

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

**(284) CWP-16650-2018
Date of Decision: March 19, 2019**

Jai Singh .. Petitioner

Versus

Haryana Power Generation Corp. Ltd. and others .. Respondents

(2) CWP-16665-2018

Gian Chand .. Petitioner

Versus

Haryana Power Generation Corp. Ltd. and others .. Respondents

(3) CWP-16672-2018

Sabir Khan .. Petitioner

Versus

Haryana Power Generation Corp. Ltd. and others .. Respondents

(4) CWP-16673-2018

Amar Nath .. Petitioner

Versus

Haryana Power Generation Corp. Ltd. and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. Jaspal Singh Maanipur, Advocate,
for the petitioner(s) in all the writ petitions.**

**Mr. Prateek Mahajan, Advocate, with
Ms. Bahaar Ghuman, Advocate, for the respondents No. 1 & 2
in CWP Nos.16650, 16673, 16672, 16665 of 2018.**

**Mr. Mohit Rathee, Advocate, for
Mr. Deepak Manchanda, Advocate,
for respondent No.3-HPGCL.**

HARSIMRAN SINGH SETHI, J.(ORAL)

By this order of mine, four writ petitions, which involve the same question of law and similar facts, are being decided. For the sake of convenience, the facts are being extracted from CWP No.16650 of 2018.

In the present writ petition, the grievance which has been raised by the petitioner(s) is that the order Annexure P-7 dated 26.06.2018 whereby while replying to the legal notice served by the petitioner(s), respondent No.3 has informed the counsel for the petitioner(s) that the petitioner(s) are not entitled for the relief as being claimed in the legal notice.

The primary contention which has been raised in the present writ petitions is that the competent authority to pass the order is only the Chief Engineer and therefore, there was no authority with the Resident Engineer to take a decision and inform the counsel in respect of the legal notice issued by the petitioner seeking benefits.

In support of the said arguments, reliance has been placed by counsel for the petitioner(s) on the decision taken by a Coordinate Bench of this Court in **CWP No.14037 of 2018, titled as Anwar Vs. Haryana Power Generation Corporation Ltd. and others, decided on 30.05.2018.** The relevant portion of the said judgment is as under:-

“2. The contention of learned counsel for the petitioner is that similarly situated employee namely Bhagirath Singh has already been granted the benefit For Subsequent orders see vide order 29.12.2009 (P-4) whereas in the instant case similar benefit claimed through legal notice dated 09.05.2018 (Annexure P-6) has been declined vide order dated 21.05.2018 (P-7)

passed by Resident Engineer, WYC HE Project, HPGCL, Bhudkalan i.e. an incompetent authority on behalf of respondents No. 1 to 3, simply on the ground that it suffers from delay and latches.

3. The petitioner retired from service on 30.09.2013 and subsequent thereto, he approached the department and ultimately, served legal notice dated 09.05.2018 (Annexure P-6). Moreover, the Resident Engineer cannot be termed to have the jurisdiction of appointing or punishing authority. He is simply a Drawing and Disbursing Officer. Since the Resident Engineer is not a competent and authorized officer to take a decision with regard to the benefit claimed by the petitioner from respondents through legal notice, the decision taken vide letter dated 21.05.2018 (Annexure P-7) is erroneous.

4. In the given circumstances, legal notice deserves to be reconsidered, that too, by the competent authority i.e. Chief Engineer, Haryana, Power Generation Corporation Ltd., DCRTTP, Yamunagar (Haryana)- respondent No.2.”

Upon notice of motion, replies have been filed by the respondents and with regard to the said averment, the respondents have stated that respondent No.2 the Chief Engineer had authorized the Resident Engineer to decide the said legal notice and convey the decision to the petitioner(s). No authorization has been placed on record to support the said contention by the respondents. The relevant portion of the reply is as under:-

“ 9. That the contents of para no. 9 are wrong and denied as respondent No.2, Chief Engineer has authorized the respondent No.3, the Resident Engineer to represent on behalf of Chief Engineer. Moreover the

legal notice for demand of regularization benefits does not have a legal standing. The petitioner here is estopped by his own conduct and demand of such benefits after 27 years is not tenable. It has been held by this Hon'ble Court in "Kesar Singh Vs. State of Punjab and Ors. " (2015 (5) SLR 234) that, " if the petition is held to be highly belated, it is liable to be dismissed on account of delay and latches alone."

I have heard learned counsel for the parties and have gone through the record.

At this stage, learned counsel for the petitioner(s) states that the petitioner(s) will be satisfied in case the appropriate authority under the law i.e. the Chief Engineer consider the cases of the petitioner(s) and passes an appropriate order deciding the claim of the petitioner(s).

Learned counsel for the petitioner(s) states that similar direction has already been given by this Court, as noticed above while deciding CWP No.14037 of 2018.

Learned counsel for the respondents states that the authorization had already been given by the Chief Engineer to respondent No.3 and therefore no fault can be found in the same. Though a statement has been made in the written statement but no order authorizing respondent No. 3 to decide the legal notice of the petitioner(s) has been placed on record.

In the absence of any written authority, mere averment in the written statement cannot bestow the authority upon respondent No.3 to decide the claim of the petitioner once the competent authority to decide the claim of the petitioner is respondent No.2 i.e. the Chief Engineer.

Further, once this Court has already directed the Chief Engineer to take a decision in May 2018, respondent No.3 should have restrained himself from passing the order subsequent to the said order.

In the present case, the impugned order is passed by respondent No.3 in June, 2018 whereas, this Court while deciding CWP No.14037 of 2018 had directed the Chief Engineer to decide the same vide order dated 30.05.2018.

Respondents are directed that the Chief Engineer i.e. respondent No.2 shall take an appropriate decision on the claim of the petitioner(s) by passing a speaking order within a period of three months from the receipt of copy of this order. The decision conveyed by respondent No.3 to counsel for the petitioner(s) shall be ignored for this purpose.

In case, it is found that the petitioner(s) are entitled for the relief, the same shall be given to them and in case, it is found that the petitioner(s) are not entitled for the relief, the detailed order so passed shall be conveyed to the petitioner(s) so that they can avail their appropriate remedy under the law.

It is made clear that this Court expresses no opinion on the merits of the case or the entitlement of the petitioner(s) for the grant of the relief as claimed in the present writ petition or as claimed in their legal notice served upon the respondents.

The present writ petitions stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

March 19, 2019
harsha

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No