

# SUPREME COURT OF INDIA

The State of Punjab

Vs.

B.K.Dhir

C.A.No.1542 of 2011

(Dipak Misra,CJI., A.M.Khanwilkar and D.Y.Chandrachud,JJ.,)

05.09.2017

## JUDGMENT

**Dipak Misra,CJI.,**

1. The respondent retired from government service from the post of Additional Director, Panchayats, Punjab on 31.10.1993. During the course of tenure of his service, he had earned his promotions and while working as Deputy Director (Land Development), he was given the officiating charge of the post of Joint Director (RD), Punjab, Chandigarh with effect from 01.05.1993 vide letter dated 30.04.1993. He was conferred with the powers and functions of the Director, Panchayats under the Punjab Gram Panchayat Act, 1952. Subsequently vide order dated 23.06.1993. he was assigned the work of the post of Additional Director, Panchayats. He assumed the said charge on 01.07.1993. Vide notification dated 23.09.1993, the powers of the Director, Panchayats were conferred on him. At the time of attaining the age of superannuation, he was discharging the duties of the post of Additional Director.
2. The grievance of the respondent was that he was not paid the salary while he was officiating in the higher post. As the grievance was not addressed, he approached the High Court in a Writ Petition which was dismissed by the learned single Judge. In intra-court appeal, that is, L.P.A. No. 198 of 2003, the Division Bench placing reliance on *Pritam Singh Dhaliwal v. State of Punjab and another*<sup>1</sup> came to hold as follows:

“Having thoughtfully considered the rival contentions, we find merit in the prayer of the appellant and are of the view that his case is squarely covered by the ratio of the judgment in *Pritam Singh Dhaliwal*<sup>1</sup>’s case (supra). It was not a case where the appellant had laid a claim to promotion on the basis of the officiating status conferred on him, but had prayed only for the pay which was admissible to incumbents working on the said posts and performing similar duties. Resultantly, therefore, if the respondents had extracted work from him as Joint Director and Additional Director, he would certainly be entitled to pay as is admissible to the regular incumbents

working on the said posts, regardless of any condition that may have been sought to be imposed upon him.”

Being of this view, the High Court allowed the appeal and directed that the appellant therein would be entitled to salary of posts of Joint Director and Additional Director, Panchayats for the period he worked as such.

3. It is apt to note here that the stand of the State before the Division Bench was that the view of the learned single Judge was correct inasmuch as the orders passed posting the appellant on officiating posts incorporated a condition that he would continue to draw his pay in the pay scale of Deputy Director, Panchayat and no extra financial benefit would be given to him for the officiating charge. Additionally, it was asserted that the officer concerned had submitted to the said terms and conditions and not raised any protest.

4. We have heard Ms. Uttara Babbar, learned counsel for the appellant and Mr. R.K. Kapoor, learned counsel for the respondent.

5. This Court today in the case of “*The State of Punjab & Another v. Dharam Pal*”, Civil Appeal No. 1549 of 2011, after referring to the authorities in *Smt. P. Grover v. State of Haryana and another*<sup>2</sup> and *Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and others*<sup>3</sup> and appreciating the similar factual matrix has held thus:

“In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in *Smt. P. Grover* (supra) and *Hari Om Sharma* (supra). As far as the authority in *A. Francis* (supra) is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in *Hari Om Sharma* (supra) and resultantly we hold that the view expressed by the High Court is absolute impeccable.”

6. The learned counsel for the State of Punjab referring to the Punjab Civil Services Rules (for short, “Rules”), urged that the respondent was not eligible to hold the post. Be it noted, the said stand was not taken before the High Court and, in any case, we are disposed to think that when the respondent had worked in the officiating post and had been granted the benefits by the High Court, he should be extended the said benefits. Had there been a contest on the score of eligibility of the respondent, possibly the matter would have been different. That not being the fact situation, we are not inclined to interfere with the order passed by the High Court.

7. Consequently, we do not find any infirmity in the order passed by the High Court and accordingly the appeal, being devoid of merit, stands dismissed. There shall be no order as to costs.

Judgment Referred.

<sup>1</sup>(2004) 4 RSJ 0599

<sup>2</sup>AIR 1983 SC 1060

<sup>3</sup>(1998) 5 SCC 0087