

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.18184 of 2010
Date of decision:13.02.2015**

Ranbir Singh

...Petitioner

Versus

Haryana State Agriculture Marketing Board, Panchkula and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Rajbir Sehrawat, Advocate for the petitioner.

Mr.Rishi Raj, Advocate for
Mr.Partap Singh, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the alleged inaction on the part of respondent authorities, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus.

Notice of motion was issued and pursuant thereto written statement was filed on behalf of the respondents.

Learned counsel for the petitioner submits that since the benefit of first ACP scale was over due in favour of the petitioner, the same was granted to him by the competent authority vide order dated 5.6.2007 (Annexure P-1) w.e.f. 1.3.1997, on completion of 10 years' regular satisfactory service. However, office of respondent No.1 sought some information vide Annexure P-2 which was supplied by respondent No.3

vide communication (Annexure P-3). He further submits that when the actual financial benefit flowing from the order (Annexure P-1) was not being released in favour of the petitioner, he approached the respondent authorities by way of representation dated 27.8.2009 (Annexure P-4), but no action thereon was taken. Having been left with no other option, petitioner has approached this Court by way of instant writ petition. He prays for issuance of appropriate direction to the respondent authorities to ensure early and strict implementation of order dated 5.6.2007 (Annexure P-1).

Per contra, learned counsel for the respondents submits that the order dated 5.6.2007 (Annexure P-1) was not implemented, because the petitioner was facing disciplinary action. Punishment of stoppage of increments was awarded to the petitioner vide order dated 2.3.2006. Another punishment of censure was also awarded to the petitioner. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the case in hand, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the order dated 5.6.2007 (Annexure P-1) would show that the competent authority found the petitioner entitled, for grant of benefit of ACP scale on completion of 10 years' regular satisfactory service w.e.f. 1.3.1997. It is a matter of record and not in dispute that nothing adverse was pending against the petitioner, till passing of order dated 5.6.2007 (Annexure P-1), particularly up to 1.3.1997 when the above-

said service benefit became due in favour of the petitioner. Even if it is to be accepted for the sake of argument that at a later point of time, petitioner was facing some disciplinary action, that would not take away an accrued right of the petitioner. The said accrued right of the petitioner was duly recognised by the competent authority and the same was granted to him vide order Annexure P-1. It is the settled principle of law that an accrued right cannot be taken away because of any later event.

The respondent authorities were duty bound to implement their own order. Neither this order (Annexure P-1) was withdrawn nor it was implemented, which clearly goes to show that the respondent authorities were proceeding on a wholly misconceived and arbitrary approach. Having said that, this Court feels no hesitation to conclude that the petitioner was entitled for release of actual financial benefits, flowing from the order dated 5.6.2007 (Annexure P-1). Since the respondent authorities illegally withheld the service benefit of the petitioner, their action cannot be sustained.

During the course of hearing, learned counsel for the respondents could not point out any material available on record, which may disentitle the petitioner from the benefit arising from the order dated 5.6.2007 (Annexure P-1). When a pointed question was put to the learned counsel for the respondents, as to on what basis implementation of the order (Annexure P-1) was kept in abeyance, he had no answer except to refer to the later disciplinary action initiated against the petitioner, which would of no consequence so far as order Annexure P-1 was concerned. Under these circumstances, it can be safely concluded that the respondent authorities illegally withheld the service benefits of the petitioner, for which he has been found entitled in law, vide order dated 5.6.2007 (Annexure P-1) passed

by the competent authority. Thus, the impugned action of the respondent authorities cannot be sustained, for this reason also.

So far as the later incidents, because of which disciplinary action was initiated against the petitioner, are concerned, the same are not the subject matter of consideration before this Court, in the present case. If the petitioner has committed some wrong, he will face consequences. In this view of the matter, this Court refrains itself from commenting anything on the alleged disciplinary proceedings against the petitioner. It is so said, because any observations made by this Court will adversely affect the rights of either of the parties.

In the present case, the only short issue involved is whether the respondent authorities had any jurisdiction to withhold the implementation of their own order (Annexure P-1), whereby the petitioner was found entitled for particular service benefits. In view of what has been discussed hereinabove, it is unhesitatingly held that the respondent authorities had no jurisdiction to withhold the implementation of their own order (Annexure P-1), because till that point of time, i.e. 1.3.1997, nothing adverse was pending against the petitioner.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned action of the respondent authorities, while keeping the order dated 5.6.2007 (Annexure P-1) in abeyance, has been found to be patently illegal, the same cannot be sustained.

Consequently, the present writ petition is allowed and the

respondents are directed to ensure immediate implementation of order dated 5.6.2007 (Annexure P-1), in its true letter and spirit, but in any case within a period of three months from the date of receipt of a certified copy of this order.

It is pertinent to note here that during the pendency of instant writ petition, petitioner has since expired and his legal representatives were brought on record by way of CM No.242 of 2014 which was allowed vide order dated 17.1.2014. Under these changed circumstances, the respondent authorities are directed that all the retiral benefits including pension, if not already paid to the legal representative of the petitioner, shall also be paid at an early date but in any case within a period of three months from the date of receipt of a certified copy of this order.

Since the financial benefits flowing in favour of the petitioner from the order dated 5.6.2007 (Annexure P-1) have been found to be illegally withheld by the respondent authorities, petitioner shall be entitled for interest @9% per annum from the date the amount became due till the date of its actual payment. If needful is not done within the stipulated period, petitioner shall be entitled for interest @ 12% per annum.

Resultantly, with the above-said observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

13.02.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE