

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

**CWP No.4183 of 2013 (O&M)
Date of decision: 08.07.2016**

Mr. Dinesh Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. Naresh Prabhakar, Advocate,
for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

Mr. Satyawan Ahlawat, Advocate,
for respondent No.2.

Ritu Bahri, J.

The petitioner is seeking direction to the respondents to release his pay as Account Officer in the revised pay scale from the date he is performing the services of Account Officer.

Petitioner joined the Haryana Roadways Engineering Corporation Ltd.-respondent No.2 as Accountant on 06.09.1988. Respondent No.2 is a limited company and is working through its resolutions. The Board of Directors in its 77th meeting, held on 17.11.2006, revived the post of Account Officer and Superintendent, subject to approval by the Haryana

Board of Public Enterprises. The post was revived to provide promotional

avenues to the employees of respondent No.2. Thereafter, in 84th meeting of the Board of Directors, which was held on 10.09.2008, one Arun Kumar Sharma was considered for promotion to the post of Junior Auditor and the case of the petitioner was approved for promotion to the post of Account Officer. Consequent to the resolution dated 10.09.2008, petitioner was promoted as Account Officer vide order dated 08.10.2008 (Annexure P-1). Joining report of the petitioner is annexed as Annexure P-2. Subsequently, the promotion order of the petitioner was amended vide order dated 27.07.2009 (Annexure P-3) and his promotion was made subject to the approval of Haryana Bureau of Public Enterprises. The said Bureau approved the new pay scale of the employees of respondent No.2. However, in the column of Account Officer, it was mentioned that **no post of Account Officer is sanctioned in the Corporation** and as such, the salary of the petitioner as Account Officer was withheld. The respondent-corporation in its 90th meeting held on 23.03.2010, passed a resolution for creation of the post of Section Officer in the pay scale of Rs.9300-34800+4000 grade pay. In the absence of any post of Account Officer, the petitioner gave his consent for the post of Section Officer on 06.05.2010 (Annexure P-4). He was working on the post of Account Officer, but was drawing the salary of Accountant in the new pay scales i.e. of an inferior post. Thereafter, the petitioner made repeated requests to respondent No.2 to pay him the salary of Accounts Officer. In response to the legal notice dated 01.07.2011 (Annexure P-5), respondent No.2 gave its reply dated 20.09.2011 (Annexure P-6) stating that the Haryana Board of Public Enterprises has not yet granted approval for sanction of the post of Accounts Officer. Hence, this petition.

Upon notice, written statement on behalf of respondent No.2 has

has not yet been sanctioned by the Haryana Bureau of Public Enterprises, the petitioner is working as Accountant. Respondent No.2 sent the proposal for creation of the post of Section Officer the the same had been approved Board of Directors in its 103rd meeting, held on 14.06.2013 and notified on 11.07.2013. It was further submitted that in order to monitor and reviewing the working of Board and Corporations in Haryana State, the Government has constituted Haryana Bureau of Public Enterprises vide notification dated 01.02.1988 (Annexure R-1) and the prior approval of the Finance Department is required for creation/upgradation of the post as per letter dated 09.01.1990 issued by the Finance Department. Even while granting the revised pay scale of employees of Haryana Roadways Engineering Corporation, the Financial Commissioner-cum-Principal Secretary to Government, Transport Department, vide letter dated 17.06.2009 had given the remarks that post of Accounts Officers is no sanctioned yet. It has been further explained that one Arun Sharma, who was promoted along with the petitioner, was granted the benefit of revised pay scale. The post and pay scale of Superintendent was approved, whereas for the post of Accounts Officer, no post and pay scale was granted by the Haryana Bureau of Public Enterprises. In the absence of any sanctioned post, the petitioner was not entitled for financial upgradation as per ACP Rules, 2008. The petitioner was granted 2nd ACP after completion of 20 years of regular satisfactory service on the post of Accountant. It has been further clarified that a correction has already been made in ACR of the petitioner for the year 2011-12 by the reporting authority.

In his replication filed by the petitioner, it is stated that during the pendency of this petition, the post of Accounts Officer has been sanctioned

17.07.2008 (Annexure P-7), had authorized the petitioner to attend the Court of Income Tax Appellate Tribunal, New Delhi as Accounts Officer and thereafter, vide order dated 01.07.2011 (Annexure P-8), he had been handed over all the cheque-books of all the banks as Accounts Officer. Vide letter dated 15.04.2013 (Annexure P-9), a committee has been constituted by DGST, Haryana, in which the petitioner, as Accounts Officer, is a member.

Learned counsel for the petitioner has argued that though the post of Accounts Officer has now been sanctioned, but even before that the petitioner had been known as Accounts Officer as is evident from the letters/orders dated 17.07.2008, 01.07.2011 and 15.04.2013 (Annexures P-7, P-8 and P-9). Therefore, he is entitled to be paid salary of this post.

Learned counsel for respondent No.2 is not disputing the facts mentioned in the replication.

Learned counsel for the State has informed the Court that the Haryana Bureau of Public Enterprises, vide order dated 21.01.2015, has sanctioned the post of Section Officer and has specifically stated that appointment of petitioner as Accounts Officer was not valid as no such post existed in the corporation at that time. In view of the order passed by the Haryana Bureau of Public Enterprises, the petitioner has no right to claim salary of the post of Accounts Officer.

The question for consideration now, would be, 'whether respondent No.2-corporation, which is a limited company, is required to take approval from the Haryana Bureau of Public Enterprises for creation of post and revision of pay scales for its employees.'

This question came up for consideration before this Court in

Haryana Warehousing Corporation Godown Keepers/Accounts Clerks

it has been held that the Haryana Bureau of Public Enterprises does not have jurisdiction to interfere in the matter of Haryana Warehousing Corporation and every company or corporation is an independent body.

In **Pawan Kumar and others Vs. Uttar Haryana Bijli Vitran Nigam Limited**, 2014 (2) PLR 209, a Co-ordinate Bench of this Court had examined the competence of the Nigam to fix salaries/emoluments or remuneration of its employees. In that case, all the Managing Directors of Haryana Power Corporations had constituted a Coordination Committee to consider the proposal of pay revision of its employees. The Committee recommended that the pay scales of Finance, Audit & Accounts Officers should be at par with those in the Engineering. The post of Accounts Officer was higher than that of Assistant Engineer and this difference would continue. The recommendations of the Committee were put up before the Board of Directors, which had approved the recommendations and sent the case to the Government and Bureau of Public Enterprises. The Government sent the case back to the company to consider the financial position of the power companies. The company again sent the proposal, which was declined by the Government. The writ petition was allowed and it was held that the Board of Directors, as per Clause 43 of the Articles of Association, was competent to revise the pay scales of its employees. Even on earlier occasion, the pay scales had been enhanced by the Board of Directors without approval of the Haryana Bureau of Public Enterprises. Against the said judgment, Uttar Haryana Bijli Vitran Nigam Ltd. had filed LPA No.383 of 2014, which was dismissed by a Division Bench of this Court vide order dated 18.02.2015. While dismissing the LPA, it was observed as under:-

“12. A learned Single Judge of this Court by a judgment dated 26.11.2010 passed in Civil Writ Petition No.5993 of 1990, ***Deva Singh and others Vs. State of Haryana and others***, held that:-

“24. It is held that the 3rd respondent is the sole authority to take a decision as to the revision of pay of its employees. In the guise of an instruction with respect to the policy decision, the 1st respondent cannot issue an instruction with respect to the pay scales of the employees or the revision of pay scales of the employees of 3rd respondent-Corporation. The instructions, issued by the 1st respondent in the above facts and circumstances of this case, would not bind the 3rd respondent Corporation. The 3rd respondent has virtually surrendered its powers with respect to the revision of pay scales of its employees to the State Government which has no say in the matter. As the State Government has no authority to interfere with the revision of pay scales of the employees of the 3rd respondent-Corporation, the impugned order passed by the 2nd respondent has no legal sanctity. Therefore, the impugned order passed by the 2nd respondent is liable to be quashed.”

We do not think it necessary for the purpose of this case to express an opinion regarding the correctness of the judgment. It was not contended before us that the State Government has the power under any statute or other principle of law to issue the directions to the Haryana Power General Corporation Ltd. (HGPCL). Nor was it their case that there was any separate agreement or understanding entitling the State Government to issue such directions to it. It is also important to note that neither the Board of Directors of HGPCL-appellant No.1 nor the Committee of the Managing Directors made their decision subject to the approval of the State Government on the basis that the State Government being only the share-holder ought to have a say in the matter.”

SLP filed against the aforesaid judgment was also dismissed on 14.08.2015.

In the present case, once the Board of Directors of respondent No.2 had passed a resolution on 08.10.2008 (Annexure P-1) promoting the petitioner to the post of Accounts Officer and the petitioner took over the charge on 08.10.2008 as per Annexure P-2, the Haryana Bureau of Public Enterprises would have no jurisdiction either to sanction the post or to deny payment of revised pay scales to the petitioner. Case of the petitioner is squarely covered by the judgment passed in **Pawan Kumar's** case (supra).

respondents to release the pay of the petitioner as Accounts Officer as well as revised pay scale from the date he is performing his duties as Accounts Officer i.e. 08.10.2008 along with all consequential benefits.

08.07.2016
ajp

(RITU BAHRI)
JUDGE