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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 18.3.2017

CWP No. 9351 of 2012 (O/M)
Gurmit Singh

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CWP No. 10219 of 2012 (O/M)
Gurnam Singh

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CWP No. 10032 of 2012 (O/M)
Labh Kaur and others

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CWP No. 16503 of 2012 (O/M)
WCREA

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CWP No. 24161 of 2012 (O/M)
Karun Bala and others

..... Petitioner (s)

Versus

Punjab State Warehousing Corporation

..... Respondent (s)

CWP No. 25623 of 2012 (O/M)
Swinder Singh Bedi

..... Petitioner (s)

Versus

Managing Director, Punjab State Warehousing Corporation and others
..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Jagdeep Bains, Advocate, for the petitioners
in CWP-9351-2012, CWP-10219-2012, CWP-10032-2013.

CWP No. 9351 of 2012 (O/M) with connected cases

Mr. G.S. Bal, Senior Advocate, with,
Mr. A.D.S. Bal and Mr. J.P. Rana, Advocates,
for the petitioner in CWP-16503-2012.

Mr. Vishal Khatri, Advocate, for,
Mr. Vijay K. Jindal, Advocate, for the petitioners
in CWP-24161-2012.

Mr. Rahul Jain and Mr. J.S. Bedi, Advocates, for the petitioner
in CWP-25623-2012.

Mr. Nikhil K. Chopra, Additional Advocate General, Punjab.

Mr. B.R. Bansal, Advocate, for PSWC in
CWP-9351-2012, CWP-16503-2012 and CWP-25623-2012.

Mr. B.S. Patwalia, Advocate,
for the Managing Director of the PSWC.

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

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KULDIP SINGH J. (ORAL)

CM-3909-CWP-2017 in/and CWP-9351-2012

Counter reply by way of affidavit of the applicant-petitioner to the affidavit dated 9.2.2017 is taken on record.

Application is disposed of.

Main cases

Heard.

This order will dispose of all the abovenoted six writ petitions, filed by the retired employees/legal heirs of the retired employees and association of the retired employees of Punjab State Warehousing Corporation (in short 'PSWC'), challenging certain impugned orders passed on 23.9.2011 (Annexure-P-11) and 9.12.2011 (Annexure-P-21), vide which the payment of pensionary benefits to the retired employees was put on hold. For brevity, the facts are taken from CWP-9351-2012. It comes out

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that the PSWC was having 1900 employees. After 1992, due to ban on the fresh recruitment, the number of employees dwindled to 1200. As a result of the same, the inflow of fund in the pension fund also dwindle. It is to be noticed that a Pension Scheme notification dated 20.3.1996 (Annexure-P-2) was implemented by the PSWC to extend the facility of pension, gratuity, LTC, medical facilities etc. and those employees, who opted the said scheme, will be entitled to the benefit of said scheme. It was laid down in the said scheme that all the liabilities of pension account of employees shall be met from pension fund only and not from the revenue and any other source of the PSWC. The difficulty arose when the number of employees dwindled and the inflow to the pension fund also dwindled. The PSWC started facing difficulty in paying the pension to its retired employees with the result that it passed the abovenoted impugned order, putting the pension on hold. Needless to say that the pension is a statutory right of a retired employee and it could not be put on hold, as was done by the PSWC in the present cases.

Now, the question would arise as to how to meet the liability of pension of its retired employees ? It also comes out that more employees will be retiring till year 2028. As a result of the revocation of the said scheme, the other employees will now be covered by the CPF scheme, so that, after the year 2028, no employee, who is entitled to pension, will be retiring. It also comes out that the PSWC is carrying out three activities, which are as under :-

- (i) procurement ;
- (ii) warehousing; and
- (iii) storage and containerization.

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As per the stand of the PSWC, it is running into losses from the activity of procurement, which are being met from the other two activities with the result that the PSWC is running into losses.

However, the plea of the learned counsel for the petitioners Ms. Jagdeep Bains, Advocate, is that if one of the activities is running into losses, the PSWC can stop that activity. However, I am of the view that this Court cannot direct the PSWC to stop one or the other activity. It is upto the PSWC to see which activities are to be carried out, keeping in view their responsibilities. However, at the same time, the PSWC cannot be absolved from paying pension to its retired employees. It also comes out from various interim orders dated 26.8.2015 and 3.9.2015, followed by further order dated 22.9.2016, passed by this Court that the Government owed a sum of Rs. 229 crores to the PSWC and was earlier paying Rs. 6 crores per month to the PSWC, which is now increased to Rs. 13 crores per month. The funds and installment being received from Dal Atta scheme from the Government are now being utilized for pension and payment of installment of loan.

This Court has been informed that the entire loan has been repaid and now, the said money being received from the Government from Dal Atta Scheme is being transferred to the pension fund. So far, Rs. 42 crores have been put in the pension fund and another sum of Rs. 52 crores is yet to be received from the said Dal Atta scheme. Therefore, it is ordered that the said Rs. 42 crores and Rs. 52 yet to be received will be put in the pension corpus to meet the pension liability. This according to the PSWC will be sufficient to meet the liability for pension till the end of year 2019.

Now, further question will arise as to how much is further

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liability to pay the pension to the retired employees, so that they will not face the problem as being faced in the present cases.

According to the learned counsel for the petitioner Ms. Jagdeep Bains, Advocate, if another Rs. 300 crores is put in the said pension corpus, the said amount alongwith interest will be sufficient to meet the liability in the future. However, according to the learned counsel Mr. B.S. Patwalia, Advocate, who is appearing for the Managing Director of the PSWC, another corpus of Rs. 473 crores will be required. Therefore, the plea of the PSWC is accepted that they need another sum of Rs. 473 crores in the pension corpus to meet the pension liability.

It also comes out from the pleadings of the parties that the State Government owes a sum of Rs. 589.20 crores to the PSWC. The PSWC is also to recover a sum of Rs. 717.52 crores from different agencies and Rs. 470.88 crores plus interest from the Food Corporation of India (in short 'FCI'). The total amount recoverable comes to Rs. 1777.60 crores (Rs. 589.20 crores + Rs. 717.52 crores + Rs. 470.88 crores). This Court has also been informed by the learned counsel Mr. B.S. Patwalia, Advocate, appearing for the M.D. of the Corporation that a civil writ petition is pending before this Court regarding recovery of Rs. 297 crores plus interest on account of storage charges against the FCI and the matter is likely to be decided in near future.

In these circumstances, respondents are directed to take effective steps to recover Rs. 589.20 crores from the State Government and the State Government is also directed to pay the same to the PSWC in easy installments, keeping in view the financial health of the State.

So far as the balance of Rs. 717.52 crores is concerned, the

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PSWC is directed to take effective steps for recovery of the said amount and if necessary resort to the legal remedy. Another sum of Rs. 297 crores with interest is likely to be recovered from the FCI in the civil writ petition filed by the PSWC before this Court.

Now, the problem is that under the said pension scheme notification dated 20.3.1996 (Annexure-P-2), the said funds cannot be diverted to pension fund. However, the payment of pension is a statutory liability of the PSWC. They cannot be allowed to take the shelter of pension scheme (Annexure-P-2) to claim that the pension is to be paid only from the pension fund and not from other sources. The pension is first charged on the income of the PSWC. Therefore, the PSWC is directed that on the recovery of the said amount, Rs. 50 crores each year shall be transferred to the pension corpus fund until the figure of Rs. 473 crore or more enough corpus, is met in addition to Rs. 94 crores received from the Dal Atta Scheme and the Government will cooperate in the same. The said amount will be kept by the PSWC in some financial institutions, from where it will earn the maximum interest, so that in future, no difficulty arises. The pension to the petitioners and employees retiring in future shall be regularly paid from said pension corpus.

In view of the above, all the abovenoted writ petitions stand disposed of with the abovenoted observations.

(KULDIP SINGH)
JUDGE

18.3.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes