

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5996 of 2016 (O&M)

Date of Decision: 23.5.2016

H.C. Arora, Advocate

....Petitioner.

Versus

State of Haryana and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. H.C. Arora, petitioner in person.

AJAY KUMAR MITTAL, J.

1. Affidavit dated 16.5.2016 of the petitioner filed along with the application is taken on record subject to all just exceptions. CM No. 6037-CWP of 2016 stands disposed of accordingly.

2. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of prohibition directing respondents No.1 and 2 not to disburse pension to respondents No.3 and 4 as Ex-MLAs of Haryana Vidhan Sabha, in view of their conviction under Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short "the 1988 Act") read with Sections 418/467/471 of the Indian Penal Code, 1860 (IPC) and having been sentenced to imprisonment for a period of 10 years vide judgment

dated 16.1.2013 passed by the Special CBI Court, Delhi, upheld by the Delhi High Court vide judgment dated 5.3.2015 and subsequently upheld by the Apex Court vide judgment dated 3.8.2015. Further, a writ of mandamus has been sought directing respondents No.1 and 2 to recover the aggregate amount of pension paid by them to respondents No.3 and 4 from the date of their disqualification for being chosen as Members of Haryana Vidhan Sabha till date.

3. Respondents No.3 and 4 were convicted by the Special CBI Court, Delhi vide judgment dated 16.1.2013 under Section 13(1)(d) of the 1988 Act read with Sections 418/467/471 of IPC and were sentenced to undergo imprisonment for a period of 10 years in recruitment of teachers. Against the judgment dated 16.1.2013, respondents No.3 and 4 filed appeals before the Delhi High Court who vide judgment dated 5.3.2015, true extract of which is Annexures P-2/1 and P-2/2 dismissed both the appeals. Respondents No.3 and 4 challenged the judgment dated 5.3.2015 before the Apex Court by way of Special Leave Petitions (Criminal) and the Apex Court vide order dated 3.8.2015 dismissed the appeals. With the dismissal of appeals by the Delhi High Court on 5.3.2015, the disqualification of respondents No.3 and 4 became effective from the date of conviction, i.e. 16.1.2013, as per Section 8 of the Representation of the People Act, 1951 (hereinafter referred to as "the 1951 Act"). The petitioner received a letter dated 18.1.2016 (Annexure P-3) under the Right to Information Act, 2005 along with a list of the Ex-MLAs who are drawing pension under the Haryana Legislative Assembly (Salary, Allowance and Pension of Members) Act, 1975. As per the said information, respondents No. 3 and 4 are drawing monthly pension despite disqualification under Section 8(3) and (4) of the 1951

Act. Earlier, the petitioner filed CWP No. 1788 of 2016 raising the same issue as raised in the instant writ petition which was dismissed and withdrawn by this Court vide order dated 5.2.2016 (Annexure P-4) with liberty to file a representation before the competent authority. Thereafter, the petitioner moved a representation dated 6.2.2016 (Annexure P-5) to respondent No.2 for withdrawal of the pension being given to respondents No.3 and 4, but no response has been received. Hence, the present writ petition.

4. The petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a representation dated 6.2.2016 (Annexure P-5) to respondent No.2, but no action has so far been taken thereon.

5. After hearing the petitioner in person, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the representation dated 6.2.2016 (Annexure P-5), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the concerned parties, i.e., the petitioner and respondents No.3 and 4 within a period of two months from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

May 23, 2016
gbs

(RAJ RAHUL GARG)
JUDGE