

CWP No.12459 of 2001

#1# Manoj Kumar
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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.12459 of 2001

Date of decision: 23.12.2016

Smt. Tarawanti and Ors.

....Petitioners

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. A.S. Nehra, Advocate for the petitioners.

Mz. Sudeepti Sharma, DAG, Punjab.

Jaswant Singh, J

Petitioners, who were working as Sr. Assistants with the Irrigation Department, Punjab, have prayed for issuance of a writ of Certiorari for quashing the impugned order dated 26.6.2001 **(P.10)** passed by respondent No.2 whereby their claim for protection of the pay during which they worked as Accounts Assistant with the S.Y.L Canal Project has been rejected.

It is contended by learned counsel for the petitioners that the impugned order has been passed by the Competent Authority i.e respondent No.2 without affording any opportunity of hearing to the petitioners and contrary to the directions of Division Bench of this Court issued on 12.7.2000 **(P.8)** in CWP No.2195 of 1990 earlier filed by the petitioners. It has further been argued that the impugned order is wholly erroneous and liable to be set aside by this Court.

On the other hand, learned state counsel has vehemently opposed the prayer of the petitioners on the ground that the impugned order **(P.10)** is perfectly legal and valid and the same has been passed after due application of mind and affording an

opportunity of hearing to the petitioners, which deserves to be upheld by this Court. It has also been argued that on account of re-fixation, the recovery of excess payments has already been effected from the petitioners and in case, the benefit claimed by the petitioners is granted, then the Senior Clerks, who were senior to the petitioners, will also stake their claims for pay protection at par with the petitioners (Juniors) leading to opening the Pandora box.

Heard learned counsel for the parties and perused the paper book with their able assistance.

There is no dispute that on earlier occasions also, the petitioners along with others had filed three separate writ petitions bearing CWP No.2195 of 1998 titled Tarawanti and Ors. Vs. State of Punjab and Ors, CWP No.14565 of 1998 titled Darshan Singh Sethi and Ors Vs. State of Punjab and CWP No.2350 of 2000 titled Rattan Chand Vs. State of Punjab and Ors. out of which CWP No.2195 of 1998 and CWP No.14565 of 1998 were allowed by a Division Bench of this Court vide common order dated 12.7.2000 (**P.8**) whereas the third writ petition bearing CWP No.2350 of 2000 was disposed of vide **P.9** in terms of the order dated 12.7.2000. The operative part of the order dated 12.7.2000 (**P.8**) reads as under:

“Having heard counsel for the parties, we are of the view that the impugned orders cannot be sustained. There is no gain saying the fact that the impugned orders have the effect of reducing the pay of the petitioners substantially to their detriment without affording an opportunity of hearing to them. This action of the respondents is clearly in violation of the principles of natural justice. We, therefore, without going into the merits of the respective stands taken by the

parties, set aside the impugned orders leaving it open to the respondents to pass fresh orders in accordance with law after affording an opportunity of hearing to them. In Civil Writ Petition No.14565 of 1998 the Chief Engineer passed the impugned order on 19.3.1998 only in regard to petitioners No.1 to 3. Since no adverse order had been passed in the case of petitioner No.4, the claim made by him in this petition is dismissed as infructuous.”

It transpires that in compliance of the order dated 12.7.2000 passed by this Court, respondent No.2 issued office Memo dated 09.1.2001 (P.11) and withdrew the order dated 09.1.1998, which was the subject matter of challenge in the writ petition bearing CWP No.2195 of 1998 and CWP No.14565 of 1998 and three petitioners, namely, Smt. Tarawanti, Usha Rani and Amarjit Singh were asked to appear and present their case before the Chief Engineer for taking a fresh decision. There is another letter dated 14.2.2001 (P.12) addressed to petitioner No.4 vide which he was also asked to appear and present his case before the Chief Engineer on 16.2.2001 in the similar terms.

There are categoric averments made in paragraph 2(m) on facts as well as ground 3(b) of the writ petition to the effect that in compliance of the directions of this Court CWP No.2195 of 1998 and CWP No.2350 of 2000, the petitioners were heard by Sh. Sukhmander Singh Dosanjh, the then Chief Engineer but he retired on attaining the age of superannuation on 31.5.2001 before taking any final decision in the matter and his successor, namely, Sh. Yaduvanshi joined the duty as Chief Engineer on or after 01.6.2001 and he has passed the impugned order dated 26.6.2001 **(P.10)** without affording any opportunity of hearing to the petitioners and

the averments have not been denied by the respondents in their counter reply, which read as under:

Writ Petition Para 2(m) <i>That thereafter the case was processed in the office of the Chief Engineer Irrigation Punjab Chandigarh and the petitioners were given the opportunity of hearing by Sh. Sukhminder Singh Dosanj, the then Chief Engineer on 22.2.2001. The petitioners believed that in view of the submissions made by them the said Chief Engineer was inclined to take a view favourable to them. However, before any final decision could be taken by him, he retired and relinquished charge on 31.5.2001 (Annexure P.9/A). His successor Sh. Yudhvanshi joined as Chief Engineer Irrigation on or about 1.6.2001. Soon after joining, the said Chief Engineer without affording any opportunity of hearing to the petitioners passed the order dated 26.6.2001 holding that the order dated 8.1.98 (Annexures P.4 to P.6) were legally sound and correct. A true copy of the order dated 26.6.2001 is appended herewith as Annexure P.10.</i>	Reply by the respondents. Para 2 (m) <i>That the contents of this sub para are admitted to the extent that the petitioners were given the opportunity of personal hearing by Sh. Sukhminder Singh Dosanj on 22.2.2001. It is submitted that the opportunity of personal hearing was given to the petitioners on 10.10.2000 at 11.00 am in the office of answering respondent. After considering the representation of the petitioners the claim of the petitioner was rejected on 26.6.2001 after passing speaking orders. It is also admitted that the hearing was given by Sh. Sukhminder Singh Dosanj the then Chief Engineer who has been retired on 31.5.2001. The answering respondent passed the speaking orders in view of the instruction of Punjab Govt and representations of the petitioners. The order dated 26.6.2001 passed by the answering respondent are legal and valid and is not liable to quashed.</i>
3(b) That before passing the impugned order dated 26.6.2001 whereby the pay of the petitioners has been reduced, no opportunity of hearing was afforded to the petitioners by the concerned Chief Engineer. It is relevant to state that after the orders were passed by this Hon'ble Court in CWP No.2195 of 1998 and in CWP No.2350 of 2000, the case was taken up by the department and the order dated 9.1.1998 and order dated 10.2.2000 were withdrawn by orders dated 9.1.2001 & 14.2.2001 (Annexures P.11 and P.12). Thereafter petitioners were asked to appear before the Chief Engineer Irrigation on 10.10.2000. The case was adjourned and the petitioner were asked to appear before the Chief Engineer on 20.2.2001. At the relevant time Sh. Sukhminder Singh Dosanj was the Chief Engineer. In view of the submissions made by the petitioners, the petitioners thought that a decision favourable to them would be taken. However, before any final decision could be taken, the aforesaid Chief Engineer retired on 31.5.2001. His successor Sh. Yudhvanshi joined as Chief Engineer SYL Canals Irrigation Punjab Chandigarh on or after 1.6.2001. No opportunity of hearing was given to the petitioners by Shri Yudhvanshi and to the surprise, order dated 26.6.2001 has been passed.	3(b) That the contents of this sub para are wrong and hence denied. The pay of the petitioners has been reduced as per the advise of the Punjab Govt and Accountant General, Punjab, Chandigarh. The rest of this para being a matter of record, hence no comments.

[Emphasis supplied]

A perusal of the contents of para 2(m) and ground 3(b) of the writ petition as well as the reply of respondents clearly reveal that the petitioners were afforded some opportunities of hearings by the then Chief Engineer, namely, Sukhmander Singh Dosanj but he retired on superannuation w.e.f 31.5.2001 without taking any final decision in the matter and thus the same is of no consequence and cannot be construed as an opportunity of hearing while passing the impugned order dated 26.6.2001 **(P.10)**. There is no dispute that the impugned order has been passed by Mr. Yaduvanshi after the retirement of Mr. Dosanj only on 26.6.2001 and no opportunity of hearing had been afforded to the petitioners by the new incumbent, who has passed the impugned order. Thus, the same is running contrary to the directions issued by Division Bench of this Court while passing the order dated 12.7.2000 (P.8) whereby it was made obligatory for the respondents to pass a fresh speaking order in accordance with law after affording an opportunity of hearing to the petitioners.

Therefore, it is clearly established that respondent No.2 has passed the impugned order not only in violation of principles of natural justice, but in absolute breach of the directions of this Court as contained in order dated 12.7.2000, therefore, the same is not legally sustainable. Still further, the conclusion recorded by respondent No.2 in the impugned order to the effect that the previous orders dated 08.1.1998 and 10.2.2000 are legally sound and correct, are absolutely without application of mind and *de hors* the earlier decision of this Court vide which both the orders i.e 08.1.1998 and 10.2.2000 were quashed.

In view of the aforesaid discussion, writ petition is allowed and the order dated 26.6.2001 (**P.10**) passed by respondent No.2 is quashed and set aside with a costs of Rs.2,00,000/- to be equally paid to all the four petitioners (Rs.50,000/- each) by the respondents and the State of Punjab shall be free to recover the same from the Officer concerned, who had passed the impugned order (**P.10**).

However, the liberty is granted to the Competent Authority to take a final decision in the matter afresh after affording an opportunity of hearing to the petitioners within a period of four months from the receipt of certified copy of this order.

December 23rd, 2016

(JASWANT SINGH)

manoj

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No