

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.11557 of 2016
Decided on :02.06.2016**

Mehanga Ram

... Petitioner

Versus

PSPCL and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. HPS Ishar, Advocate for the petitioner.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks a writ in the nature of mandamus directing the respondents to recalculate the retiral benefits as per revised salary and to pay the same. The payment of leave encashment for 300 days is also prayed for.

The case of the petitioner is that he was appointed as T-mate on 01.06.1980 and his services were regularized w.e.f. 27.07.1992 and retired on 30.11.2012. The pensionary benefits were not released to him and he approached this Court and directions were issued on 26.02.2014 (Annexure P-1) to decide his claim, which has been raised in the legal notice dated 10.12.2013. It is his case that leave encashment have been paid for 171 days, whereas, he was entitled for 300 days and the punishment of stoppage of one increment had been imposed upon him, which was set aside in appeal to the effect that the future effect was done away with. The salary of the petitioner had been revised and the respondents also required to recalculate the benefits and pension as per the revised salary. Reliance was placed upon the reply filed in the contempt petition on behalf of the respondents to this fact. Resultantly, the present writ petition has been filed.

Admittedly, respondents have not been approached for the necessary relief, after the disposal of the contempt petition. No detailed representation has been filed, whereby the respondents have got an opportunity to reply to the claim set up by the petitioner. It is not the case of the petitioner that the said demand having been raised has not been met. Thus, in the absence of the respondents having been approached for the necessary relief, the present writ petition is not maintainable. It is settled principle that the writ of mandamus cannot be issued, until the respondents have been approached and they have declined to act upon the representation. The said principle was laid down by three Judges Bench of the Apex Court in '**Saraswati Industrial Syndicate Ltd. etc. Vs. Union of India**' (1974) 2 SCC 630 wherein it has held as under:-

“25. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi-judicial proceedings was before the High Court. The powers of the high Court under [Article 226](#) are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless the well recognised rule that no writ or order in the nature of a Mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties the salutary general rule which is subject to certain exceptions applied by us as it is in England when writ of Mandamus is asked for could be stated as we find it set out in Halsbury's Laws of England (3rd edition vol. 13 p. 106):

"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that

demand was met by a refusal."

26. *In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution. These appeals must be and are, hereby, dismissed but in the circumstances of the case we make no order as to costs."*

Similar principles were laid down by the Apex Court in '**Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and others'** (2013) 5 SCC 427 wherein it was held that there has to be a demand which is clear, plain and unambiguous to the concerned officer having requisite authority to perform the act before enforcement of a legal right can be claimed.

Similarly in '**Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another'** (2013) 5 SCC 470, the same view was taken.

In the absence of the petitioner having failed to approach the respondents, he cannot approach this Court at the first instance. Accordingly, the present writ petition is dismissed with liberty to the petitioner to approach the respondents.

JUNE 02, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE