211 ***2023:PHHC:166586***

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-16731-2015 (O&M)
DECIDED ON: 6th SEPTEMBER, 2023

MAHABIR SINGH TANWAR

PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Petitioner in person.

Mr. Jagbir Malik, Addl. AG, Haryana.

Mr. Arun Sharma, Advocate
for respondents No.3 and 4.

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SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ of *Certiorari* for quashing of the impugned order 15.06.2015 (Annexure P-24) with further prayer for issuance of a writ in the nature of Mandamus directing the respondents to implement the orders dated 02.12.2003 (Annexure P-9) and dated 01.03.2005 (Annexure P-12) forthwith vide which the pay of the petitioner was correctly fixed by the than Managing Director and also to pay him at par with the juniors from the date the juniors of the petitioner have been given higher basic pay than the petitioner with all consequential

benefits arising out of pay fixation of the petitioner with 12% interest per annum from the date the junior to the petitioner are getting higher pay than the petitioner and to release the consequential benefits of arrears.

2. The factual matrix leading to the filing of instant writ petition is that the petitioner joined the services of respondent-Bank as Manager on deputation basis on 19.05.2001 after rendering excellent service of more than 19 years from 04.07.1981 to 18.05.2001 in the office of Housefed Haryana. On 22.05.2001 the Bank appointed Sh. Kuldeep Sharma, to the post of Manager by promoting him from the post of Assistant/Jr. Accountant and he joined his duties as such w.e.f. 22.05.2001. In this way, Sh. Kuldeep Sharma, Manager is junior to the petitioner as per Staff Services Rules. Thereafter, vide resolution No.4, the Board of Directors of the Bank in its meeting held on 26.09.2002 (Annexure P-3) absorbed the services of the petitioner in the services of the Bank as Manager. On absorption of the services of the petitioner in the Bank as Manager, vide order dated 22.11.2002 (Annexure P-6) the respondent-Bank fixed the basic pay of the petitioner as Rs.6350/- w.e.f. 19.05.2001 and Rs.6700/- on absorption as Manager in the pay scale of Rs.6500-9900/-, less than the minimum stage of Rs.6500/- of the pay scale Manager. Feeling aggrieved of the said pay fixation, the petitioner made a representation on 19.06.2003 requesting therein to equalize his basic pay at par with his junior Sh. Kuldeep Kumar. Accordingly, the pay of the petitioner was fixed vide order dated 02.12.2003 (Annexure P-9) and in compliance thereof, a Cheque No. 636752, dated 19.12.2003 to the tune of Rs.85,088/- was issued in favour of the petitioner towards the arrears. On presentation, the

same was returned with the remarks that the payment has stopped by the drawee. Thereafter, the petitioner met the in charge of the Accounts Section of the respondent-Bank, who apprised him that the payment of the cheque has been stopped due to some internal financial arrangements in the office of the respondent-Bank but instead of issuing a fresh cheque, he was paid the salary for the month of December, 2003 as per old fixation and without the annual increment, which was due w.e.f. 01.12.2003. Thereafter, the petitioner filed CWP-17785-2004 before this Court, which was disposed off, vide order dated 18.11.2004 with a direction to respondents to decide the representation dated 20.08.2004 by passing a speaking order within a period of two months from the receipt of a certified copy of the order. It is during the pendency of COCP, the Managing Director of the respondent-Bank has passed the order dated 01.03.2005 after getting the pay fixation of the petitioner verified from the Personnel of the Finance Department Haryana.

3. Learned counsel for the petitioner has contended that the than successor Managing Director neither provided any opportunity of hearing to the petitioner nor any show cause notice has been issued to him before passing the impugned order. Similarly, respondents No.1 to 3 have also not afforded any opportunity of hearing while rejecting the lawful appeal of the petitioner dated 25.10.2013 (Annexure P-22) vide order dated 15.06.2015 (Annexure P-24). Thus, the impugned orders dated 16.07.2005 and 15.06.2015 (Annexures P-14 & P-24) deserves to be quashed on this ground alone and orders dated 02.12.2003 and 01.03.2005 (Annexures P-9 and P-12) deserves to be restored and implemented forthwith. It is further

contended that there is grave violation of well settled principle of law settled by a Division Bench of this Court in LPA-774-2011, titled as ***"State of Haryana and others vs ASI Dharam pal and another", decided on 03.05.2011*** as well as in the case of ***"Ram Niwas Vs. State of Haryana and others"; 2006 (3) SCT 834.*** Further contention is that the Respondent Board has not taken into consideration the office order dated 18.02.2005 passed by the then Managing Director, The Haryana State Co-operative Agricultural and Rural Development Bank Limited, Chandigarh whereby, the pay of the persons, who is juniors to the petitioners is fixed, which is higher than the pay of the petitioner. Moreover, the then Managing Director is not competent to re-examine and to pass a fresh orders reversing the lawful orders dated 02.12.2003 and 01.03.2005 (Annexures P-9 and P-12), which have already been passed by his predecessor more than three years back after following due procedure of law and those orders had attained finality also. Further, the petitioner has never accepted his pay fixation w.e.f. 26.09.2002, at Rs.6700/- and the said is proved from the record, as the petitioner has been making repeated representations/reminders for wrong fixation of his pay on the date of deputation with a request for stepping up the pay at par with his junior namely Kuldeep Kumar, who was promoted after the joining of the petitioner, as Manager in the respondent-Bank.

4. It has been contended on behalf of counsel for respondents No.3 and 4 that vide order dated 19.05.2001 the petitioner was taken on deputation and he emerged among the cadre of Managers only on 07.10.2002, when he accepted the offer dated 01.10.2002. It is further

contended that in fact the absorption of petitioner in the services of the Bank was under the political influence not for his excellent work and conduct. To support this contention, respondent-Bank has placed reliance upon a note dated 05.01.2001 written by the Minister of State for Animal Husbandry Diary Development, Fisheries and Wakf, Haryana and that of Sh. Rambir Singh, MLA, Pataudi annexed with their reply dated 07.04.2016 as Annexures R-3 and R-4 respectively. It is submitted on behalf of respondents No.3 and 4 that the pay of the petitioner has rightly been fixed as Rs.2150/- in the pay scale of Rs.1400-2600/- and Rs.6700/- in the pay scale of Rs.6500-9900/-. The assertion is that the act of acceptance of offer of absorption by the petitioner dated 07.10.2002 itself estops to claim parity with Kuldeep Sharma and pay fixation of the petitioner dated 02.12.2003 was wrong as the petitioner was not on the cadre of Manager on 19.05.2002, thus, rightly the order dated 02.12.2003 were found erroneous and were not implemented and once the error was found in the said order, the payment of cheque amounting to Rs.85088/- dated 19.12.2003 was immediately stopped. Moreover, in the order dated 01.03.2005 (Annexure P-12), it is clearly mentioned that if anything is adverse, the petitioner will be liable for recovery of the amount if received by him, as a result of order dated 02.12.2003. Further more, the petitioner is claiming parity with his junior and also with the Managers who are promoted from the post of Assistant Manager even after the petitioner is wrong, because as a result of their continuation in the service of bank and as a result of stagnation for promotion they were getting higher pay scale then the Petitioner even as Assistant Managers as their pay scale was much higher then that of the petitioner as Assistant Manager, therefore, the petitioner who was in the lower pay scale prior to his absorption dated 01.10.2007 accepted on 07.10.2007. The Petitioner was placed in the pay scale of the Managers only on 07.10.2002 which was lower then the pay scales of the so called and alleged employees who were promoted as Managers in 2003. In this way the claim of the Petitioner was not sustainable in the eyes of law in view of the pay scales being claimed by those Managers as Assistant Manager higher then that of Petitioner prior to their the promotion. Hence, they pray for dismissal of the present petition.

5. No other argument has been raised by either of the parties.

6. Heard learned counsel for the respective parties at length.

7. Before adverting to the merits of the case, it is relevant to go through Clause 12-B (vi) of the circular issued by the Financial Department of the Haryana Government dated 17.03.1987 (Annexure P-26), which reads as under:

> ***12. Grant of retirement benefit on permanent absorption in****:*
>
> ***A. Public Sector Undertaking:_***
>
> *XXXXX XXXXXXXXX XXXXX*
>
> ***B. Public Enterprises under the Central Government:-***
>
> *(i) XXXXX XXXXXXXXX XXXXX*
>
> *(ii) XXXXX XXXXXXXXX XXXXX*
>
> *(iii) XXXXX XXXXXXXXX XXXXX*
>
> *(iv) XXXXX XXXXXXXXX XXXXX*
>
> *(v) XXXXX XXXXXXXXX XXXXX*
>
> ***(vi) Seniority****: The seniority of officers/officials opting for service in enterprises should be fixed in a particular grade with effect from the date of their original deputation to that grade and not*

> *from the date of exercise of their option regardless of the terms offered to them."*

8. The petitioner went on deputation vide order dated 16.05.2001 (Annexure P-1) and absorbed in the service of the Bank in the cadre of Manager vide resolution dated 26.09.2002 (Annexure P-3) and order of absorption dated 01.10.2002 (Annexure P-4) and he joined as Manager on deputation on 19.05.2001 and Kuldeep Singh was promoted to the post of Manager on 22.05.2001.

9. From the bare perusal of afore-said clause, it is crystal clear that the petitioner is senior to Sh. Kuldeep Sharma and by following this preposition the respondent-Bank treated the petitioner senior to Sh. Kuldeep Sharma and after taking advices from all expert quarters including the officers of respondent-Bank fixed the pay of the petitioner at par with his junior Sh. Kuldeep Sharma vide order dated 02.12.2003 (Annexure P/9) and in compliance of the re- fixation order dated 02.12.2003 (Annexure P/9), a cheque No. 636752 dated 19.12.2003 for Rs. 85088/ was issued to the Petitioner towards the arrears of the re-fixed pay.

10. Admittedly, during the pendency of contempt petition the representation dated 26.02.2005 of the petitioner has been finally decided in favour of the petitioner and necessary orders were issued vide office order dated 01.03.2005 (Annexure P-12) whereby, the office order dated 02.12.2003 issued earlier was allowed operate and in the said order it is clearly mentioned that the pay fixation of the petitioner is verified by SAS Personnel of the Finance Department, Haryana.

11. Now the question remains with this Court to decide is that

there is a power of review with the Managing Director to set aside the order passed by his predecessor.

12. In this regard, a reference can be placed upon the judgment of a Division Bench of this Court passed in LPA-774-2011 titled as ***"State of Haryana and others vs. ASI Dharam Pal",*** decided on 03.05.2011, wherein, while considering the judgment of the Apex Court in the case of "***Ram Niwas vs. State of Haryana and others", 2006 (3) SCT 834***, has held that there is no power of review with the Director General of Police to set aside the order passed by predecessor. The relevant extract of the judgment reads as under:-

> "*We have heard the learned counsel and are of the view that the order passed by respondent No. 2 does not suffer from any legal infirmity warranting our interference. It has come on record that the petitioner had earned adverse remarks for the period 1992-93 and his integrity was considered doubtful. It was further remarked that he has been conniving with anti social elements for extorting money and has been harassing the general public for the same purpose. His representation made against the adverse remarks entered by the Reporting Authority (Superintendent of Police, Karnal) was duly considered by respondent No. 3. Inspector General of Police, Rohtak and it was rejected by an order dated 14.1.1994 and the same was conveyed to the petitioner on 2.2.1994 (Annexures P.8 and P.9). There was no opportunity for filing or entertaining another representation on the same cause of action in June, 2006 nor any order could have been passed on 11.7.2000 (Annexure P.11). Firstly, in law there is administrative hierarchy which has to be respected and any successor officer cannot set aside the orders passed by his predecessor. Secondly, there is no provision under the Punjab Police Rules, 1934, as applicable to*

> *Haryana, or in any instructions or subordinate legislation providing for review of an order passed by the predecessor in office. It is well settled that power of review cannot be exercised unless it is expressly provided by the statute. In this regard, reliance may be placed on a judgement of the Hon'ble Supreme Court in the case of Rathi Alloys and Steel Ltd. v. C.C.E., (1990)2 SCC 324. Our view also finds support from the judgement of this Court in the case of Amarjit Kaur v. State of Punjab and others, 1988(4) SIR 199. It is further apparent that the subsequent representation has been made after a long period of six years which was not only entertained but the adverse remarks earlier entered have been expunged. Moroever, the whole administration would be put to chaos and indiscipline if such a course is permitted by law. Therefore, we have no doubt in our mind that the order dated 11.7.2000 (Annexure P.11) entertaining the representation filed by the petitioner (Annexure P.10) is palpably illegal and the impugned order setting aside the aforementioned order is absolutely fair, just and reasonable. Therefore, we are inclined to uphold the order dated 28.4.2006 (Annexure P.14).”*

12. In view of the afore-said judicial pronouncement, this Court is of the opinion that there is administrative hierarchy which has to be respected and any successor officer cannot set aside the orders passed by his predecessor. Thus, it can be safely inferred that the impugned orders dated 16.07.2005 and 15.06.2015 (Annexures P-14 and P-24) passed by the then Managing Director, The Haryana State Co-operative Agriculture and Rural Development Bank, Ltd., Panchkula whereby, all the previous orders dated 01.03.2005 and 26.09.2002 issued by the respondent-Bank are set aside, are bad in the eyes of law as, there is no power vested by any

Legislation, Rules or Regulation made thereunder, with the officer to review the order passed by his predecessor.

13. In view of the discussions made hereinabove, the present petition is allowed and impugned order dated 16.07.2005 and 15.06.2015 (Annexures P-14 and P-24) are set aside and respondent-Bank is directed to implement the orders dated 02.12.2003 and 01.03.2005 (Annexures P-9 and P-12 respectively) forthwith within a period of one month from the receipt of certified copy of this order.

(SANDEEP MOUDGIL)
JUDGE

6th SEPTEMBER, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No