

*Before Tejinder Singh Dhindsa, J.*  
**SHYAM LAL GULATI—Appellant**  
*versus*

**HARYANA STATE ELECTRICITY BOARD**  
**AND OTHERS—Respondents**

**CWP No. 5299 of 1993**

September 9, 2013

*A. Constitution of India, 1950 - Art. 226 & 227 - Arrears of pay upon retrospective promotion - Petitioner denied promotion at the appropriate time on account of the mistake of the Board itself - Such mistake rectified and the petitioner granted benefit of retrospective promotion - Principle of 'no work no pay' would have no applicability - Action of the Board in denying to the petitioner arrears - Cannot be sustained - Writ petition allowed.*

*Held*, that applying the ratio of the Division Bench judgment in Satyavir Singh Shekhawat's case (supra), nothing has been placed on record to demonstrate that the petitioner has been denied promotion to the post of Deputy Superintendent w.c.f. 17.08.1989 on account of the pendency of a genuine dispute. Only conclusion discernible from the pleadings on record is that the petitioner had been denied promotion at the appropriate time on account of the mistake of the respondent-Board itself. Such mistake having been rectified and the petitioner having been granted the benefit of retrospective promotion w.e.f. 17.08.1989, the principle of "no work, no pay" would have no applicability. As such, the action of the respondent-Board in denying to the petitioner the arrears for the period 17.08.1989 till 22.07.1992 cannot sustain.

(Para 6)

***B. Constitution of India, 1950 - Art. 226 & 227 - Haryana State Electricity Board, Ministerial Service (Head Office) Regulations, 1991 - Reg. 9 - Promotion to the post of Deputy Superintendent as also Superintendent is seniority cum merit - Petitioner denied promotion to the post of Deputy Superintendent at the appropriate time - Penalties imposed prior to promotion - Subsequently petitioner granted benefit of retrospective promotion - After promotion no penalty has been imposed and nothing adverse has been communicated - No justifiable basis for having denied to the petitioner promotion to the post of Superintendent - If such penalties could not stand in the way of the petitioner for being promoted to the post of Deputy Superintendent, the same cannot be made basis to deny promotion to the post of Superintendent.***

*Held*, that a perusal of the statutory provisions would make it clear that the principle governing promotion to the post of Deputy Superintendent as also Superintendent is seniority cum merit. In the petition, categorical averments have been made that the penalties imposed in relation to three charge sheets as referred to in the impugned order dated 18.01.1993 have been imposed prior to the petitioner having been promoted to the post of Deputy Superintendent. It has further been averred that after the promotion as Deputy Superintendent, no penalty has been imposed and nothing adverse has been communicated. Such averments have not met with any rebuttal in the written statement filed on behalf of the Board. As such, there could

he no justifiable basis for having denied to the petitioner promotion to the post of Superintendent for the reason that by adopting the same very yardstick as per Rule 9 of the 1991 Regulations i.e. seniority cum merit, the petitioner had been found suitable for promotion to the post of Deputy Superintendent with effect from a date the penalties in relation to three different charge sheets already stood imposed. If such penalties could not stand in the way of the petitioner for being promoted to the post of Deputy Superintendent, the same cannot be made a basis to deny promotion to the post of Superintendent.

(Para 8)

R.K Malik, Senior Advocate with Nikhil Sharma, Advocate, *for the petitioner.*

O. P. Sharma, Advocate for respondent No. 1.

**TEJINDER SINGH DHINDSA, J.**

(1) Counsel for the parties have been heard.

(2) Petitioner instituted the instant writ petition in the year 1993 against the erstwhile Haryana State Electricity Board impugning the order dated 18.01.1993 (Annexure P-4), whereby he has been superseded as regards promotion to the rank of Superintendent. Further challenge is to the condition stipulated in office orders dated 22.07.1992 at Annexure P-1, whereby even though he has been retrospectively promoted to the post of Deputy Superintendent w.e.f. 17.08.1989 but he has been denied arrears of salary for the period in question i.e. 17.08.1989 to 22.07.1992.

(3) Brief facts which are not in dispute would require notice. The petitioner was granted benefit of deemed date of promotion to the post of Deputy Superintendent w.e.f. 17.08.1989 vide order dated 22.07.1992 (Annexure P-1). In the light of such order, it was also stipulated that he would be deemed to have completed his one year probationary period satisfactorily. Condition (vi), however, recited that he would not be paid arrears on his promotion as Deputy Superintendent w.e.f. 17.08.1989 as he has not worked as Deputy Superintendent from such date but his pay will be protected. As a consequence of such promotion, the petitioner was assigned seniority in the cadre of Deputy Superintendent at Sr. No.140-A.

A number of employees, the names of whom have been furnished in para 5 of the writ petition and who were shown in the seniority list below the petitioner from Sr. No. 141 onwards were promoted to the post of Superintendent. The impugned order at Annexure P-4 dated 18.01.1993 clearly notices that even though the petitioner was senior to the officials promoted to the post of Superintendent but he has been superseded on account of the penalties imposed in relation to three different charge sheets.

(4) The first issue that arises for consideration is as to whether an employee can be denied arrears of salary upon having been given benefit of retrospective promotion.

(5) Such issue came to be examined in detail in a recent Division Bench judgment dated 02.11.2012 in *LPA No. 1018 of 2012 titled as Satyavir Singh Shekhawat Vs. State of Haryana & others*. After having noticed a number of decisions of the Apex Court, the principle as regards arrears of salary upon grant of retrospective promotion was laid down in the following terms:

*"16. We find from the aforesaid discussion that at times Supreme Court has granted the relief whereas on some other occasions, the arrears of salary for the period prior to the date of actual assumption of promotional post are denied. However, a closure scrutiny of the facts in each case would clearly reveal a discerning trend and there is no contradiction as far as principle of law laid down in various judgments is concerned.*

*17. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see *State of Kerala and Others Vs. E.K. Bhaskaran Pillai - JT 2007 (6) SC 83*;*

*Mohd. Ahmed v. Nizam Sugar Factory and Others – (2004) 11 SCC 210; Nalini Kant Sinha v. State of Bihar and Others - 1993 Supp (4) SCC 748. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.”*

(6) Applying the ratio of the Division Bench judgment in *Satyavir Singh Shekhawat's case (supra)*, nothing has been placed on record to demonstrate that the petitioner has been denied promotion to the post of Deputy Superintendent w.e.f. 17.08.1989 on account of the pendency of a genuine dispute. Only conclusion discernible from the pleadings on record is that the petitioner had been denied promotion at the appropriate time on account of the mistake of the respondent-Board itself. Such mistake having been rectified and the petitioner having been granted the benefit of retrospective promotion w.e.f. 17.08.1989, the principle of “no work, no pay” would have no applicability. As such, the action of the respondent- Board in denying to the petitioner the arrears for the period 17.08.1989 till 22.07.1992 cannot sustain.

(7) Insofar as the supersession of the petitioner to the post of Superintendent is concerned, it would be apposite to refer to the statutory provisions holding the field i.e. the Haryana State Electricity Board, Ministerial Service (Head Office) Regulations, 1991. Rule 9 as also the relevant extract of Appendix ‘C’ is being reproduced herein:

#### **9. APPOINTMENT TO THE SERVICE:**

*(1) Appointment to the service, shall be made in any of the following manners and as ..specified in Appendix-..C. :-*

*(a) By direct recruitments; or*

*(b) By promotion*

*Provided that a member of the service, shall not be eligible for promotion to the next higher post until he qualifies the Departmental Examination or any examination or training prescribed for the purpose by the Board from time to time for appointment to such post.*

*(2) All Promotions unless otherwise provided, shall be made on seniority cum-merit basis and seniority alone, shall not give, any right to such promotions.*

APPENDIX 'C'

Sr. No.	Designation of post	Academic qualification and experience, if any for direct recruitment	Academic qualifications and experience, if any, for appointment other than by direct recruitment
1	2	3	4
4	Deputy Superintendent		By promotion from amongst Assistants on seniority-cum-merit basis having following qualification /experience:-  (a) Having passed Departmental 3.38 Examination for Ministerial Establishment prescribed by the Board.  (b) Having 5 years service as Assistant.
5	Superintendent		By promotion from amongst Deputy Superintendent on seniority-cum merit basis provided that :-  (a) He has passed the Departmental Examination for Ministerial Establishment.  (b) He has completed 3 years service as Deputy Superintendent.

(8) A perusal of the statutory provisions would make it clear that the principle governing promotion to the post of Deputy Superintendent as also Superintendent is seniority cum merit. In the petition, categorical averments have been made that the penalties imposed in relation to three charge sheets as referred to in the impugned order dated 18.01.1993 have been imposed prior to the petitioner having been promoted to the post of Deputy Superintendent. It has further been averred that after the promotion as

Deputy Superintendent, no penalty has been imposed and nothing adverse has been communicated. Such averments have not met with any rebuttal in the written statement filed on behalf of the Board. As such, there could be no justifiable basis for having denied to the petitioner promotion to the post of Superintendent for the reason that by adopting the same very yardstick as per Rule 9 of the 1991 Regulations i.e. seniority cum merit, the petitioner had been found suitable for promotion to the post of Deputy Superintendent with effect from a date the penalties in relation to three different charge sheets already stood imposed. If such penalties could not stand in the way of the petitioner for being promoted to the post of Deputy Superintendent, the same cannot be made a basis to deny promotion to the post of Superintendent.

(9) This Court in exercise of writ jurisdiction cannot go into the question of suitability of a particular officer, but the Court can certainly examine as to whether an employee has been granted his vested right of a fair consideration for promotion to a higher post. In the facts of the present case, I am of the considered view that such fair consideration as regards promotion to the post of Superintendent has been denied to the petitioner.

(10) For the reasons recorded above, the writ petition is allowed. The offending stipulation in the order dated 22.07.1992 (Annexure P-1) denying to the petitioner arrears on the post of Deputy Superintendent w.e.f. the date he was granted retrospective promotion is set aside. Such arrears for the period 17.08.1989 to 22.07.1992 be released to the petitioner forthwith. Further directions are issued to consider the case of the petitioner as regards promotion to the post of Superintendent afresh w.e.f. the date his juniors were promoted and the necessary orders in regards thereto, be passed within a period of two months from the receipt of a certified copy of this order.

(11) The civil writ petition allowed in the aforesaid terms.