

CWP No.18772 of 2016,
CWP No.19142 of 2016 &
CWP No.19152 of 2016 :1:

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No.18772 of 2016
Date of decision : March 12, 2019
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Satbir Singh
.....Petitioner

Versus

Haryana Power Generation Corporation Limited and another
.....Respondents

CWP No.19142 of 2016

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Raj Singh
.....Petitioner

Versus

Haryana Power Generation Corporation Limited and another
.....Respondents

CWP No.19152 of 2016

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Dharam Bhushan
.....Petitioner

Versus

Haryana Power Generation Corporation Limited and others
.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. J.K Goel, Advocate for the petitioner.

Mr. M.S Sidhu, Advocate for the respondents.

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RITU BAHRI, J.

Vide this common judgment three writ petitions bearing **CWP No.18772 of 2016** (Satbir Singh vs. Haryana Power Generation Corporation Limited and another), **CWP No.19142 of 2016** (Raj Singh vs. Haryana Power Generation Corporation Limited and another) and **CWP No.19152 of 2016** (Dharam Bhushan vs. Haryana Power Generation Corporation Limited and others) shall be decided as all these three cases involve similar set of facts and circumstances and an identical question of law arises for determination in them. For the sake of convenience, facts are being extracted from CWP No.18772 of 2016.

The petitioner is seeking quashing of the order dated 1.6.2016 (Annexure P-13) to the extent that vide this order, the petitioner was held not entitled for salary w.e.f 20.4.2011 to 30.4.2014.

The petitioner Satbir Singh was compulsorily retired from the services vide order dated 19.4.2011 (Annexure P-7) on attaining the age of 55 years. This order had been passed on the basis of an enquiry report dated 02.5.2009 (Annexure P-2) and punishment order dated 27.7.2009 (Annexure P-3). The allegation against the petitioner in the charge sheet

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dated 30.4.2008 (Annexure P-1) was that the officer refused to accept the uniform cloth/items in spite of repeated reminders thereby defying the order of his superiors besides blockage of corporation funds. It was alleged that the the petitioner along with other officials indulged in notorious activities by making complaints against his superiors and also invited the press and made statements against his superiors and thus creating indiscipline, nuisance and misconduct. As per the enquiry report dated 2.5.2009 (Annexure P-2), the same charge sheet was issued to 12 fireman on the same date. As per the enquiry report, charges against charged officials did not stand established and thereafter the punishment of stoppage of one annual increment without cumulative effect was imposed against the petitioner. After imposing the punishment vide order dated 27.7.2009 (Annexure P-3), adverse remarks for the years 2005-06 were communicated to the petitioner vide letter dated 19.9.2007 (Annexure P-4). A copy of the letter dated 19.9.2007 containing the adverse remarks w.e.f 01.04.2006 to 17.7.2006 is attached with the writ petition as Annexure P-5. The petitioner made a representation which was rejected by a non speaking order on 24.7.2008 and he challenged the above said order in CWP No.15873 of 2010. During the pendency of this writ petition, he made a representation on 16.3.2011 (Annexure P-6) to extend his services beyond 55 years of age without considering the adverse remarks recorded in the ACRs for the period from 01.04.2005 to 17.7.2006 as the adverse ACRs were subject matter of challenge in CWP 15873 of 2010. In the above background without waiting

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for the decision in the writ petition, the petitioner was retired compulsorily from the services vide order dated 19.4.2011 (Annexure P-7) in terms of Rule 3.26(d) of Civil Service Rules Volume 1 Part 1.

Finally, CWP No.15873 of 2010 filed by the petitioner was disposed of by this Court vide order dated 13.10.2011 (Annexure P-8) with a direction to the respondents to decide the appeal which was pending before them within a period of two weeks. It was further ordered that the respondent-authorities shall communicate the order to the petitioner immediately thereafter in order to enable him to challenge the same in accordance with law. The respondent-authorities thereafter again rejected the appeal on 16.5.2012 and affirmed the order dated 27.7.2009 whereby the punishment had been imposed. Order dated 16.5.2012 was challenged by the petitioner in CWP No. 5957 of 2013 which was dismissed by this Court on 19.3.2013 (Annexure P-9). The petitioner, thereafter filed an LPA No.924 of 2013 before this Court and challenged the order dated 19.3.2013 (Annexure P-9), which was allowed vide order dated 3.12.2013 (Annexure P-10). One more opportunity was given to the respondents to pass a speaking order after affording an opportunity of hearing to the petitioner in accordance with law. Pursuant to the directions given by the LPA Bench vide order dated 3.12.2013 (Annexure P-10), the respondent authorities vide order dated 30.4.2015 (Annexure P-11) passed a speaking order and ordered that the adverse remarks in the ACR of the petitioner for the year 2005-06, 2006-07 and 2007-08 be expunged. However, the penalty of stoppage of

one annual increment without cumulative effect was maintained. CWP No. 7147 of 2011 wherein the petitioner challenged the office order dated 19.4.2011 was disposed of vide order dated 31.3.2016 (Annexure P-12) as infructuous in view of a statement given by the counsel for the respondent-Corporation that in view of the order dated 30.4.2015, the impugned order dated 19.4.2011, whereby the petitioner was compulsorily retired needs to be set aside and would be withdrawn with all consequential benefits by passing a formal order within 2 weeks. The respondents thereafter passed an order dated 01.06.2016 (Annexure P-13) in which it was stated that the review committee has decided to allow further extension of service of the petitioner beyond the age of 55 years till the age of his superannuation i.e 58 years. However on the principle of 'no work no pay' petitioner was not held entitled for the salary for the period i.e from 20.4.2011 to 30.04.2014. However, the said period was ordered to be counted for the purpose of continuity of service and disbursement of pensionary benefits only.

Counsel for the petitioner has vehemently argued that since the issue of charge sheet dated 30.4.2008 (Annexure P-1), the petitioner has been facing the harassment of going through the enquiries. Counsel for the petitioner has argued that as per enquiry report dated 2.5.2009, the charge against the petitioner was not proved. Thereafter, a committee was constituted to investigate the reasons due to which doubtful integrity was recorded in the ACRs. The said committee submitted its report on 2.1.2015 and concluded that there is no specific record available on the basis of

which the doubtful integrity was recorded in the ACR of the petitioner. Apart from the said enquiry, another enquiry officer, Sh. Neeraj Shori was appointed to investigate the charges levelled in the charge sheet against Sh. Satbir Singh. Mr. Neeraj Shori submitted his enquiry report dated 12.4.2015 vide which it has been concluded that the charges level against the petitioners are in order. The matter was thereby reconsidered afresh in view of latest enquiry reports dated 2.1.2015 and 12.4.2015 and it was observed that there was no specific record available on the basis of which the doubtful integrity was recorded in the ACR of the petitioner. It was further also noted that the version of the petitioner regarding fraudulent loss caused to the Corporation exchequer to the tune of multiple lacs of rupees through purchase of uniform clothes, other items, fire fighting material, misuse of jeep etc. found incorrect and devoid of facts. In this view of the matter, the adverse remarks in the ACR of the petitioner were expunged. However, in view of the latest enquiry dated 12.4.2015, the punishment of stoppage of one annual increment without cumulative effect was held to be in order. Once the ground for recording adverse ACR was not made out, the same ACR cannot be made basis to compulsorily retire him and in this backdrop, the petitioner was to continue till the age of 58 years.

Reference can be made to some judgments to contend that if an employee is not allowed to work by the employer then he could not be denied the benefit of back wages with reinstatement. This Court in **Sardar Singh vs. State of Haryana and others, 2015 (2) RSJ 32** was considering a

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case of an employee where he had been denied promotion to the post of road Inspector against a post reserved for scheduled caste category as per relevant rules and regulations and as per petitioner's eligibility. Since the directions issued by this Court were not being complied with, petitioner initiated contempt proceedings, whereupon an order was passed promoting the petitioner as Road Inspector w.e.f. 19.1.2009. The petitioner preferred CWP No.2320 of 2011 claiming promotion to the post of Road Inspector w.e.f 15.3.2005 instead of the date the post reserved for Scheduled Caste category at the roster point had fallen vacant. CWP No. 2320 of 2011 was disposed of on 29.7.2011 with a direction to the respondents to consider the claim of the petitioner in the light of the relevant policy instructions. Subsequently, order dated 9.11.2011 was passed promoting him to the post of Road Inspector w.e.f 15.3.2005 i.e the date of passing the departmental examination against reserved quota post. However, the pay and allowance for the period in question were not given. This Court allowed the writ petitioner and petitioner was held entitled to arrears of salary w.e.f 15.3.2005 to 23.1.2009. In paragraphs 8 & 9 of this judgement, it was observed as under:

8. A Division Bench of this Court in [State of Haryana v. Bani Singh Yadav](#), 2005(1) SCT 355 had laid down the following principle:

"The principle of 'no work no pay' can be invoked by the employer to deny wages or

pay to the employee only in those cases in which the employee voluntarily abstains from discharging the duties assigned to him/her. It cannot be applied in cases in which the employee/workman is kept away from duty or is prevented or rendered ineligible to discharge duties of a particular post due to an act or omission of the employer."

9. *In the present case, it is not a situation where there was dispute regarding seniority and promotion could not have been given because of uncertainty on the issue of seniority as per the law laid down by Hon'ble the Supreme Court in the case of [State of Haryana v. O.P . Gupta](#), 1996 (7) SC 533. However, Hon'ble the Supreme Court in the case of [State of Kerala v. E.K.Bhaskaran Pillai](#), 2007 (6) SCC 524, has held that the principle of 'no work no pay' cannot be regarded as a rule of thumb and grant of full back wages in certain eventualities is inoperative particularly when promotion is wrongly denied. In Para 4, their Lordships have made reference to various judgments rendered by the Supreme Court in the cases of [Paluru Ramkrishnaiah v. Union of India](#),*

(1989) 2 SCC 541; *Virender Kumar v. Avinash Chandra Chadha*, (1990)3 SCC 472; *A.K.Soumini v. State Bank of Travancore*, (2003) 7 SCC 233; *Union of India v. Tarsem Lal*, (2006) 10 SCC 145; *Union of India v. K.V.Jankiraman*, 1991(4) SCC 109; *State of A.P. v. K.V.L. Narasimha Rao*, (1999)4 SCC 181; *Vasant Rao Roman v. Union of India*, 1993 Supp. (2) SCC 324; ***State of U.P. Vinod Kumar Srivastava***, (2006) 9 SCC 621; and *O.P.Gupta's case (supra)* and held as under:

"...So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may

grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle of "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

Recently in the case of **Karma Devi vs. Punjab National Bank, 2018 (4) SLR 19**, whereby in departmental proceedings, the Punjab National Bank awarded the punishment of compulsory retirement. It was observed that respondents while framing of article of charge no.1 and II have violated sub-regulation 3 of Regulation 3 in not framing article of charge definite and distinct charges on the basis of allegation and in this backdrop the initiation of enquiry and conciliation proceedings was set aside. Even it was further observed that in the enquiry only interested witnesses who had animosity against the petitioner examined and concerned person like news reporter and concerned person of television channel etc. had not examined. The evidence of interested witnesses held to be unbelievable to the extent that petitioner had invited the press conference.

The writ petition was allowed and the impugned orders passed by the disciplinary, appellate and reviewing authority were set aside. The petitioner was ordered to be treated as having retired from service w.e.f the date of her superannuation in the normal course. It was further ordered that she shall be paid arrears of her salary from the date of retiring her compulsorily w.e.f 02.08.2008 till date of age of superannuation. If any increments were due to her during the period from 2008 till her superannuation, the same shall be extended and arrears shall be paid to the petitioner. Retiral benefits, if any, like provident fund, gratuity etc., if she is entitled in accordance with law shall also be calculated and disbursed to her in accordance with regulations/rules, as if no order compulsory retirement was passed against her.

In view of the facts of the present case, the department itself has expunged the adverse ACR vide order dated 30.4.2015 (Annexure P-11) and thereafter vide order dated 01.06.2016 (Annexure P-13) allowed the petitioner to continue till the age of superannuation after crossing 55 years of age. However, on the basis of principle of '*no work no pay*' petitioner was not held entitled for the salary for the period from 20.4.2011 to 30.4.2014. This principle will not be applicable in this case as the petitioner could not be retired at the age of 55 years because as per the enquiry reports dated 2.1.2015 and 12.4.2015, the charges against the petitioner for recording adverse ACR were not made out. Hence the petitioner had every right to continue his services and he could not be compulsorily retired. The

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petitioner was not allowed to work on account of the enquiry proceedings which were ultimately held to be in favour of the petitioner. Keeping in view the judgment passed by Hon'ble the Supreme Court of India in **Union of India vs. KV Jankiraman 1991 (4) SCC 109**, this writ petition is allowed. Impugned order dated 1.6.2016 (Annexure P-13) is set aside. The petitioner is held entitled to salary w.e.f 20.4. 2011 to 30.4.2014. The benefit of arrears shall be paid to the petitioners within a period of 4 months of receipt of a certified copy of this order.

March 12, 2019
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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No