HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.6090 of 2013
Date of decision:29.01.2015

Manohar Lal Sharma and others

...Petitioners

Versus

Haryana State Industrial & Infrastructure Development Corporation Limited and another.

...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.R.K.Malik, Sr. Advocate with
Mr.Mandeep Singh, Advocate for the petitioners.

Mr.Dhiraj Chawla, Advocate for respondent No.1.

Mr.A.S.Chaudhary, Addl.A.G., Haryana.

<u>RAMESHWAR SINGH MALIK, J.</u> (Oral)

Feeling aggrieved against the impugned order dated 27.8.2012 (Annexure P-7) passed by respondent No.1, petitioners have 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 certiorari. Petitioners also seek a writ in the nature of mandamus directing respondent No.1 to implement its own decision dated 4.5.1993 which was reiterated vide decision dated 22.12.2011, granting the financial benefits to the petitioners, arising out of these decisions, along with interest.

Notice of motion was issued and pursuant thereto, written statement was filed by respondent No.1, whereas a short reply was filed by respondent No.2. Thereafter, in compliance of the order dated 17.10.2014 passed by this Court, affidavit dated 9.12.2014 of Principal Secretary to

Government of Haryana, Industries and Commerce Department, was also filed. Respondent No.1 has also placed on record affidavit dated 20.11.2014 along with Annexures R-6 to R-8 by way of CM-14258-2014.

Learned senior counsel for the petitioners submits that the respondent-corporation took a conscious decision way back on 4.5.1993 (Annexure P-2), whereby the board of directors considered the proposal and resolved that the revised pay-scales, as recommended by the Sub-Committee, were to be allowed to all the executives which would include the present petitioners as well. He further submits that when the above-said conscious decision taken by the Board of Directors of respondent No.1 was not implemented, petitioners were left with no other option except to approach this Court by way of CWP No. 15298 of 1993 (Manohar Lal Sharma and others v. The State of Haryana and another), which was disposed of by this Court vide order dated 8.2.2011 (Annexure P-3). He would next contend that although respondent No.1 ought to have granted, the service benefits claimed by the petitioners immediately in compliance of the order dated 8.2.2011 passed by this Court, yet it was not granted. The matter was again considered by the Board in its meeting held on 8.8.2011 and finally the matter was decided in favour of the petitioners vide Annexure P-4. The matter was again considered on 22.9.2011 under the Chairmanship of Financial Commissioner-Principal Secretary, Industries and Commerce Department, Haryana, and the issue was again resolved in favour of the petitioners vide Annexure P-5. The recommendations made by the Committee were again duly approved by the Board, while considering Item No. 42 in its meeting held on 22.12.2011 vide Annexure P-5.

Learned senior counsel for the petitioners, while placing reliance on Article 81 (v) and 95 of the Articles of Association of the respondent-Corporation, contended that once the Chairman of the Board of Directors of respondent No.1 never thought it appropriate to exercise his power under Article 95, the Managing Director of the respondent-Corporation would have no jurisdiction to refer the matter to the Government. However, in the present case the Managing Director acted without jurisdiction, while referring the matter again to the State Government, superseding the Chairman of the Board of Directors. The State Government kept on sitting tight over the matter. Finally, the State Government neither declined nor clearly approved the proposal of the respondent-Corporation, while issuing the communication dated 27.8.2012 (Annexure P-6), thereby directing respondent No.1 to re-examine its proposal for grant of one time benefit to the left over employees, i.e. petitioners.

He further submits that after receipt of communication dated 27.8.2012 (Annexure P-6) from the State Government, the Managing Director of the respondent-Corporation was duty bound to put up the matter again before the Board of Directors but he did not do so. On the other hand, he himself passed the impugned order dated 27.8.2012 (Annexure P-7), thereby superseding the Board of Directors. Thus, the impugned action of the Managing Director was an order without jurisdiction. Regarding the communication dated 10.11.2014 (Annexure R-8), learned senior counsel for the petitioners submits that in view of the mandatory provisions of Article 95 of the Articles of Association of the respondent-Corporation, the action of the respondent-State was totally without jurisdiction. He places reliance on a judgment of this Court in **CWP No. 5271 of 1986 (Surjit Singh and others v. Haryana State Industrial Dev. Corpn. Ltd. etc.)** decided on 26.7.1991 and also the order dated 8.2.2011 passed by this Court in **CWP No. 15298 of 1993 (Manohar Lal Sharma and others v. The State of Haryana and another)**, in support of his contentions. Finally, he prays for setting aside the impugned order, by allowing the present writ petition.

Per contra, learned counsel for the respondent-Corporation submits that the directives issued by the State were binding on the Corporation. He further submits that although earlier decisions were taken more than once by the Board of Directors to the effect that the petitioners are also entitled to the grant of benefit claimed by them as one time measure, initially w.e.f. 1.11.1992 yet thereafter it was changed w.e.f. 1.1.2006. However, since the proposal forwarded by the respondent-Corporation was not approved by the State, the same could not be implemented in favour of the petitioners. He also places reliance on the instructions of the respondent-State vide Annexures R-6 and R-7. Further, he places reliance on Article 135 of the Articles of Association of the respondent-Corporation to contend that respondent-Corporation was duty bound to follow the directives issued by the State Government. He prays for dismissal of the writ petition.

Learned counsel for the State, while referring to the averments taken in affidavit dated 9.12.2014, submits that since the proposal put by the respondent-Corporation was not found worth acceptance, the same was rightly declined by the State Government. He further submits that Haryana Bureau of Public Enterprises was an expert body, who considered the proposal put forth by the respondent-Corporation. However, since the proposal was having financial implications, it was thought appropriate not to approve the same. While referring to the communication dated 10.11.2014 (Annexure R-2/1), (same order as at Annexure R-8) learned counsel for the State submits that petitioners were not entitled for getting the pay-scales of professional because they were not the members of the professional cadre. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of 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 present case, the instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

Twin questions of law that fall for consideration of this Court are :-

(i) Whether the State Government would have no role to play in the matter of respondent-Corporation, particularly when the Chairman of Board of Directors has not exercised his powers under Article 95 of the Articles of Association of the respondent-Corporation, while not referring the matter to the State Government; and

(ii) Whether the Managing Director of the respondent-Corporation would have no authority to refer the matter to the State Government at his own level, when the Chairman of the Board of Directors has not exercised his powers under Article 95 of the Articles of Association, for referring the matter to the State Government.

With a view to answer the questions posed above, it is pertinent to refer the Articles of Association of the respondent-Corporation. Articles 81(v), Article 95 as well as Article 135, read as under:-

> *"81(v) To appoint at their discretion, remove or suspend such Managers, Secretaries, Officers, Clerks, Agents and servants for permanent, temporary or special service as they may from time to time, think fit and to determine their powers and duties and fix their salaries or emoluments and to require security of such amount as they think fit in such instances."*
>
> *95. The Chairman shall reserve for the decision of the Government any proposals or decisions of the Board of Directors or any matter brought before the Board which raises in the opinion of the Chairman, as important issue and is on that account fit to be reserved for the decision of the Government and no decision on such an important issue shall be taken in the absence of the Chairman appointed by the Government.*
>
> *In respect of matters reserved by the Chairman for decision of the Government, if the Government's views are not received within a period of two months, the Director shall be entitled to act in accordance with the proposal or decision without further reference to Government."*
>
> *135 Notwithstanding anything contained in any of the Articles, the Government may, from time to time, issue such directives as the may consider necessary in matters of broad policy and in like manner may vary and annual any such directive. The Company shall give immediate effect to directives so issued."*

A bare combined reading of the above-said provisions of law would show that once the Chairman of the Board of Directors has not exercised his powers under Article 95, reproduced above, the State government would have no role to play. It is so said because once the Chairman has not exercised his powers under Article 95, there would be no reference for consideration before the State Government. Having said that, this Court feels no hesitation to conclude that answer to the first question posed hereinabove is and has to be in the positive to hold that till the matter is referred by the Chairman under Article 95, Government has no role to play. In the present case, admittedly the Chairman of the respondent Corporation never exercised his powers under Article 95 with a view to refer the matter to the State Government. In this view of the matter, the State Government would have no role to play.

Coming to the second question posed hereinabove, once the Chairman of the Board of Directors does not exercise his power under Article 95 of the Articles of Association, the Managing Director of the respondent-Corporation would have no jurisdiction to refer the matter to the State Government at his own level. Thus, the second question is answered, accordingly. Any contrary interpretation would run counter to the unambiguous legislative intent as well as true spirit of Article 95. In fact, present case clearly falls within the scope of Article 81(v) reproduced above.

So far as the argument raised by learned counsel for respondent-Corporation based on Article 135 is concerned, the same has been duly considered but found without any substance. It is so said because Article 135 would not at all be attracted in view of the given fact situation of the present case. It is neither pleaded nor argued case on behalf of either of the respondents that financial health of respondent Corporation was not sound or it was facing any kind of difficulty in that regard.

Similarly, argument raised by the learned counsel for the State that since petitioners were not members of professional cadre they were not entitled for the service benefit in question, is to be noted to be rejected. The reason to say so is that since the employer, i.e. respondent-Corporation has considered this aspect of the matter for more than once, before taking its repeated and conscious decisions in this regard, respondent-State had no jurisdiction to interfere, particularly when there was no reference before it under Article 95. Further, even the latest decision dated 10.11.2014 of respondent No.2 contained in Annexure R-2/1 is not only without jurisdiction but also non-speaking as there is not even a passing reference of Articles 81(v), 95 and 135, much less discussion thereof. In fact, in this process, the only justified decision of respondent No.2 was dated 27.8.2012 Annexure P-6, whereby this matter was left to be decided by respondent-Corporation itself, at its own level. But thereafter respondent-Corporation acted illegally trying to take a complete somersault changing its earlier stand which does not behove a model employer, because it had taken a conscious decision which was reiterated also. Thus, the order dated 10.11.2014 cannot be sustained for this reason also.

At this stage, learned counsel for respondent No.1 places heavy reliance on the decision of Board of Directors taken in its meeting held on 29.8.2013 (Annexure R-3) to contend that this would amount to exercise of power by the Chairman under Article 95 of the Articles of Association and the said proposal of the respondent-Corporation was not approved by the State Government. However, a bare perusal of this decision of the Board of Directors contained in Annexure R-3 would show that it nowhere refers, even remotely, to the earlier decisions taken by the Board of Directors, for granting the service benefits to the petitioners which they are claiming. This proposal in Annexure R-3 put forth before the Board of Directors was regarding manpower planning and the amendments in Recruitment and Promotion Policy of HSIIDC. The relevant part of Annexure R-3, reads as under:-

> *"Item No.35 Proposal for Manpower Planning and amendments in Recruitment & Promotion Policy of HSIIDC*
>
> *Resolved that, subject to approval of the State Government/HBPE, the proposal for Manpower Planning as well as amendments in Recruitment and Promotion Policy for the employees of the Corporation, as circulated to the Board, be and is hereby approved.*
>
> *Further resolved that the Managing Director be and is hereby authorised to take necessary steps in the matter."*

Even for the sake of argument, if it is to be accepted that this decision taken by the Board of Directors was pertaining to the petitioners as well, it would be prospective in nature. However, since the repeated decisions have already been taken by the Board of Directors in favour of the petitioners which had never been set aside or reviewed later on, this decision dated 29.8.2013 will in no manner hamper the claim of the petitioners. Further, there is no communication available on record as to whether even after taking this decision dated 29.8.2013 (Annexure R-3), Chairman of the Board of Directors had ever exercised his power under Article 95 of the Artic1es of Association, with a view to refer the matter to the State Government. Under these circumstances, it can be safely concluded that the Managing Director of the respondent-Corporation acted without jurisdiction, while passing the impugned order and the same cannot be sustained.

It is pertinent to note here that the respondent-Corporation took a conscious decision in this regard as early as on 4.5.1993 in favour of the petitioners. However, despite lapse of an inordinate long time of more than two decades, said conscious decision taken by the respondent-Corporation, had not been implemented in favour of the petitioners for one or the other unjustified reasons. It is a sorry state of affair, to say the least. The respondent authorities ought to have concluded the issue within a reasonable time, particularly after passing of the order dated 8.2.2011 passed by this Court vide Annexure P-3, in the earlier writ petition filed by the petitioners.

The above-said view taken by this Court also finds support from the judgment dated 26.7.1991 passed by this Court in **Surjit Singh's** case (supra) as well as the order dated 8.2.2011 passed by this Court in **Manohar Lal Sharma's** case (supra) filed by the present petitioners themselves.

The first conscious decision was taken by the respondent-Corporation, in its meeting held on 20.4.1993 and the operative part thereof, is as under:-

> *"The Sub Committee recommends grant of pay scales by way of promotion to the executives as per details in Annexure-1 supra. The recommended pay scales may be implemented w.e.f. 1.11.1992 i.e. the date from which such scales have been granted earlier to some executives in pursuance of Board's decision dated 1.2.93. The Sub Committee further recommends grant of these pay scales by relaxing relevant provisions in the Promotion Policy already in operation. It is also recommended that the above principles may be adopted in future also regarding promotions."*

Thereafter, the matter was put up before the Board in its meeting held on 4.5.1993 and after having detailed deliberation on Item No. 19, the Board took the following decision:-

> "*Item No. 19 Revision of Pay Scales by promotion in the New Specialised Cadre of Professionals.*
>
> *The Board considered the proposal and resolved that the revised pay scales as recommended by the Sub Committee be and are hereby allowed to all other Executives as mentioned in the Agenda Notes.*"

Even after passing of the above-said order by this Court on 8.2.2011, disposing the earlier writ petition filed by the petitioners, the Board of Directors in its meeting held on 8.8.2011 discussed the issue again under Item No. 46 and decided as under:-

> "*Item No.46.Manohar Lal Sharma and others Vs. State of Haryana and another (CWP No.15298 of 1993) and Ashok Mahajan Vs. HSIIDC (CWP No.3405 of 1993) – Grant of Higher Pay Scales to the Executives of Non professional cadre.*
>
> *The Board considered the proposal and resolved that since there would be wide-spread ramifications, therefore, the matter be examined in depth by the Committee of Directors, constituted by the Board, for personnel matters under the Chairmanship of Financial Commissioner and Principal Secretary Industries, Haryana and its recommendations be put up to the Board for consideration.*"

In compliance of the above-said decision of the Board of Directors, the Committee of the Directors, constituted by the Board, had detailed discussion on the issue and thereafter took a conscious decision vide Annexure P-5, operative part of which reads as under:-

> "*Keeping in view the above changed scenario, the Committee decided to recommend that these left-over employees may also be accommodated, as a one time measure,*

> *in order to minimize any heart-burning among these employees, and allowed the pay band/grade pay equal to their counterparts in the professional stream w.e.f. 01.01.2006. The executives of IT Cadre, who had earlier been allowed the professional scales w.e.f. 2.8.2008, should also be entitled for the professional scale w.e.f. 01.01.2006. However, the executives in 'non-professional stream' should continue to be considered for promotion in their own non-professional stream up to the level of Senior Managers in all streams of the Corporation. The promotion at the level of AGM and above should be strictly restricted only for those executives who possess the required professional qualifications as per the Recruitment & Promotion Policy of the Corporation."*

The above-said recommendations made by the Committee of Directors was finally put up for consideration before the Board of Directors in its meeting held on 22.12.2011 and the issue was discussed under Item No. 42, taking the following decision:-

> *"Item No.42.Manohar Lal Sharma and others Vs. State of Haryana and another (CWP No.15298 of 1993) and Ashok Mahajan Vs. HSIIDC (CWP No.3405 of 1993) – Grant of Higher Pay Scales to the Executives of Non professional cadre.*
>
> *The Board, after consideration, resolved to approve the recommendations of the Committee of Directors, constituted by the Board for personnel matters, under the Chairmanship of Principal Secretary Industries, as circulated to the Board."*
>
> *The Board authorized the Managing Director to take further necessary steps in the matter."*

It was at this crucial stage, that the Managing Director was duty bound to comply with the above-said conscious decision of the Board of Directors, for strict implementation thereof. However, he exceeded his jurisdiction, while referring the matter to the Government at his own level.

It is so said because once the Chairman has not exercised his power under Article 95 of the Articles of Association, the Managing Director was not empowered to refer the matter to the Government on his own. Had the Managing Director proceeded in accordance with law, the above-said order dated 8.2.2011 passed by this Court at Annexure P-3 would have been implemented granting the relief to the petitioners, which had also been repeatedly approved by the Board of Directors. Since the Managing Director of respondent-Corporation transgressed his authority and jurisdiction to pass the impugned order dated 27.8.2012 (Annexure P-7), the same cannot be sustained for this reason also.

It is also a matter of record that the order dated 8.2.2011 passed by this Court at Annexure P-3 was neither challenged by the respondent-Corporation nor by the respondent-State by way of filing LPA and the same has become final between the parties. The relevant observations made by this Court in its order dated 8.2.2011, which can be gainfully followed in the present case, read as under:-

> *The petitioners, accordingly, have now approached asking for relief on the ground of parity as the Engineers working in the Board were equated with them and were re-designated as such. The submission is that the Board need not to wait the decision from the State Government and it is itself competent to remove the anomaly and grant the pay scale. It is conceded that there is a need of parity of the pay scales of various employees as was done earlier.*
>
> *Learned counsel for the respondent-Corporation has drawn my attention to order (Annexure P-2) passed by this Court in C.W.P. No.5271 of 1986, (Surjit Singh Ahuja & others Versus Haryana State Industrial Development Corporation Limited), decided on 26.7.1991. After making reference to Article 95 of the Articles of Association, this Court has held*

that Board is competent to revise the pay scale of its employees. Counsel for the Corporation submits that this decision Annexure P-2 was not put to any challenge and thus, has acquired finality.

That being the legal position, the present writ petitions certainly can be disposed of with the direction that the Board may at its own level consider granting the pay scale as demanded by the petitioners, if it is otherwise due to them in accordance with law. It is pointed out by the counsel for the petitioners that Board has already recommended the revision of pay scales vide Annexures P-10 & 11. Once it is held that the Board is competent to take the decision, no question would arise for waiting for outcome of the recommendation made to the State Government. The Board is competent to take a decision in regard to revision of pay scales. Both the writ petitions are, accordingly, disposed of. The necessary action be completed within a period of three months from the date of receipt of certified copy of this order.'

A combined reading of the peculiar facts and circumstances of the case noticed hereinabove, would make it crystal clear that the respondent authorities had been acting in the most arbitrary and discriminatory manner. Genuine claim of the petitioners, which had been duly considered and accepted by the competent authority, i.e. Board of Directors of the respondent-Corporation, was denied to them proceeding on a patently illegal approach. Petitioners had been pursuing their cause regularly and no fault can be found against the petitioners in this regard. Since the respondent authorities proceeded on a wholly misconceived and perverse approach at every relevant point of time, the impugned action has been found to be an arbitrary one on the face of it and the same cannot be sustained, for this reason as well.

It is pertinent to note here that since the Chairman of the respondent-Corporation did not exercise his power under Article 95 of the Articles of Association, communication dated 10.11.2014 Annexure R-8 placed on record by the respondent-Corporation would be of no consequence, because the same is an action without jurisdiction. Further, had this Court not passed the order dated 17.10.2014, the respondent authorities were proceeding on a casual approach, while sitting tight over the matter without their being any justification for the serious omissions on their part. In fact, long delay of more than 21 years in taking the matter to its logical end, has gone unexplained by the respondents.

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 order dated 27.8.2012 (Annexure P-7) passed by the Managing Director of respondent-Corporation has been found to be an order without jurisdiction, the same is hereby set aside.

Consequently, the respondent-Corporation is directed to ensure strict implementation of its repeated and conscious decisions particularly dated 4.5.1993 and reiterated vide its decision dated 22.12.2011. Let the financial benefits arising out of these decisions of the respondent-Corporation be released to the petitioners at an early date and in any case within a period of two months from the date of receipt of a certified copy of this order.

However, as per the statement made by learned senior counsel for the petitioners before this Court on 9.10.2014, petitioners shall be entitled for the financial benefits arising out of the above-said decisions of the respondent-Corporation only from 1.1.2006. Since the genuine claim of the petitioners has been illegally denied by the respondent authorities during all this long period, petitioners shall be entitled for interest on the arrears @9% per annum from the date the amount became due till the date of payment. If needful is not done within the stipulated period, petitioners shall be entitled for interest @ 12% per annum.

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

29.01.2015 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**