

---

(21) For these reasons, the revision petition being without merit must fail and accordingly dismissed.

---

*J.S.T.*

*Before N.K. Sodhi, Swatanter Kumar & N. K. Sud, JJ*

PRITAM DASS NAGPAL,—*Petitioner*

*versus*

STATE OF HARYANA,—*Respondent*

C.W.P. No. 6266 of 1997

14th July, 2000

*Constitution of India, 1950—Art. 226—Punjab Civil Service Rules, Vol. I, Part I—Rl. 3.19(1)—Govt. passing order of promotion of the petitioner with effect from the date he takes over as such—Order could not reach the petitioner till he retired from service on attaining the age of superannuation—Since the petitioner could not assume charge of promotional post before retirement the orders did not become effective or operative—Petitioner not entitled to retiral benefits of the promotional post—Writ dismissed.*

Held that the petitioner was promoted as Senior Accounts officer with effect from the date he was to take over as such. Thus, his appointment was to become effective with effect from the date when he was to assume charge of the promoted post. Since he did not assume charge of that post he was never appointed to the promotional post and the order of promotion qua him did not become effective or operative and he must, therefore, be held to have retired as an Accounts officer and consequently he is entitled to the retiral benefits attached to the post from which he retired. He cannot claim benefits attached to the promotional post. Thus, there is no merit in the writ petition and the same stands dismissed.

(Para 4)

S.D. Sharma, Senior Advocate with Surinder Sharma, Advocate  
*for the petitioner*

N.K. Joshi, AAG Haryana *for the respondent*

---

JUDGMENT

*N.K. Sodhi, J*

(1) Petitioner had been working as Accounts Officer in the office of the General Manager, Haryana Roadways, Panipat. By order dated 18th October, 1996 passed by Financial Commissioner and Secretary to Government, Haryana, Finance Department, he and some others were promoted as Senior Accounts Officers in the pay scale of Rs. 2200—4000 “with effect from the date they take over as such”. On promotion he was posted as Senior Accounts Officers in the office of Chief Administrator, Haryana Urban Development Authority, Panchkula. This order reached the office of the General Manager on 13th November, 1996 but the petitioner by then had retired from service on 31st October, 1996 on attaining the age of superannuation. Petitioner states that he came to know to this order on 13th November, 1996 when he went to the office of the General Manager to pursue the settlement of his retiral benefits. He represented to the department that he be treated as having retired from the promotional post of Senior Accounts Officer and his retiral benefits be computed accordingly. When his claim was not acceded to, he filed the present petition under Article 226 of the Constitution for a mandamus directing the respondent to treat the petitioner as having retired as Senior Accounts Officer for the purpose of computing his retiral benefits. When this petition came up for motion hearing on 8th May, 1997, the learned counsel for the petitioner placed reliance on a Division Bench judgment of this court in *Hawa Singh Deswal vs. State of Haryana*(1), in support of his contention, Learned Judges constituting the Motion Bench did not agree with the view expressed in *Hawa Singh Deswal*'s case (supra) and directed that the matter be heard by a Full Bench. This is how the case is before us.

(2) In the reply filed on behalf of the State of Haryana, it is admitted that the petitioner was promoted as Senior Accounts Officer on 23rd October, 1996 and that the order was despatched to the petitioner and the General Manager on 24th October, 1996. It is, however, averred that if the order did not reach the office in time, it was no fault of the department and that since the petitioner had not taken charge of the promotional post till his retirement, he is not entitled to retiral benefits of the promotional post. Reliance is also placed on Rule 3.19(1) of the Punjab Civil Service Rules Volume I-Part-I, according to which, a Government employee commences or ceases to be entitled to the pay and allowances of a post with effect from the date

---

(1) 1995 (2) R.S.J. 486

---

he assumes or relinquishes charge of the duties of that post, if he assume or relinquishes charge of those duties in the fore-noon of that date, otherwise from the following day. It is pleaded that since the petitioner was working as an Accounts Officer on the date of his retirement, he is entitled to the retiral benefits of that post only and he cannot claim benefits attached to a post of which he never took charge.

(3) The question that arises for our consideration, is as to when does an order appointing/promoting an officer take effect. Shri S.D. Sharma, learned senior Advocate appearing on behalf of the petitioner placed reliance on a judgment of the Supreme Court in *State of Punjab and others vs. Balbir Singh etc.*(2) to contend that once an order is despatched and it goes out of the control of the authority which had passed the order, the same must be deemed to have become effective. In this case Balbir Singh had been promoted on officiating basis as Sub Divisional Officer in the Punjab Public Works Department (B&R) Branch) when by order dated 28th October, 1966 he was reverted by the erstwhile State of Punjab to his original rank. The order was communicated to him on 30th October, 1966 though it was received on or after 1st November, 1966. The erstwhile State of Punjab was reorganised by the Punjab Re-organisation Act, 1966 with effect from 1st November, 1966. The question arose as to when did the order of reversion become effective-whether before or after 1st November, 1966. Relying on the earlier judgments in *State of Punjab vs. Khemi Ram*(3) and *State of Punjab vs. Amar Singh Harika*(4) their Lordships held that the order was communicated either on 29th October, 1966 or surely on 30th October, 1966 when that order went out of the control of the authority which had passed that order and when the copy was forwarded to the Accountant General and the Chief Engineer and in this view of the matter, the order was held to have been communicated to Balbir Singh before 1st November, 1966. In *Balbir Singh's* case (supra) the question arose in the context of the order of reversion but in the case before us the question is when would an order of promotion/appointment take effect. *Balbir Singh's* case (supra) is, therefore, of no help. In *Partap Singh vs. State of Punjab*(5) an order of suspension of an officer when he was on leave was held to be effective from the moment it was issued. It was also observed that if the officer had been actually on duty the order of suspension would have taken effect from the moment it reached him and from which moment alone he could have complied with that order by ceasing to work any further in the

---

(2) 1976 (1) S.L.R. 36

(3) A.I.R. 1970 S.C. 214

(4) A.I.R. 1966 S.C. 1313

(5) A.I.R. 1964 S.C. 72

discharge of his duties. This decision also does not advance the case of the petitioner any further. In our opinion, the question that arises for consideration in this case does not need elaborate discussion as the dispute before us stands concluded by the judgment of the Supreme Court in *Dr. Amarjit Singh Ahluwalia vs. State of Punjab and others*(6). The appellant therein was promoted with effect from 25th April, 1964 as Assistant Director in the Public Health Service Class-I while respondents No. 3 to 19 therein were promoted to the Provincial Civil Medical Service Class-I by order dated 8th April, 1964. This order was, however, conveyed to the respondents therein on 23rd April, 1964 and they took charge of the promoted posts on different dates between 27th April, 1964 and 11th May, 1964. Provincial Civil Medical Service and the Punjab Health Service were integrated by the State of Punjab with effect from 15th July, 1964. Common combined cadres of PCMS Class-I and PCMS Class II were created. Government issued instructions in regard to the determination of *inter-se* seniority of officers coming from the two services, according to which, seniority in Class-I was to be determined with reference to the length of continuous service from the date of appointment in the group. A common seniority list of Class-I service was prepared which was in dispute before their Lordships. The appellant therein claimed seniority over respondents No. 3 to 19 therein on the plea that his continuous service started from 25th April, 1964 while continuous service of the respondents therein did not start until 27th April, 1964 when they took charge of the promoted posts. The State Government rejected the claim of the appellant therein and ordered that seniority of the respondents therein would be reckoned from the date of their order of appointment namely 8th April, 1964 as they had been appointed to the promoted posts "with immediate effect". Learned Judge of the Apex Court upheld the decision of the State Government and laid down the law as under :—

".....An order of appointment may be of three kinds.

It may appoint a person with effect from the date he assumes charge of the post or it may appoint him with immediate effect or it may appoint him simpliciter without saying as to when the appointment shall take effect. Where the order of appointment is of the first kind, the appointment would be effective only when the person appointed assumes charge of the post and that would be the date of his appointment. It would be then that he is appointed. But in a case of the second kind, which is the one with which we are concerned since the order dated 8th April, 1964 appointed respondents No. 3 to 19 to PCMS Class-I "with

---

(6) A.I.R. 1975 S.C. 984

---

immediate effect", the appointment would be effective immediately irrespective as to when the person appointed assumes charge of the post. The date of his appointment in such a case would be the same as the date of the order of appointment. It is, therefore, obvious that so far as respondents No. 3 to 19 were concerned, the date of their appointment was 8th April, 1964 and the length of their continuous service in PCMS Class-I was required to be reckoned from the date. It is true that respondents No. 3 to 19 did not assume charge of their respective posts of promotion until after 25th April, 1964 but that makes no difference because the length of continuous service is to be counted from the date of appointment on the hypothesis that once the appointment is effective the person concerned is in the post and his service in the post is deemed to have commenced though under the rules governing his conditions of service he may not be entitled to the salary and allowance attached to the post until he assumes charge of the post. The continuous service of respondents No. 3 to 19 in PCMS Class-I, therefore, commenced from 8th April, 1964 and since that was longer than the continuous service of Dr. Jagjit Singh and the appellant in Public Health Service Class-I, which commenced only on 25th April, 1964, respondents No. 3 to 19 were entitled to be placed senior to Dr. Jagjit Singh and the appellant in the joint seniority list of the integrated PCMS Class-I" (emphasis supplied).

(4) In the case before, us, the petitioner was promoted as Senior Accounts Officer with effect from the date he was to take over as such. Thus, his appointment according to the law laid down by the Supreme Court in *Dr. Amarjit Singh's* case (supra), was to become effective with effect from the date when he was to assume charge of the promoted post. Since he did not assume charge of that post he was never appointed to the promotional post and the order of promotion qua him did not become effective or operative and he must, therefore, be held to have retired as an Accounts Officer and consequently he is entitled to the retiral benefits attached to the post from which he retired. He cannot claim benefits attached to the promotional post.

(5) Now coming to the judgment of this Court in *Hawa Singh Deswal's* case (supra). In that case, the petitioner therein who was working as a Master in Middle School, Gangoli, District Jind had been promoted as Headmaster by order dated 20th January, 1994 and posted at Gangana, District Sonapat. The order did not reach the petitioner till 31st January, 1994 when on attaining the age of superannuation

---

he retired from government service. He claimed the benefits of the promotional post which were denied to him by the State government. He filed a writ petition which was allowed by the Division Bench observing that the status of Headmaster had been conferred on him on 20th January, 1994 when he was promoted. It was observed that "simply because the order could not be communicated to the petitioner well in time to enable him to join the post before his retirement should not in the circumstances deprive him of the benefits of the Headmaster for all intents and purposes. He has to be treated as Headmaster with effect from 24th January, 1994 and retired as such. "It is not clear from the judgment as to whether the petitioner therein was promoted on 20th January, 1994 with 'immediate effect' or with effect from the date he was to assume charge or whether he was promoted simpliciter without stating as to when the order of promotion was to take effect. We sent for the original records of CWP 15236 of 1994 filed by Hawa Singh Deswal and found that the annexures to the writ petition had been destroyed. It could not, therefore, be ascertained as to what was the nature of the order promoting Hawa Singh Deswal. If he had been promoted with immediate effect the view taken by the Division Bench is correct but if the promotion was to take effect from the date he assumed charge of the promotional post then the observations made therein run counter to the law laid down by the Supreme Court in *Dr. Amarjit Singh's* case (supra). We are, therefore, of the view that the judgment of this court in *Hawa Singh Deswal's* case (supra) is of no assistance to the petitioner before us.

(6) In the result, there is no merit in the writ petition and the same stands dismissed with no order as to costs.

---

**R.N.R.**

*Before T.H.B. Chalapathi, J*

SUKHMINDER SINGH,—*Petitioner*

*versus*

BALJEET KAUR AND ANOTHER,—*Respondents*

C.R. No. 334 of 1998

4th June, 1999

*Code of Civil Procedure, 1908—S. 115—Hindu Adoption and Maintenance Act, 1956—Ss. 18 & 20—Application filed seeking permission to file suit in forma pauperis for maintenance u/s 18/20 of the Act—Application also filed seeking interim maintenance—*