

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.22683 of 2011(O&M)

Date of decision: 4.2.2016

Jarnail Singh

...Petitioner

Versus

The Punjab State Power Corporation limited and others **...Respondents**

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

Present: Mr. R.K.Arora, Advocate for the petitioner

Mr. Y.P.Khullar, Advocate for the respondents.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 24.8.2011 (Annexure P/20) passed by respondent no.4 wherein the petitioner's appeal has been rejected on technical grounds.

The reasoning which has weighed that the petitioner had not signed on the representation-cum-appeal and the power of attorney of the Advocate had not been attached. The other ground taken is that the limitation had expired. The reasoning given in the order reads as under:-

“5) The petitioner neither put his signature on the Annexure P-18 attached with the writ petition nor filed any appeal before the appellate authority against the order dated 29.2.2008.

6) On the notice, there was signature of the advocate only, but he has not attached his vakalatnama, which is necessary for filing appeal.

7) Annexure P-18 dated 21.12.08 was received in this office on 15.1.09 in the form of notice, whereas the order under challenge was passed on 29.2.08. Accordingly, limitation has been expired.

8) In this regard, the Hon'ble Punjab and Haryana High Court has been informed vide reply filed COCP No.818.

In view of the aforementioned facts, no action is required to be taken at this stage. In compliance of the

orders of Hon'ble High Court and in view of the instructions issued by the Powercom, the representation of the employee has been considered and this speaking order is issued that the representation submitted by the employee is incomplete and time barred and the same is hereby filed. As per these orders, the petitioner is not entitled for any other payment.”

It is not disputed that the petitioner had challenged rejection of his request for voluntarily retirement by way of Civil Writ Petition No.10444 of 2007 and vide order dated 31.1.2008 (Annexure P/15), a Division Bench of this Court while allowing his case had directed that the petitioner be retired prematurely with effect from 29.2.2008. On account of order dated 29.2.2008 (Annexure P/16) being passed which was further modified vide order dated 11.3.2008 (Annexure P/17), the period from 23.4.2007 to 29.2.2008 was treated as non duty period by the said respondent.

The petitioner had come to this Court challenging the said order by filing Civil Writ Petition No.20207 of 2009. The same had been disposed of on 12.5.2011 (Annexure P/19) wherein an objection had been taken by the counsel for the Board itself that an appeal was maintainable against the said order.

Counsel for the petitioner at that point of time brought to the notice of the Court that representation-cum-appeal was still pending but no decision has been taken by the respondents authorities. This fact was not disputed by the counsel for the respondent-Board. The said aspect would be clear from the relevant part of the order dated 12.5.2011 which reads as under:-

“Counsel for the petitioner while referring to Annexure P-18 dated 21.12.2008 submits that the said representation-cum-appeal is still pending with the respondents wherein apart from challenging the order dated 29.2.2008 (Annexure P-16), his further claims which he has made in the present writ petition, have also been submitted. No decision on the said representation/appeal has been taken by the respondent Authorities as yet. This

fact is not disputed by the counsel for the respondents.

Counsel for the petitioner in the light of the above, prays that a direction may be issued to the Secretary, Punjab State Electricity Board (now Punjab State Power Corporation Limited)-respondent No.1 to decide the said representation/appeal within some specified time.

Without going into merits of the case or commenting thereupon, the present writ petition is disposed of with a direction to the Secretary, Punjab State Electricity Board (Now Punjab State Power Corporation Limited)-respondent No.1 to consider and decide the representation/appeal dated 21.12.2008 (Annexure P-18) within a period of three months from the date of receipt of certified copy of this order, in accordance with law. In case the petitioner is held entitled to the benefit claimed by him, the consequential relief be released to him within a period of two months thereafter.”

Resultantly, the said writ petition was disposed of with a direction to consider/decide the representation/appeal dated 21.12.2008 within a period of three months.

The same has now been as noticed dismissed on the above technical aspects. In the opinion of this Court the said reasoning given as reproduced above is on the face of it absurd. Once it had been held out before this Court that the matter has to be decided within a specified period, respondent no.4 was under legal obligation to decide the issue on merits rather than put forth technical objections and deny the consideration on merits to the petitioner. The history of litigation has already been noticed. The petitioner has been in Court since last 9 years i.e. from 23.2.2007 when his case of voluntarily retirement had been rejected and the respondents are driving him again and again to the Court unnecessarily.

In similar circumstances in **Civil Writ Petition No.3840 of**

2012-Inderjit Singh Sodhi Vs. Punjab State Power Corporation Ltd. and others decided on 20.11.2013 while noticing identical objections raised costs of ₹ 50,000/- were imposed upon the respondents as compensatory costs to the petitioner therein on account of delay in payment of retiral benefits.

Thus, this Court is of the opinion even in this case also similar costs are liable to be imposed on account of attitude of respondent no.4 who has failed to discharge his duties and comply with the orders of this Court.

Accordingly, the present writ petition is allowed. The impugned order dated 24.8.2011 (Annexure P/20) is set aside with a direction to consider and decide the representation-cum-appeal of the petitioner afresh on merits within a period of three months from the date of receipt of a certified copy of this order. The petitioner shall be entitled to ₹ 50,000/- as costs and it would be open to the Board to recover the said costs from the concerned Officer who had decided the appeal in such a manner in spite of directions by this Court.

February 04, 2016
Pka

(G.S.SANDHAWALIA)
Judge