IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA Nos. 65 and 66 of 2014 (O & M)
Date of Decision: 17.03.2022

Punjab State Warehousing Corporation ....Appellant(s)

vs.

Baldev Singh and others ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. K.B. Raheja, Advocate,
for the appellant.

Mr. R. Kartikeya, Advocate,
for respondent Nos.6, 10, 11, 12, 14, 17 to 27, 37, 39 to 47
(in LPA No. 65 of 2014).

Ms. Jagdeep Bains, Advocate,
for respondent Nos.3, 4, 7, 8, 12, 16, 30, 34, 35 and 44
(in LPA No. 66 of 2014).

(Proceedings are being conducted through video conferencing, as per instructions).

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of two appeals i.e. LPA Nos. 65 and 66 of 2014 as common questions of facts and law are involved in both the appeals. The present appeal is directed against the judgment of the learned Single Judge passed in CWP No. 20795 of 2011, Ashok Kumar and others vs. State of Punjab and another, decided on 15.10.2012 and CWP No. 1750 of 2012 decided on the same date. Reference is being made to the facts of ***LPA No. 65 of 2014, Punjab State Warehousing Corporation vs. Baldev Singh and others*** arising out of CWP No.1750 of 2012.

The writ petitions were filed against the Corporation for issuance of directions to release full pension to the writ petitioners whereby, since only 67% of the pension had been released as provisional pension alongwith interest on the arrears. The claim of the petitioners was that having retired as such, they were entitled for full pension. The office orders granting them the provisional pension as such would go on to show that at the time of retirement on various dates, 30.06.2009, 31.08.2011, 31.05.2010, 31.12.2008 and 31.07.2011, not a word was incorporated that there were any departmental proceedings pending against the employees. One such order reads thus:-

> *"Sh. Baldev Singh, TA (Retd), State Warehouse Fazilka has retired on 30.06.2009 from the Corporation after attaining the age of 58 years is being granted Rs. 4668/-(including 50% D.P. and 5% I.R) as monthly provisional pension 2/3 share of the basic pension of Rs. 7033/- w.e.f. 01.07.2009."*

A perusal of the noting of the corporation dated 21.06.2011 would go on to show that on account of the legal opinion taken from its counsel Sh. Narinder Pal, it was opined that the demand for the payment of the pension was genuine and solely on account of anticipation of the liability of the delinquent retiree being fixed in the disciplinary/judicial proceedings, the same could not be withheld. Reference was made to the judgment of the Full Bench of this Court in ***Dr. Ishar Singh vs. State of Punjab, 1994 (3) RSJ 543.*** The relevant opinion reads thus:-

> *"It is now well settled that Rule 9.14 of the Punjab CSR Vol. II which is mandatory statutory provision a delinquent retiree against whom departmental/judicial proceedings are pending is entitled to the grant of 100% provisional pension. As such Corporation cannot escape its liability to pay pension solely in anticipation of the liability of the delinquent retiree being fixed in the*

> *disciplinary/judicial proceedings.*
> *Reference may be made to the judgment of the Full bench of the Hon'ble Punjab and Haryana High Court in the case Dr. Ishar Singh V/s State of Punjab reported as 1994 (3) RSJ 543. This judgment has been subsequently followed in various pronouncements. Therefore, in my opinion the demand raised by the Association is a legally genuine and there is implicit obligation on the part of the corporation to grant same relief to similar situated persons whose claims is based upon identical facts and points of law. Such action would avoid unnecessary litigation...........”*
> *As regards, the payment of arrears of pension, for that the Association may be persuaded not to press for the same for the time being as the Corporation is facing financial constrains.”*

In the writ petition, in the short reply which was filed by Col. V.K. Joshi, Manager (Establishment) of the Corporation, the stance was that the financial condition of the Corporation was poor and accordingly, affidavit dated 02.05.2012 was filed which reads thus:-

> *“I, the above named deponent do hereby solemnly state and affirm as under:-*
> *1. That the petitioners have filed the instant writ petition to release the full permissible pension as provisional pension w.e.f. the dates of retirement of the petitioners as per their entitlements under the rules alongwith arrears and interest.*
> *2. That the answering respondent is ready to release 100% provisional pension to the petitioners after the decision of the Board of Directors, So far as arrears are concerned, it would be paid to the petitioners on the improvement of financial condition of Punjab State Warehousing Corporation.*
> *3. That the answering respondent is ready to submit detailed reply, if required by this Hon'ble Court.*

DEPONENT

Place: Chandigarh

Dated: 02.05.2012"

In pursuance of the said untenable defence and since nothing had been brought to the notice of the Learned Single Judge that there were any proceedings pending, the learned Single Judge as such had allowed the writ petition vide impugned order dated 15.10.2012 that on account of financial crunch, the legitimate dues of the employees could not be withheld.

Thereafter, an application for review alongwith an application for condonation of delay came to be filed wherein, the stance as such in the application for condonation delay was that on account of the contempt proceedings having been filed and the fact that the recovery was to be effected from the petitioners it could not be inadvertently brought to the notice of this Court. Thus, after detailed consultation with legal consultants, it was concluded that the order was required to be reviewed. The relevant portion in the averments made in the application for condonation of delay reads thus:-

> *"4. That the Managing Director of respondent-corporation issued office order for release of 100% provisional pension to the petitioners in compliance of order dated 15.-10-2012 passed by this Hon'ble Court. It is pertinent to mention here that at the time of filing of the writ petition, respondent-corporation was recovering huge amount from various petitioners but inadvertently the said fact could not be brought to the notice of this Hon'ble Court by respondent-corporation. However, one of the petitioners against whom respondent-corporation was recovering huge amount on account of his lapse, filed contempt petition before this Hon'ble Court. The said fact came to the notice of respondent-corporation when respondent-corporation received summons in the contempt petition filed by one of the*

petitioners on 17-7-2013. Thereafter the respondent-corporation after detailed consultation with its legal consultants, came to the conclusion that order dated 15-10-2012 is required to be reviewed. Hence the delay of 303 days occurred in filing the present review application.

5. That the detail of 303 days in filing the review application has been occurred, was neither intentional nor deliberate but due to the circumstances mentioned above."

In the review application as such, reference was made that petitioner No.2 namely Davinder Singh was facing a show cause notice dated 27.07.2004 regarding the departmental inquiry and the decision had been kept pending. The final order as such of recovery was stated to be passed only on 20.03.2012. It is pertinent to notice that as per Annexure P-5 (Colly.), Davinder Singh had retired on 31.08.2011 and as is apparent from the certificate dated 28.11.2011 [Annexure P-5 (Colly.)] when he was to retire there was no mention as such that there were any departmental proceedings pending against him. The same also reads as under:

"Sh.Davinder Singh, ASTO District Office Moga, has retired on 31.08.2011 from the Corporation after attaining the age of 58 years is being granted Rs.9450/- as monthly provisional pension 2/3 share of the basic pension of Rs.14175/- w.e.f. 01.09.2011."

The explanation given in the review application was that these facts could not be brought to the notice of this Court at the time of filing the written statement. The application was supported by the affidavit of Sh. Raman Vinayak, Manager (Establishment). Nothing was mentioned as to whether the responsibility of the delinquent employee who had filed the affidavit was sought to be fixed on account of giving wrong affidavit before this Court. The impugned order had been passed on account of the untenable stance which had been taken that the amounts and dues could not be paid on account of financial difficulties being faced by the Corporation and nothing was mentioned regarding pendency of departmental proceedings.

It is not disputed that in pursuance of the order passed by the learned Single Judge, directions were given to release full pension from November, 2011 onwards as per the order of the Managing Director (Annexure R-2). The said order reads as under:-

> *"In pursuance of the decision of Punjab and Haryana High Court dated 15.10.2012 in the Civil Writ Petition No. 20795 of 2011 (O & M) titled Ashok Kumar and others Versus State of Punjab & Others vide which it has been ordered to release full pension to the petitioners from November, 2011 onwards and the arrears on account of difference in pensions be paid upto March 31, 2013, the Corporation has decided to release the 100% provisional pension to all the retired employees of the Corporation, who have been allowed @ 67% provisional pension at the time of their retirement.*
>
> *CHANDIGARH, THE ARVINDER SINGH BAINS IAS*
> *DATED: 11.12.2012 MANAGING DIRECTOR"*

The review application was thereafter dismissed vide impugned order dated 18.11.2013 of learned Single Judge on account of the fact that it was belated by 303 days and rehearing of the petition was sought, which had been decided on the basis of undisputed contentions raised and also on account of the fact of delay.

It is a matter of record that the earlier appeals were dismissed on account of delay only vide order dated 17.01.2014 since the appeals had also been filed two months after the order passed in the review. The learned Apex Court as such had remanded the matters in Civil Appeal Nos. 3073-3704 of

2017 and Civil Appeal Nos. 3810 and 3811 of 2017 on 06.03.2017 on account of the fact that the order of recoveries had been passed and, therefore, the same having not been challenged, the case should be decided on merits. The coordinate Bench on 17.01.2019 had directed as under:-

> *"Learned counsel for the appellant(s) prays for time to file an affidavit giving the details of the persons (i) against whom no recoveries are being effected, where the inquiries have concluded: (ii) the persons against whom recoveries are being effected; and (iii) the persons against whom the inquiries are still pending and during the pendency of the inquiry no recovery is being effected.*
>
> *Adjourned to 11.02.2019.*
>
> *Photocopy of this order be placed on the file of other connected case."*

In pursuance of the same, the necessary affidavit has been filed of Mr. G.S. Dhillon, Chief Manager (Establishment) of the Corporation dated 07.02.2019. Even the said affidavit is evasive as not all the details have been mentioned. The said affidavit reads thus:-

> *"3. That in compliance to the orders of this Hon'ble Court, this affidavit is being filed along with the list giving the details of the retired employees (i) against whom no recoveries are being effected where the inquiries have concluded (ii) the retired employees against who recoveries are being effected and (iii) the retired employees against who the inquiries are still pending and during the pendency of the inquiry no recovery is being effected. The said list is attached herewith the affidavit as* ***Annexure-A****.*
>
> *4. <u>It is pertinent to mention here that there are some more cases, of unjustified storage loss in rice and less</u> storage gain in wheat, pending adjudication against the respondents/retired employees and the said cases are lying*

with the Quality Control Branch of Appellant Corporation. The details of the said cases will be provided later on if directed by this Hon'ble Court."

A perusal of the table would go on to show that the retirements had taken place almost three years earlier and all the recovery orders have been passed thereafter though the show cause notices had been pending earlier. For example, petitioner No.4 namely N.K. Abrol retired on 31.12.2008 and the recovery order was passed only on 21.12.2011. The same is explained by way of table as under:-

Sr. No.	*Name*	*Date of Retirement*	*Date of Recovery*	*Date of Show Cause Notice*
1	Baldev Singh	30.06.2009		15.06.1988
2	Davinder Singh	31.08.2011	28.03.2012	19.02.2009
3	C.G. Dhawan	31.05.2010		07.01.1999
4	N.K. Abrol	31.12.2008	12.12.2011	12.02.2007
5	Randhir Singh	31.07.2011		27.02.2012

The said table would also go on to show that the show cause notices were pending since 2007 and in some cases from 1988, 1999. A perusal of the above would go on to show that disciplinary proceedings as such were pending for decades against the employees and no effort was made to complete the proceedings during the service tenure and in such circumstances, in the above facts and circumstances, the fault lies wholly with the Corporation. At the first instance, proper assistance was never given to this Court and the defence given was that on account of financial exigencies, the amounts were not paid. Even the retirement orders did not mention that there were any departmental proceedings against them. Thirdly, the affidavit and Annexure A now filed would show that the Corporation had not given all the information asked for and withheld the details of the cases. It has sought directions from this Court that the detail would be provided as directed by this Court in spite of the specific orders having been passed and only details of the writ petitioners have been given. Another lack of clarity is that nothing has been brought on record to show that any action was taken against the official who filed the short affidavit, for not bringing the correct picture before this Court.

Keeping in view the cumulative conduct of the Corporation, we are of the considered opinion that the appeals are bereft of merit as the Corporation is totally at fault of mishandling this present set of litigation and not bringing to the notice of this Court all the relevant material at earlier point of time. Even today, it is not candid enough to place on record the action taken against similarly situated employees.

Resultantly, the appeals are not liable to be entertained and being without any merit, the same are dismissed. All pending applications, if any, are also disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

17.03.2022
shivani/sailesh

(VIKAS SURI)
JUDGE

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