

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18918 of 2015
Date of Decision : 20.03.2019

Maha Singh

...Petitioner

Versus

Registrar, Cooperative Societies, Haryana and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. S.S. Dalal, Advocate for the petitioner.

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Mr. Jasbir Singh Mor, Advocate for respondents No. 2 and 3.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the challenge is to the Resolution No. 12 dated 07.12.2010 passed by the Board of Directors of respondent No. 2-Bank to the effect that the pensionary benefits of the petitioner are to be calculated on the initial pay.

The facts as mentioned in the writ petition are that the petitioner was working as a Secretary in the Jind Central Cooperative Bank Limited, Jind. While working there, he was put under suspension on 24.8.1984 on some alleged irregularities. Thereafter, a charge-sheet was served upon the petitioner on 10.11.1984 and after holding an enquiry into the allegations as mentioned in the charge-sheet, Board of Directors

considered entire matter in its meeting dated 01.04.1985. Thereafter, a notice was issued to the petitioner on 16.04.1985 to show cause as to why the petitioner should not be dismissed from service. Thereafter on 14.06.1985, the petitioner was dismissed from service.

Against the said order, the petitioner preferred an appeal before the Registrar, Cooperative Societies, Haryana and the Registrar, Cooperative Societies, Haryana decided the said appeal on 19.04.1988 by which the appeal of the petitioner herein was accepted. The order of dismissal dated 14.06.1985 was set-aside and the petitioner was reinstated alongwith seniority but without back wages. Further, the period for which the petitioner remained out, the same was to be treated as leave without pay. The relevant portion of the order passed by the Registrar Cooperative Societies is as under:-

“.....Therefore, I accept the appeal of the appellant and set-aside the order of his dismissal dated 14.06.1985 to the extent that the appellant will not be entitled for any back wages for the period from the date of his dismissal to the date of announcement of the decision. Further the appellant will be entitled for seniority in his line. The period of absence from duties and the period of dismissal from service shall be considered as leave without pay.

Dated : Chandigarh, the

19th April, 1988

sd/- H.L. Sondh

Additional Registrar (Credit),

Cooperative Societies, Haryana,

Chandigarh.”

Against the said order dated 19.04.1988, the respondent-Bank

filed a writ petition bearing CWP No. 6238 of 1988 and on 14.12.1988, the respondents agreed that the petitioner will be allowed to work and he will be paid the salary by 7th of every month. Thereafter, the petitioner was allowed to join the duties and he kept on working till he superannuated on 31.12.2009. In respect of retirement of the petitioner, the respondents passed an order, which is as under:-

“ORDER

Sh. Maha Singh, Secretary/Clerk B/O Karsola, of this Bank is hereby permitted to retire from the services of this bank w.e.f. 31.12.2009 after-noon on attaining the superannuation age of 58 years under rule 15.1(i) of the Haryana State/Central Cooperative Bank's Staff Service (Common Cadre) Rules, 1975.

However, his retiral benefits are withheld till the decision of Hon'ble Punjab & Haryana High Court Civil Misc. No. 12008 of 2009 in C.W.P. No. 6238 of 1988.

sd/- Managing Director”

A bare perusal of the above order would show that the retirement of the petitioner was subject to the order passed by this Court in the writ petition filed by the Bank challenging the order passed by the Registrar Cooperative Societies dated 19.04.1988.

The writ petition i.e. CWP No. 6238 of 1988 was also decided by this Court on 30.07.2010. Said writ petition was disposed of having rendered infructuous. The order dated 30.07.2010 is as under:-

“CORAM:- HON'BLE MR. JUSTICE MAHESH GROVER

Present:- Mr.Ramesh Goyat , Advocate for the petitioner/applicant.

Mr. S.S.Dalal, Advocate for the respondent.

MAHESH GROVER, J.

CM No. 12008 of 2009

For the reason that because of the mistake of the counsel as also of the office, for which reasons have been sufficiently explained in the application, the same is allowed and the writ petition is restored to its original number.

CWP No. 6238 of 1988

Learned counsel for the respondent states that he has since retired from the service and hence nothing survives in the present writ petition. It is also to be noticed that at the time of motion hearing the following order was passed:-

“Counsel for the parties agree that in case respondent no.2 furnishes security for the refund of the salary, the same shall be paid to him and shall be continued to be paid by the 7th of every calendar month without taking any work from him. It is, however, made clear that if at any point of time the petitioner decides to take work from him, then the salary shall be paid without any security. C.M is disposed of accordingly.”

(sd/- M.S. Liberhan, Judge)

Learned counsel for the respondent further states that the petitioner has been extracting work from him.

After hearing learned counsel for the parties, I am of the considered opinion that the writ petition has since been rendered infructuous.

In view of the fact that the respondent has since superannuated, the present petition is dismissed as infructuous, however, the petitioner shall be at liberty to make financial adjustments by giving the retiral benefits to the respondent, if any.

*July 30 , 2010
rekha*

***(Mahesh Grover)
Judge”***

After the writ petition was rendered infructuous, order passed by the Registrar, Cooperative Societies, Haryana dated 19.04.1988 became final, according to which, the petitioner was reinstated in service with all the benefits except the back wages and the period for which the petitioner remained out of service, was to be treated as leave without pay.

As the petitioner became entitled for the grant of the pensionary benefits, respondent-Bank passed a Resolution No. 12 on 07.12.2010. In the said Resolution, the Bank decided that the petitioner be paid the pensionary benefits but on the initial pay as per the decision of Hon'ble the High Court. The Resolution passed by the Bank is as under:-

“Copy of resolution No. 12 dated 07.12.2010 passed by the Board of Directors of this Bank.

Agenda	Decision
12. To consider and decide the action to be taken on the decision dated 30.07.2010 given by Hon'ble Punjab & Haryana High Court, Chandigarh in Civil Misc. No. 12008 of 2009 in CWP No. 6239/1988 filed by Sh. Maha Singh s/o Ujala Ram, Secretary (Retd.) of this Bank.	12. Considered and resolved to accept the decision dated 30.07.2010 of Hon'ble High Court, Chandigarh in Civil Misc. No. 12008 of 2009 in CWP No. 6239 of 1988 in case of Sh. Maha Singh s/o Sh. Ujala Ram, Secretary (Retired). He is allowed retiral benefits on the initial pay as per Hon'ble High Court decision. Gen. Manager/Managing Director of this Bank is authorized to do the needful in this regard. sd/-Chairman

Certified that above is the true copy of the original and that the book containing the original entry is still in the custody of the bank.

*sd/-
General Manager”*

This Resolution is under challenge before this Court by the petitioner.

The reply has been filed by the respondents. In the reply filed on behalf of respondents No. 2 and 3, the respondents have defended the action of granting the retiral benefits from the initial pay, thereby declining the petitioner the revised pay scale and other benefits. The ground taken is that the same has been done as per the order dated 14.12.1988 passed by this Court in CWP No. 6239 of 1988. The relevant para of the reply is as under:-

“3. That in reply to the contents of para 3 of the writ petition, it is submitted that the matter of the petitioner to consider and decide the action to be taken on the decision/order dated 30.07.2010 passed by the Hon'ble High Court in Civil Misc. No. 12008 of 2009 in CWP No. 6239 of 1988 filed by the petitioner. After considering the matter, the Board of Administrators resolved to accept the decision dated 30.07.2010 of the Hon'ble High Court and the petitioner was allowed retiral benefits on the initial pay as per the order of the Hon'ble High Court vide resolution dated 07.12.2010 (Annexure P/4). Accordingly, the retiral benefits were released to the petitioner on the basis of his initial pay. The said resolution and order of the competent authority are legal, just and in consonance of the order dated 14.12.1988.

4. That in reply to the contents of para 4 of the writ petition, it is submitted that the petitioner is not entitled for the benefits of revised pay scale and other benefits on the revised pay in terms of the order dated 14.12.1988 passed by the Hon'ble High Court for releasing his salary/pay wages and the Board of Administrator has also passed the resolution on dated 07.12.2010 for releasing his retiral benefits on the basis of initial pay drawn by him. Accordingly, the retiral benefits of the petitioner were released to him by the respondent Bank. The resolution dated 07.12.2010 is legal, just and sustainable

in the eyes of law.”

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the petitioner argues that once the petitioner was reinstated in service with seniority and only the benefit of back wages were declined, the petitioner was entitled for all other benefits such as revision of pay scale and other benefits after the order passed by the Registrar, Cooperative Societies, Haryana dated 19.04.1988 became final. Learned counsel further states that once the writ petition filed by the respondents against the order passed by the Registrar Cooperative Societies dated 19.04.1988 was disposed of as having been rendered infructuous, petitioner became entitled for all the benefits except back wages for the period when he remained out from service.

Learned counsel for the petitioner states that the Resolution dated 07.12.2010, which has been passed by the respondents by taking shelter behind the order passed by this Court fixing the pensionary benefits of the petitioner at the initial pay is contrary to the facts as there is no such order passed by this Court stating that the petitioner will not be entitled for any benefit of revision of pay and increment for the service, which he had rendered including the revised pay as was being given to the similarly situated employees who were working with the petitioner also.

On the other hand, learned counsel for the respondents is unable to show any order passed by this Court, according to which, all the benefits were to be given to the petitioner on the basis of the initial pay which the petitioner was drawing at the time when he was dismissed from

service in the year 1985.

Once the petitioner was reinstated in service by setting aside the order of dismissal and only the benefit of back wages was denied to the petitioner, the petitioner was entitled for the fixation of his salary by deeming fiction that the petitioner continued to remain in service. Only the back wages are not to be paid to the petitioner, denial of the back wages does not mean that even the salary of the petitioner is not to be fixed by granting revisions of pay scales and increments. The order passed by the Registrar Cooperative Societies is clear that the petitioner will be entitled for seniority in his line, which means that the petitioner will be treated in service from the day of his initial appointment as Secretary and not from the day when he is being reinstated in pursuance to the order. Once, the said benefit was extended by the Registrar, Cooperative Societies vide order dated 19.4.1988 and the said order has already attained finality as the writ petition filed by the Respondent-bank against the said order had been rendered infructuous, the action of the respondents in not giving the retiral benefits to the petitioners on the basis of the initial pay, is totally incorrect and against the order passed by the Registrar, Cooperative Societies.

Learned Counsel for the Respondents states that this Court directed that the petitioner will not be entitled for any benefit and, therefore, in the Resolution also, the respondent-bank has taken a decision while passing the Resolution that the retiral benefits are to be calculated as per the initial pay as directed by the Hon'ble High Court. Counsel for the Respondents is unable to produce any order which has been passed by this Court in CWP No.6238 of 1988 to show that the petitioner was ordered to

not to be given benefit of increment or revision of the pay scale as the case may be.

The only order passed by this court on 14.12.1988, already reproduced hereinbefore, the petitioner was to be re-instated and once the petitioner worked, he was to be paid salary every month. Thereafter, the writ petition has only been rendered infructuous as the petitioner already retired from services on attaining the age of superannuation on 31.12.2009. In the absence of any order passed by this Court, the Resolution which has been passed by the respondent-bank is factually incorrect. That being so, the same is liable to be set aside and is accordingly set aside.

Keeping in view the facts and circumstances narrated above, the petitioner upon his re-instatement in service, shall be entitled for all the benefits as given by the Registrar, Cooperative Societies vide its order dated 19.4.1988 which includes seniority, continuity of service except back wages. The period for which the petitioner remained out is to be treated as leave without pay. The petitioner shall be entitled for the fixation of his salary by treating him in service continuously from the date of his initial appointment as a Secretary till the date of retirement by giving revision of pay as well as the increments. Only the back wages for the period as directed i.e. from the date of termination till the date of passing of the order by the Registrar, Cooperative Societies are not to be given to the petitioner. Let the respondents calculate the benefit in terms of this order by granting the petitioner the benefit of revision of pay scale as and when revised by the bank in respect of the other similarly situated employees and also grant the increments from the date of his initial appointment till the date of his

retirement and thereafter re-calculate the pensionary benefits for which the petitioner will be entitled for. Whatever the difference of financial benefits for which the petitioner is found entitled for with regard to the grant of the pensionary benefits, the same shall be released to the petitioner within a period of two months after the calculation is done by the respondents.

The writ petition is allowed in above terms.

March 20, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*