

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

CWP No.11364 of 2014 (O&M)

Date of Decision:10.1.2018

Om Parkash Panwar and others

... Petitioners

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.BS Mittal, Advocate for the petitioners

Mr.P.S.Poonia, Advocate for the respondents

RAJIV NARAIN RAINA, J. (Oral)

CM No.16704-CWP of 2016

CM is allowed. Documents are taken on record.

CWP No.11364 of 2014 (O&M)

1. The respondent- Dakshin Haryana Bijli Vitran Nigam Ltd. issued notification dated 1st November 2013 (Annex. P-1) in exercise of powers conferred by Clause C of Section 79 of the Electricity (Supply) Act, 1948 read with Haryana Electricity Reforms Act, 1997 and other enabling powers changing the nomenclature/designation and pay scales of a number of posts including the posts of the Commercial Assistant and Circle Superintendent into Assistant (Field) and Superintendent (Field) in the same pay scale, but with enhanced grade pay i.e. from ₹ 3200/- to ₹ 3600/- and ₹ 4200/- to ₹ 4600/-. It appears that the matter was sent by the Board to the Haryana Bureau of Public Enterprises to get advice from its Finance Department regarding change of nomenclature/designation and allowing pay scale to the Field Cadre (Ministerial) at par with Head Office Cadre

2. The decision on change of designation of certain posts was taken by the Board of Directors of the respondent Dakshin Haryana Bijli Vitran Nigam Ltd. One fine day on 18th December, 2013, the Chief Engineer (HR & Admn.), DHBVN, Hisar passed an Office order keeping the notification in abeyance. In the interregnum, it was ordered that the old promotion channel alongwith old pay scales will remain in practice till the finalization of the matter. It was recorded in the office order dated 18th December, 2013 (Annex. P-3) that this advice issues with the approval of the Director/OP, DHBVN, Hisar. It appears that the decision taken by the Board of Directors was kept in abeyance by one Director against a decision taken by the Board of Directors sitting in quorum. Meanwhile, the 1st petitioner was re-designated as Superintendent (Field) while the remaining petitioners were re-designated as Assistant (Field) and they continued to earn their salaries and allowances accordingly. However, the Office order dated 18th December, 2013 interrupted their higher pay and recoveries were made from them in excess of the old grade pay and the new one. The actual reduction in pay was effected in April, 2014 retrospectively.

3. On 13th August, 2015 vide an office order (Annex.R-1 with the short written statement), the Notification dated 1st May, 2013 was withdrawn in toto. This decision was taken by the Board of Directors of DHBVN in its meeting held on 30th June, 2015 against agenda Item No.163.35. That would have been an end of the matter, but the Board of Directors thought fit to re-issue the Notification dated 1st May, 2013 in new form thereby re-designating the posts with some changes which did not affect the posts of Circle Assistant and Circle Superintendent re-designated as Assistant (Field) and Superintendent (Field). The grade pay of Assistant

the petitioners had been re-designated in terms of the Notification dated 1st May, 2013 read with the Office order dated 20th July, 2016. The Office order dated 20th July, 2016 is re-produced as under:-

“Office Order No.35/SE/Admn.

Dated: 20.7.2016

DHBVN is pleased to modify the nomenclature and pay scales of the following posts of the Field Ministerial Cadre/Clerical Staff as per approval of HBPE, Finance Department to Govt. Of Haryana vide U.O. No.20/4/2016/Asstt./HBPE(FD) dated 16.05.2016 and U.O.No.23/UHBVN/2009/Acctt./HBPE(FD) dated 13.07.2016 is as under:-

Sr.No.	Existing Nomenclature & Pay Scales	Modified Nomenclature and Pay Scales Approved	Remarks
1.	LDC (5200-20200+2400 GP)	No Change	
2.	UDC (5200-20200+2900 GP)	No Change	
3.	Commercial Assistant (9300-34800+3200 GP)	Assistant (Field) (9300-34800+4200 GP)	
4.	Circle Assistant ((9300-34800+3300 GP)		
5.	Head Clerk (9300-34800+3600 GP)	Dy.Superintendent (Field) (9300-34800+4200 GP)	The Prescribed experience for promotion to the post of Dy. Supdt. (Field) will be 5 years service as Assistant (Field) and unqualified Assistants will not be promoted as Dy. Supdt.
6.	Circle Superintendent (9300-34800+4200 GP)	Superintendent (Field) (9300-34800+4600 GP)	

This issues with the approval of the Managing Director, DHBVN, Hisar.

Sd/-SE/Administration
DHBVN, Hisar.”

4. The short question which falls for consideration in the above circumstances is whether the recoveries made from the petitioners while they served on the re-designated posts deserve to be refunded to them since they have worked on the re-designated posts and if the principle of quantum merit would apply. The further issue is whether the petitioners can claim the pay and allowances of the pay scale and the grade pay on the re-designated posts up till 13th August, 2015 i.e. the date of withdrawal of the Notification dated 1st May, 2013.

5. On the first question, I have no doubt that the petitioners have a right to be refunded the money recovered from them unlawfully taking it to be excess payment above the entitlement. The orders, if any, recovering money from them are not sustainable and are quashed. The respondent-Nigam will refund the amount of recovery with interest at the rate of 6% per annum till realization.

6. As far as entitlement of the petitioners on the second issue is concerned, I have also no doubt that they would be entitled to the higher grade pay w.e.f. 13th August, 2015 for the reason that the notification dated 1st May, 2013 was illegally kept in abeyance by the Office order dated 18th August, 2013 without due authority of law. A single Director had no jurisdiction to keep in abeyance the decision taken by the Board of Directors of the Nigam collectively. Accordingly, the arrears be calculated and paid to the petitioners together with interest at the rate of 6% per

receipt of a certified copy of this order failing which, the amount in default will earn interest at the rate of 9% per annum till realization. However, the petitioners are held not entitled to the difference of higher grade pay from August, 2015 to 15th May, 2016.

7. The writ petition is partially allowed. The impugned orders are set aside and payments are directed to be made to the petitioners in terms of this order.

10.1.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No