

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

CWP No.14974 of 2016

Date of Decision: 3.3.2020

Manohar Lal Arya

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. R.S. Bains, Advocate, for the petitioner.

Mr. Gaurav Jain, Additional Advocate General, Haryana.

NIRMALJIT KAUR, J. (Oral)

The prayer in the present petition is for setting aside the order dated 13.05.2016, vide which, an amount of ₹.14,41,787.75/- was ordered to be recovered from the petitioner by way of punishment.

The writ petition is filed inter-alia on various grounds. One of the ground as raised in para 22 of the petition is that the case of the petitioner is squarely covered by the judgment dated 27.09.2015 rendered in the case of Gordhan Singh Jain Vs. State of Haryana and another, CWP No.28593 of 2013. Admittedly, Gordhan Singh Jain, is a similarly situated co-employee of the petitioner.

Learned counsel for the respondents, however, submitted that the case of the petitioner was different. The petitioner had filed RSA No.3062 of 2013 questioning the order dated 11.03.2013 passed by the Appellate Authority. However, the said RSA was disposed of with liberty to the respondents to pass afresh order and that they have already passed the afresh order on 17.02.2020. Therefore, the present writ petition is

infructuous and the petitioner can now always challenge the same by way of another writ petition.

It has brought to the notice of this Court by learned counsel for the petitioner that in the case of Gordhan Singh Jain and the present petitioner, the Appellate Authority had granted liberty to the department to pass afresh order in spite of civil decree in favour of the petitioner as well as Gordhan Singh Jain. The petitioner challenged the order passed by the Appellate Authority by way of RSA No.3062 of 2013, whereas, Gordhan Singh Jain could not file RSA as a fresh order already stood passed by the Appellate Authority before he could file RSA. Therefore, he challenged the fresh order dated 25.08.2006 by way of writ petition bearing CWP No.28593 of 2013. The said writ petition was allowed and the order dated 25.08.2006 passed in the case of Gordhan Singh Jain was set aside by the High Court on 17.09.2015. The respondents have also complied with the order dated 17.09.2015. However, in the case of the petitioner, fresh order was passed on 13.05.2016 during the pendency of RSA. Since, the said order was also a non speaking order, the liberty was granted to the respondents to reconsider each and every plea raised by the petitioner afresh.

Thereafter, the petitioner challenged the order dated 13.05.2016 by way of present writ petition. Meanwhile, the respondents went ahead and withdrew the earlier order dated 13.05.2016 and went on to pass afresh order dated 17.02.2020, which is placed on record today. Once again, it appears that fresh order has been passed as late as on 17.02.2020 just to render the writ petition infructuous. The said order not only smells of arbitrariness but also contrary to the very order passed in the case of

Gordhan Singh Jain, (Annexure P-13 which is very much a part of the writ petition) in spite of the fact that the case of the petitioner is identical.

The written statement is filed stating therein that the impugned order dated 13.05.2016 has been withdrawn and passing of the final order is under process, which will be completed after reconsidering the reply to the second show cause notice. Obviously, it was presumed that better sense would prevail and the respondents would take note of the identical case and the order and judgment dated 17.09.2015 passed in the case of similarly situated co-employee namely Gordhan Singh Jain. Instead, respondents have gone ahead and passed another order on same lines and that too only now in the year 2020.

Accordingly, the respondent/officer concerned i.e. Director General, Treasuries & Accounts Department Haryana was directed to come present before this Court to explain the difference in the case of the petitioner and that of Gordhan Singh Jain and why the order dated 17.9.2015 was ignored by him while passing the order dated 17.2.2020.

In pursuance to the said order, Sh. Sunil Saran, Director General, Treasuries & Accounts Department Haryana is present and filed an affidavit explaining as to how and what situation the orders were passed in the case of Gordhan Singh Jain. The only explanation offered is that the respondents did not get any opportunity to file reply in the case of Gordhan Singh Jain. Therefore, the correct facts could not be brought to the notice. Hence, the said argument is only after thought because the order passed in the case of Gordhan Singh Jain was never challenged.

Be that as it may, as observed, the order dated 17.9.2015 passed in CWP-28593-2013 was never challenged. Neither any review was filed

nor any appeal against the said order was filed. In fact, the respondents went ahead and complied with the order dated 17.9.2015. It is also admitted before this Court that the neither any reply nor any appeal was filed on the advise of the office of the Advocate General that the same was not fit either for filing review or for filing any appeal.

If it is so, then there is nothing to distinguish the case of the petitioner from that of Gordhan Singh Jain. Accordingly, the present writ petition is allowed. The impugned orders as well as the order dated 17.2.2020 placed on record on the last date of hearing, which was passed during the pendency of the present petition, are set aside. The respondents are directed to release the pensionary dues and other consequential benefits to the petitioner, which have been illegally withheld.

Needful be done within a period of three months from the receipt of certified copy of this order. The petitioner is also entitled to the interest as decreed by the Civil Court.

This Court may note that although the petition deserves to be allowed with costs keeping parity with the order dated 17.9.2015 which was also allowed with costs of ₹ 50,000/- but in view of the fair stand taken by the respondents before this Court, this Court does not deem it proper to impose any costs.

(NIRMALJIT KAUR)
JUDGE

3.3.2020
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Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No