

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

CWP No.2970 of 2016 (O&M)

Date of decision: 04.03.2020

Tarsem Singh

....Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Rajiv Atma Ram, Sr. Advocate with Mr. Bhagoti Singh,
Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. D.S. Nalwa, Advocate for respondent No.2.

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

CM No.614 of 2020

Application is allowed subject to all just exceptions. Affidavit of
petitioner along with Annexure 'A' is taken on record.

CWP No.2970 of 2020

Prayer in the petition under Article 226 of the Constitution of
India is for the issuance of a writ of certiorari for quashing order
Annexure P/9 dated 05.02.2016 passed by the Managing Director, UHBVNL,
Panchkula rejecting the request of the petitioner for withdrawal of appeal
dated 27.08.2015 as also for quashing notice Annexure P/7 dated 29.01.2016
issued by the Managing Director to show cause as to why proposed enhanced
punishment be not inflicted upon the petitioner. Prayer is also for the issuance

of a writ of Mandamus for directing the respondents to permit the petitioner to withdraw the appeal filed by him.

2. Brief facts of the case leading to the filing of the writ petition are that the petitioner who is working as Assistant Engineer in UHBVNL was imposed penalty of stoppage of two increments with cumulative effect by the Managing Director of the Nigam vide order Annexure P/3 dated 04.08.2015. The petitioner filed a statutory appeal before the Managing Director of the Nigam, Annexure P/4 against order Annexure P/3 dated 04.08.2015 imposing punishment of stoppage of two increments with cumulative effect. Thereafter, the petitioner submitted application Annexure P/6 dated 27.01.2016 to the Managing Director of the Nigam withdrawing appeal dated 27.08.2015. Thereafter, on 29.01.2016, a show cause notice Annexure P/7 was issued to the petitioner as to why enhanced punishment of dismissal from service be not imposed on the petitioner. The petitioner submitted representation Annexure P/8 dated 01.02.2016 that he had already withdrawn the appeal vide application Annexure P/6 dated 27.01.2016, therefore, the show cause notice was not maintainable and accordingly, the same be dropped. However, the plea of the petitioner for dropping of show cause notice was rejected vide order Annexure P/9 dated 05.02.2016 by stating that the appeal had already been decided by the Managing Director and that the second show cause notice issued on 29.01.2016 had been acknowledged by the petitioner on the same date itself, therefore, the request of the petitioner for withdrawal of the appeal was not feasible for acceptance.

3. Learned counsel for the petitioner contends that as per Regulation 9 of the Haryana State Electricity Board Employees (Punishment and Appeal)

is provided to the Authority higher than the Authority passing the order and that since order imposing punishment of withholding of two increments with cumulative effect was passed by the Managing Director, therefore, in terms of Regulation 9, the appeal could not have been heard by the Managing Director and had to be heard only by the next Higher Authority i.e. the Chairman.

4. Mr. D.S. Nalwa, learned counsel appearing on behalf of respondent No.2 has not been able to controvert the aforementioned position nor has shown anything to the contrary as per the regulations applicable.

5. In the circumstances, the question of rejecting the request of the petitioner for withdrawal of appeal dated 27.08.2015 preferred before the Managing Director of the Nigam pales into insignificance as appeal before the Managing Director against order passed by the Managing Director was not maintainable and it was not open to the Managing Director to have heard an appeal against an order passed by the Managing Director himself.

6. In the light of the position as noted above, impugned order Annexure P/9 dated 05.02.2016 is unsustainable and is accordingly, set aside. It is, however, made clear that the claim of the petitioner of his having withdrawn appeal dated 27.08.2015 (Annexure R/7) filed in terms of Regulation 9 before the Chairman of the respondent-Nigam vide request dated 18.01.2019 has not been adjudicated in the instant petition.

7. Writ petition disposed of in the aforementioned terms.

March 04, 2020
ps

(B.S. WALIA)
JUDGE

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