

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGRH**

Letters Patent Appeal No.1024 of 2018 (O&M)

Date of Decision: 09.07.2018

Dakshin Haryana Bijli Vitran Nigam Ltd. Hisar and others ..Appellants

Versus

Om Parkash Panwar and others ..Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present : Mr. R.S.Longia, Advocate, for the appellants.

KRISHNA MUMARI C.J. (oral)

CM No. 2721-LPA of 2018

Heard. For the reasons mentioned in the application, delay of 141 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 1024 of 2018 (O&M)

This intra-court appeal has been filed challenging the judgment and order dated 10.01.2018 passed by the learned Single Judge allowing the writ petition filed by the respondents in part.

2. The issue for consideration raised in the writ petition before the learned Single Judge was whether the recoveries made from the petitioners while they served on the re-designated posts deserve to be refunded to them since they admittedly discharged their duties on the said posts and whether the petitioners can claim pay and allowances of the pay scale and the grade pay on the re-designated posts up till 13th August, 2015 when the notification dated 01.05.2013 was withdrawn.

3. The aforesaid issues were raised by the respondents-petitioners before the learned Single Judge in the back ground of the following facts:-

Admittedly, respondent-petitioner No.1 was working as Superintendent (Field) in the operation circle, Sirsa of the appellant-corporation and respondent Nos.2 to 15 were working as Assistant (Field) in different Division offices of the corporation and similarly respondent No. 16 to 23 were working as Upper Division Clerk (UDC) in different divisions. In 151st meeting of the Board of Directors of the appellant corporation, agenda item No.151.18 in respect of removal of disparities between the Head office cadre and Field cadre (ministerial) employees was considered and the Board resolved to approve the said proposal. Accordingly, a notification dated 01.05.2013 was issued in pursuance to the aforesaid decision taken by the Board of Directors changing the nomenclature/designation as well as pay scales of number of posts including the posts held by the petitioners-respondents with immediate effect. Accordingly, the respondents-petitioners started getting salary in the revised pay scale.

4. Subsequently, the matter was referred by the appellant corporation to Haryana Bureau Public Enterprises seeking advice on the basis of certain observations made by the Haryana Bureau of Public Enterprises. Respondent No.2 Director (operations) of the appellant corporation passed an order dated 18.12.2003 whereby the notification dated 01.05.2013 issued in pursuance to the decision taken by the Board of Directors in its meeting dated 25.04.2013 was directed to be kept in abeyance. A further direction was issued that old promotion channel alongwith old pay scales will remain in force till finalization of the matter.

5. It is an admitted case of the appellant corporation in its written statement filed before the learned Single Judge that notification dated 01.05.2013 was subsequently withdrawn vide office order dated 13.08.2015 issued in pursuance to the decision taken by the Board of Directors of the appellant corporation in its meeting dated 30.06.2015. However, this fact is also admitted that the notification was kept in abeyance vide order dated 18.12.2013 passed by respondent No.2, as a result whereof the respondents-petitioners were again placed in the old pay scale. Further case set up by the appellant-corporation in the written statement is that the nomenclature, designation and pay scale of the clerical staff was again modified vide order dated 20.07.2016 in compliance of the approval of the Haryana Bureau of Public Enterprises and the same was made applicable w.e.f. 16.05.2016.

6. Learned Single Judge held that enhanced pay paid to the respondents-petitioners in pursuance to the re-designation and revision in the pay scales was not liable to be recovered from them and accordingly directed the appellant-corporation to refund the amount recovered from the petitioners with interest at the rate of 6% per annum.

7. In so far as second issue with respect to the entitlement of the respondents-petitioners to the higher grade pay w.e.f. 13.08.2015, the date on which the notification dated 01.05.2013 was kept in abeyance, learned Single Judge on the basis of the admitted facts found that a Director had no jurisdiction to keep in abeyance any decision taken by the Board of Directors and accordingly directed the arrears to be calculated and paid to the petitioners alongwith interest at the rate of 6% per annum. Learned Single Judge further went on to hold that the respondents-petitioners shall not be entitled to payment of any difference of higher grade pay from

August-2015 when the Board of Directors took a decision to withdraw the notification dated 01.05.2013 till 15.05.2016 when another notification re-designating the posts and revising the grade pay was issued.

8. Learned Single Judge, in our considered opinion, rightly held that no recovery was liable to be made as payment in revised scale was made in pursuance to the decision taken by the Board of Directors, which could not have been withdrawn by respondent No.2 as one Director cannot withdraw the decision taken by the Board of Directors.

9. In the facts and circumstances we do not find any illegality in the conclusion arrived at by the learned Single Judge, which requires any interference.

10. The appeal is devoid of merits and accordingly stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

09.07.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√