotion, officiating basis, stop-gap arrangement, or additional charge, is entitled to the salary attached to that post for the period i.e. actually discharges its duties.
- (ii) The principle of quantum meruit mandates that an employee must be compensated with the emoluments of the higher post for the work actually performed thereon.

- (iii) Refusal to pay the salary of the higher post, in the absence of a specific statutory rule permitting such denial, is arbitrary and unjustified.
- (iv) Any condition or undertaking imposed upon an employee that he shall not claim the salary of the higher post while working thereon is contrary to law, against public policy, and unenforceable under Section 23 of the Contract Act.
- (v) The State, as a model employer, cannot be permitted to enforce such unconscionable conditions or take advantage of an employee's acceptance thereof.

Further held, that it is a well-established principle of service jurisprudence that salary is not a bounty or a gratuitous payment but it is the consideration for the work done by an employee. When an employee discharges the duties of a higher post, they necessarily perform work of a higher responsibility and are entitled to the corresponding remuneration. Any condition that seeks to deny the salary of the higher post while extracting work of that post is nothing but a contract of service that is unconscionable and opposed to public policy. The principle of "equal pay for equal work" though not absolute, has been recognized as a goal to be achieved under the Directive Principles of State Policy and has also been read into Article 14 of the Constitution in appropriate cases.

(Para 14)

Further held, that the respondents have placed strong reliance on the condition incorporated in the additional charge orders and the fact that the petitioners accepted the same. However, it is true law that there can be no estoppel against statute or against fundamental rights. If the condition imposed is contrary to law, the fact that the employee accepted it cannot validate an otherwise illegal condition. Moreover, it is a matter of common knowledge that employees in government service often accept such conditions under these circumstances cannot be treated as a voluntary waiver of their legal rights.

(Para 15)

Further held, that in view of the discussion above, the present writ petition is allowed. The respondents are directed as under:

- (i) To grant the petitioners the salary in the higher scale attached to the posts of SDO and Junior Engineer, as the case may be, for the periods they worked on said posts on additional charge basis.

- (ii) To revise the salaries of the petitioners accordingly and pay to them the arrears so accruing, along with interest at the rate of 6% per annum from the date the amount became due till the date of actual payment.
- (iii) The respondents shall comply with these directions within a period of three months from the date of receipt of a certified copy of this order.

(Para 17)

Smt. P. Grover v State of Haryana
1983 AIR SC 1060

(Para 3)

Arindam Chattopadhyay and others v State of West Bengal and others
Civil Appeal No. 25021 of 2013

(Para 3)

Selva Raj v Lt. Governor of Island, Port Blair
1998 (4) SCC 291

(Para 9)

Subhash Chander v State of Haryana
2012 (1) RSJ 442

(Para 10)

Secretary-cum-Chief Engineer, Chandigarh v Hari Om Sharma
1998 INSC 207

(Para 12)

MR Gupta v Union of India
1995 5 SCC 628

(Para 16)

Bhavesh Ola, Advocate for Parvez Chugh, Advocate, *for the petitioner.*

Vikas Sonak, AAG, Punjab.

Navkesh Singh, Advocate for respondent No.3.

HARPREET SINGH BRAR, J. (Oral)

(1) The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to grant the salary in the higher scale to the petitioners for the posts of SDO and Junior Engineer for the period they had worked on the said posts as Additional Charge and all consequential benefits by revising their salaries and pay to them the arrears so accruing to them with interest thereon. A further writ in the nature of mandamus is sought directing the respondents to decide the legal notice dated 23.02.2023 (Annexure P-8) within some stipulated time period.

(2) Learned counsel for the petitioners *inter alia* contends that the petitioners are employees of the Respondent No.3 - Board.

Petitioner No.1, was working on the regular post of Junior Engineer and was given additional charge of SDO on 28.03.2019. He worked as SDO (additional charge) till 12.12.2022 and was regularized as SDO on 13.12.2022. Petitioner No.2, was working on the regular post of Pump Operator and was given additional charge of Junior Engineer on the basis of his Diploma in Civil Engineering on 29.01.2014 and is still working as Junior Engineer (additional charge) till date. Petitioner No.3, was working on the regular post of Pump Operator and was given additional charge of Junior Engineer on 29.01.2014 and was regularized as Junior Engineer on 28.10.2021. Petitioner No.4, was working on the regular post of Plumber and was given additional charge of Junior Engineer on 29.01.2014 and was regularized as Junior Engineer on 19.08.2016. Petitioner No.5 was working on the regular post of Assistant Engineer and was given additional charge of SDO on 31.05.2017 and was regularized as SDO on 01.04.2021.

(3) Learned counsel for the petitioners further submits that the claim regarding the grant of higher salary for the period the petitioners discharged duties of a higher post, in the writ petition is squarely covered by a settled proposition of law, that once an employee is promoted or is given additional charge of a higher post and actually discharges the duties of that post, he becomes entitled to the salary attached to such higher post for the entire period during which he performed those duties. It is further submitted that there is no justification for denying the salary of the higher post in the absence of any statutory rule permitting such denial, and that any administrative condition to the contrary would be unsustainable in law. Learned counsel in this regard places his reliance on the judgments of the Hon'ble Supreme Court in *Smt. P. Grover versus State of Haryana*¹ and *Arindam Chattopadhyay and others versus State of West Bengal and others, Civil Appeal No.25021 of 2013*, wherein it has been authoritatively laid down that an employee working on a higher post cannot be denied the salary attached thereto. Learned counsel further submits that despite the settled legal position, the respondents have failed to grant the petitioners the salary of the higher post for the periods they worked on additional charge basis, compelling the petitioners to serve a legal notice dated 23.02.2023 (Annexure P-8). Since the said legal notice has not been decided, the petitioners have been left with no alternative but to approach this Court by way of filing the present writ petition.

(4) *Per contra*, learned counsel for the respondents submits that

¹ 1983 AIR SC 1060

the petitioners have an alternative statutory remedy by way of an appeal to the State Government under Section 42 of the Punjab Agricultural Produce Market Act, 1961, which they have not availed, rendering the writ petition not maintainable, that the petitioners were given additional charge vide specific orders (Annexures R-1, R-2, R-3) which contained an express condition that "no additional allowance or benefit will be paid in lieu of the present posting," which condition was voluntarily accepted by the petitioners at the time of joining, and having done so without any protest, they are now estopped from claiming any additional allowance or benefit after several years (in some cases up to 10 years), further learned counsel submits that the present petition suffers from delay and laches as the claims pertain to additional charge given as far back as 2014. Further, the legal notice dated 23.02.2023 (Annexure P-8) has already been decided vide letter dated 29.08.2023 (Annexure R-4), rendering the second prayer in the writ petition infructuous.

(5) I have heard learned counsel for the parties and perused the record with their able assistance.

(6) The core issue that falls for determination in the present writ petition is whether an employee who works on a higher post on an additional charge basis is entitled to the salary attached to that higher post for the period he actually discharges the duties of such post, and if so, whether such entitlement can be defeated by a condition imposed in the order of additional charge that "no additional allowance or benefit will be paid."

(7) It is incontrovertible that each of the petitioners was given additional charge of a higher post and that they actually discharged the duties of that post for the periods mentioned in the writ petition. Petitioner No.1 worked as SDO (additional charge) for over three and a half years. Petitioner No.2 has been working as Junior Engineer (additional charge) for over twelve years. Petitioner No.3 worked as Junior Engineer (additional charge) for over seven years before regularization. Petitioner No.4 worked as Junior Engineer (additional charge) for over two and a half years before regularization. Petitioner No.5 worked as SDO (additional charge) for nearly four years before regularization.

(8) A two Judge Bench of the Hon'ble Supreme Court in *Smt. Grover versus State of Haryana*², while speaking through Justice O. Chinnappa Reddy observed as under:

“3. We mentioned that she was promoted as an acting

² AIR 1983 SC 1060

District Education Officer with effect from July 19, 1976. The order of promotion contained a superadded condition that she would draw her own pay scale which apparently meant that she would continue to draw her salary on her pay scale prior to promotion. The initial order extending her services recited that she was an acting District Education Officer, but contained a superadded condition that her pay would not be more than the maximum of the principal's grade. Smt. Grover claims that having been promoted as District Education Officer, she was entitled to the pay of a District Education Officer and there was no justification for denying the same to her. A writ petition filed by her was dismissed by the High Court of Punjab and Haryana and she is before us by way of special leave under Article 136 of the Constitution. The counter-affidavit filed on behalf of the Government of Haryana offers no rational explanation for denying the pay of District Education Officer to Smt. P. Grover after she was promoted to act as District Education Officer. All that was said in the counter-affidavit was that there were no Class-I posts available and therefore she was not entitled to be paid the salary of District Education Officer. **We are unable to understand the reason given in the counter-affidavit. She was promoted to the post of District Education Officer, a Class-I post, on an acting basis. Our attention was not invited to any Rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post (the validity of such a rule would be doubtful if it existed),** we must hold that Smt. Grover is entitled to be paid the salary of a District Education Officer from the date she was promoted to the post, that is, July 19, 1976 until she retired from service on August 31, 1980. The appeal is, accordingly, allowed with costs."

(emphasis added)

(9) Further, another Two Judge Bench of the Hon'ble Supreme Court in *Selva Raj versus Lt. Governor of Island, Post Blair*³, while speaking through Justice S.P. Kurdukar made the following observation:-

³ 1998 (4) SCC 291

“3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his saary was to be drawn against the post of secretary (Scouts) under GFR. 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regulary promoted to the said post. It is also true as stated in the counter affidavit of Deputy Resident Commissioner, Andaman and Nicobar Adminstration that the appellant was regularly posted in the pay scale of 1200-2040 and he was asked to look after the duties of Secretary (Scourts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but he appellant was keen to stay in Port Blair as averred in the said counter. However in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scourts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum merit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.”

(emphasis added)

(10) Reliance in this regard may also be placed V on the judgement rendered by a Three-Judge Bench of this Court in ***Subhash Chander versus State of Haryana***⁴, where in it was held that, if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade.

(11) Admittedly, the respondents have not disputed the fact that the Petitioners actually discharged the duties of the higher posts during the aforementioned periods. The only defense raised is that the orders granting additional charge contained a condition that "no

⁴ 2012 (1) RSJ 442

additional allowance or benefit will be paid" and that the petitioners accepted this condition. This Court finds merit in the contention of the petitioners that such a condition is contrary to the settled legal position and cannot be sustained in law.

(12) A Three Judge Bench of the Hon'ble Supreme Court in *Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma*⁵ while speaking through Justice S. Saghir Ahmad observed as under:

8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer-I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. **Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law.** The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer-I and was, therefore, likely to be considered for promotion in his own right. 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. It would, therefore, be unenforceable in view of Section 23 of the Contract Act.

(emphasis added)

(13) In light of the above this court observes that:-

- (i) An employee who works on a higher post, whether on promotion, officiating basis, stop-gap arrangement, or additional charge, is entitled to the salary attached to that post for the period he actually discharges its duties.
- (ii) The principle of *quantum meruit* mandates that an employee must be compensated with the emoluments of the higher post for the work actually performed thereon.

⁵ 1998 INSC 207

(iii) Refusal to pay the salary of the higher post, in the absence of a Specific statutory rule permitting such denial, is arbitrary and unjustified.

(iv) Any condition or undertaking imposed upon an employee that he shall not claim the salary of the higher post while working thereon is contrary to law, against public policy, and unenforceable under Section 23 of the Contract Act.

(v) The State, as a model employer, cannot be permitted to enforce such unconscionable conditions or take advantage of an employee's acceptance thereof.

(14) It is a well-established principle of service jurisprudence that salary is not a bounty or a gratuitous payment but is the consideration for the work done by an employee. When an employee discharges the duties of a higher post, they necessarily perform work of a higher responsibility and are entitled to the corresponding remuneration. Any condition that seeks to deny the salary of the higher post while extracting work of that post is nothing but a contract of service that is unconscionable and opposed to public policy. The principle of "equal pay for equal work" though not absolute, has been recognized as a goal to be achieved under the Directive Principles of State Policy and has also been read into Article 14 of the Constitution in appropriate cases.

(15) The respondents have placed strong reliance on the condition incorporated in the additional charge orders and the fact that the petitioners accepted the same. However, it is trite law that there can be no estoppel against statute or against fundamental rights. If the condition imposed is contrary to law, the fact that the employee accepted it cannot validate an otherwise illegal condition. Moreover, it is a matter of common knowledge that employees in government service often accept such conditions under compulsion, as refusal may invite displeasure of the superiors and affect their career prospects. The acceptance of such a condition under these circumstances cannot be treated as a voluntary waiver of their legal rights.

(16) With regard to the objection pertaining to delay and laches, it is observed that the petitioners approached this Court while still in service and had issued a legal notice in the year 2023. It is trite law, as settled by the Hon'ble Supreme Court in *M.R. Gupta versus Union of India*⁶, that a claim relating to salary constitutes a

⁶ 1995 (5) SCC 628

continuing wrong, thereby giving rise to a recurring cause of action. In view of the said principle, the objection regarding delay and laches cannot be sustained.

(17) In view of the discussion above, the present writ petition is allowed. The respondents are directed as under:

(i) To grant the petitioners the salary in the higher scale attached to the posts of SDO and Junior Engineer, as the case may be, for the periods they worked on said posts on additional charge basis.

(ii) To revise the salaries of the petitioners accordingly and pay to them the arrears so accruing, along with interest at the rate of 6% per annum from the date the amount became due till the date of actual payment.

(iii) The respondents shall comply with these directions within a period of three months from the date of receipt of a certified copy of this order.

(18) Pending application(s), if any, also stand disposed of.

(19) No order as to costs.

Reporter-Shubreet Kaur