

*Before Permod Kohli, J.*

**GURDIAL SINGH,—Petitioner**

*versus*

**THE AMBALA CENTRAL COOPERATIVE BANK LTD. AND  
ANOTHER,—Respondents**

**C.W.P. No. 4138 of 2010**

27th October, 2010

*Constitution of India, 1950—Art. 226—Persons junior to petitioner promoted—Petitioner filing appeal—Appellate Authority ordering promotion of petitioner retrospectively with effect from date his juniors were promoted—Claim for back wages on account of retrospective promotion—Denial of—Principle of ‘No Work No Pay’—Not applicable as petitioner was wrongly and illegally denied promotion—No fault on behalf of petitioner—No stipulation in orders passed by appellate authority that petitioner shall not be granted back wages from date of his promotion—Petition allowed, respondent directed to release all financial benefits attached to promotional post from date of promotion.*

*Held*, that the petitioner was granted retrospective promotion with effect from the date his juniors were promoted. There was no stipulation in the orders that the petitioner shall not be granted back wages from the date of his promotion. It is only when the petitioner claimed back wages from the date of his promotion, the respondents in the reply denied the wages to the petitioner applying the principle of “No work no pay”. This principle will not be attracted in the present case for two reasons - (1) The petitioner was wrongly and illegally denied promotion when his juniors were promoted. There was no fault on behalf of the petitioner that he was not promoted to the higher post. His claim for higher post and promotion was duly recognized and was accepted by the Appellate Authority and he was given retrospective promotion with effect from the date his juniors were promoted ; and (2) the appellate authority in exercise of quasi judicial power, while deciding the appeal of the petitioner granted him retrospective promotion from the date his juniors were promoted without any reservation

for payment of the back wages from the date of promotion. Order of the Appellate Authority has been duly implemented by respondent No. 1-Bank and the petitioner was granted promotion retrospectively in the pay scale of Rs. 4000–6000. In both these orders, the petitioner's retrospective promotion has been acknowledged without any reservation. The respondents have no right to plead that the petitioner is not entitled to the wages from the date of promotion, particularly, when the petitioner was illegally denied promotion.

(Para 4)

J. S. Maanipur, Advocate, *for the petitioner.*

S. S. Dalal, Advocate, *for respondent No. 1.*

S. S. Antal, Advocate, *for respondent No. 2.*

#### **PERMOD KOLHI, J. (ORAL)**

(1) Keeping in view the controversy involved and with the consent of learned counsel for the parties, this petition is disposed of at motion stage itself.

(2) The petitioner was employec of respondent No. 2—Naneloa Primary Agricultural Cooperative Society Ltd. where he worked as Clerk/ Salesman right from 1979. The employee of the Society could be promoted to the post of B Grade Secretary in respondent No. 1-Bank by way of promotion, for which 50% posts were reserved. It is alleged that the petitioner, despite being at Sr. No. 6 in the seniority list, was ignored for such promotion and persons at Sr. Nos. 33 and 155 of the Seniority List, namely, Jeet Ram and Rohtash Singh, respectively were promoted as B Grade Secretary *vide* Resolution dated 6th July, 2005. The petitioner being aggrieved of his non-consideration for promotion filed a statutory appeal before the Registrar Cooperative Societies, Haryana. The said appeal was allowed *vide* order dated 5th June, 2008 and the petitioner was ordered to be promoted retrospectively with effect from the date his juniors named above were so promoted. On the basis of the order passed by the Registrar, respondent No. 1—Bank promoted the petitioner *vide* order dated 21st August, 2008 (Annexure P-2) granting him retrospective promotion.

The relevant part of the order dated 21st August, 2008 granting retrospective promotion is reproduced here under :-

“In pursuance of the judgment dated 5th June, 2008 of the Registrar, Coop. Soes. Haryana, Panchkukla and the subsequent decision of the Board of Administrator of the Bank *vide* reso. No. 16, dated 5th August, 2008, you are hereby promoted to the post of B Grade Secy. with retrospective effect from 6th July, 2005 in the new pay scale of Rs. 4000-100-4800-EB-100-6000 on the following terms and conditions. You are, therefore, advised to report for duty to the undersigned by 5th Spetember, 2008.”

(3) When the petitioner did not receive the back wages on account of his restrospective promotion, he served legal notice for release of salary from the date of his promotion. The legal notice was replied to by respondent No. 1.—*vide* reply dated 18th June, 2009 sent through Advocate (Annexure P-5). In the reply (Annexure P-5), the petitioner has been denied the back wages from the date of promotion i.e. 6th July, 2005 to 10th September, 2008 applying the principle of “No Work No Pay”. It is against the aforesaid action of the respondents that the petitioner has filed this petition.

(4) I have heard learned counsel for the parties at length. It is admitted position on record that the petitioner was ignored while promoting his two juniors named above. Petitioner’s appeal against his non-consideration for promotion, was accepted by the appellate authority and direction was issued for his retrospective promotion from the date his juniors were promoted. - *vide* order dated 5th June, 2008 (Annexure P-1). The said order of the appellate authority has been implemented by respondent no. 1 and the petitioner was granted promotion. —*vide* order dated 21st August, 2008 (Annexure P-2). In both these orders, petitioner was granted retrospective promotion with effect from the date his juniors named above were promoted in the new scale of Rs. 4000-6000. There was no stipulation that the petitioner shall not be granted back wages from the date of his promotion. It is only when the petitioner claimed back wages from the date of his promotion, the respondents in the reply denied the wages to the petitioner applying the principle of “No work no pay”. This principle will not be attracted in the present case for two reasons-(1) The petitioner was wrongly and illegally denied promotion when his juniors were promoted.

There was no fault on behalf of the petitioner that he was not promoted to the higher post. His claim for higher post and promotion was duly recognized and was accepted by the Appellate Authority and he was given retrospective promotion with effect from the date his juniors were promoted; and (2) the appellate authority in exercise of quasi judicial power, while deciding the appeal of the petitioner granted him retrospective promotion from the date his juniors were promoted without any reservation for payment of the back wages from the date of promotion. Order of the Appellate Authority has been duly implemented by respondent no. 1-Bank and the petitioner was granted promotion retrospectively in the pay scale of Rs. 4000-6000. In both these orders, the petitioner's retrospective promotion has been acknowledged without any reservation. The respondents have no right to plead that the petitioner is not entitled to the wages from the date of promotion, particularly, when the petitioner was illegally denied promotion. The issue has been duly considered by Hon'ble Supreme Court in the case of **Union of India versus K.V. Janakiraman (1)**, wherein it has been observed as under :—

“The normal rule of “no work no 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.”

(5) The aforesaid judgment has been followed by a Division Bench of this Court in CWP No. 12037 of 2005 (Sudesh Kumar versus Haryana Power Generation Corporation Ltd. and another decided on 2nd February, 2006).

(6) In view of the above, this petition is allowed. Impugned order dated 18th June, 2009 (Annexure P-5) is hereby quashed. Respondent no. 1 is directed to release all the financial benefits attached to the promotional post from the date of promotion of the petitioner i.e. 6th July, 2005 within a period of three months alongwith interest at the rate of 6% per annum.

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**R.N.R.**

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(1) AIR 1991 S.C. 2010