

(106) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.15647 of 2018 in/and
CWP No.12820 of 2017

Date of decision : 24.07.2019

Ramesh and others.

.... Petitioners

Versus

State of Haryana and others.

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Y.P. Khullar, Advocate for the petitioners.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J. (Oral).

[1] Despite notice of the application (i.e. CM No.15647 of 2018) having been issued on 16.10.2018 and time taken to file reply, no reply has been filed till date despite listing of the case thereafter on 08.02.2019, 05.04.2019, 24.04.2019, 15.05.2019, 22.05.2019 as well as today. It also needs noticing here that on 05.04.2019 while adjourning the case to 24.04.2019, it was noticed that order dated 23.08.2018 had been passed by the Executive Engineer, Provincial Division, PWD (B&R), Palwal qua all the petitioners, yet reference of the arrears admissible to the petitioners in terms thereof restricted to 38 months had been allowed only qua petitioner No.1 despite entitlement of all the petitioners to arrears of 38 months in terms of the aforesaid order dated 23.08.2018. Learned Sr. DAG had requested for a short date to respond to the aforementioned plea but as has been noticed above, till date no reply has been filed. In the circumstances, I am not inclined to adjourn the case any further.

[2] Brief facts of the case leading to the filing of the writ petition are that the petitioners who are five in numbers were working as Beldars on daily-wages since 1992/93 and their services were terminated on 02.04.1996. Reference of the industrial dispute amongst the parties was made to the Labour Court which dismissed the same vide award dated 31.03.2005. Petitioner Nos.1 to 3, thereafter, filed CWP Nos.19273, 19255 and 19276 of 2005 against the award dismissing their reference. The said writ petitions were allowed by this Court. The aforementioned petitioners were ordered to be reinstated with continuity of service with 50% back wages vide order dated 04.08.2006. Thereafter, SLP No.8870 of 2007 filed by the respondents against the decision of the Hon'ble Division Bench of this Court in the aforementioned writ petitions was dismissed vide order dated 08.07.2014. Similarly, petitioner Nos.4 and 5 raised industrial dispute against termination of their services w.e.f. 02.04.1996. The Labour Court allowed the claim of said petitioners vide award dated 16.03.2004 and ordered their re-instatement with continuity of service and 50% back wages. Against the said award dated 16.03.2004 the respondents filed CWP Nos.1573 and 503 of 2005. However, said writ petitions were dismissed vide order dated 28.01.2005 and 11.01.2005 respectively. No SLP was filed against said orders by the respondents. Pursuant thereto, the petitioners who had already been reinstated were released 50% back-wages. Thereafter, vide order, Annexure P-3 dated 30.09.2014, the respondents regularized the services of the petitioners as Beldar w.e.f. 01.10.2013.

[3] On 07.08.2018 while noticing that the petitioners were seeking benefit of fixation of pay notionally, the respondent-State was directed to pass appropriate orders after giving them (inadvertently typed as 'him') benefit of notional fixation of pay before the next date of hearing. Pursuant thereto

office order Nos.579 to 583 dated 23.08.2018 were passed by the Executive Engineer, Provincial Division, PWD (B&R), Palwal whereby the pay of the petitioners was refixed notionally w.e.f. 01.10.2003. Copies of the orders as furnished by the learned Sr. DAG are taken on record.

[4] In paragraph No.7 of the application (i.e. CM No.15647 of 2018), it has been averred that petitioner No.1 was paid arrears after fixation of notional pay with effect from due date but no order had been passed with regard to petitioner Nos.2 to 5 for reasons best known to the respondents although petitioner Nos.2 to 5 were similarly situated as petitioner No.1 even though order dated 07.08.2018 had been passed by this Court qua all the petitioners.

[5] No response has been filed to the application. Therefore, there is no reason to disbelieve the averment that after fixation of pay of the petitioners notionally w.e.f. 01.10.2003, petitioner No.1 has been paid arrears.

[6] Learned Sr. DAG states that petitioner No.1 was paid arrears for 38 months prior to the filing of the writ petition since directions passed in order dated 07.08.2018 were only qua petitioner No.1.

[7] The aforementioned stand is vehemently opposed by learned counsel for the petitioners who contends that a hypertechnical argument is being advanced in view of the apparent typographical omission in the order for although in the order it was noticed that the petitioners were seeking benefit of fixation of pay notionally, therefore, respondent-State was directed to pass appropriate orders but the benefit was ordered to be given to him (i.e. petitioner No.1). Learned counsel states that the writ petition has been filed by five petitioners. The benefit of notional pay fixation sought is by the petitioners and it is only a typographical omission in the order which

is sought to be relied upon by the respondents to deny the benefit of similar relief being extended to petitioner Nos.2 to 5.

[8] I have considered the submissions of learned counsel for the parties.

[9] Admittedly, the writ petition was filed by five petitioners. Order dated 07.08.2018 noticed that the petitioners were seeking benefit of fixation of pay notionally. In the aforementioned context, directions were issued to the respondent-State to pass appropriate orders after giving him (inadvertently typed as 'him', whereas it apparently is 'them') benefit of notional fixation of pay. The orders obviously referred to claim by all the petitioners, therefore, it is not open to the respondents to adopt a different yardstick in the case of petitioner Nos.2 to 5.

Accordingly, the respondents are directed to release the benefits payable to petitioner Nos.2 to 5 as were released to petitioner No.1 within a period of four weeks from today failing which the same shall carry interest @ 6% per annum w.e.f. the date of entitlement till date of payment.

[9] Accordingly, C.M. stands disposed of.

[10] At this stage, learned counsel for the petitioners states that the petitioners are entitled to release of arrears with effect from the date of regularization i.e. 01.10.2013 and that the petitioners be granted liberty to challenge the action of the respondents in restricting the benefit of arrears to 38 months as had been allowed in the case of petitioner No.1 by the Executive Engineer, Provincial Division, PWD (B&R), Palwal and as has now been allowed in terms thereof by this Court.

[11] In the light of the position as noted above, the writ petition is disposed of as above with the liberty to the petitioners to take action in

accordance with law qua their grievances for payment of arrears with effect

from the date of regularization as per law, if so entitled.

24.07.2019
amit

(B.S. Walia)
Judge

1. Whether speaking/reasoned:

Yes/No.
2. Whether reportable :

Yes/No.