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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7016-2020 (O&M)

Date of Decision: 11.01.2024

Dr.Santosh Sangwan

....Petitioner(s)

Versus

**Ch. Charan Singh Haryana Agricultural University, Hisar (Haryana)
and another**

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate, for the petitioner.

Mr. Shobit Sharma, Advocate for
Mr. Kshitij Sharma, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *Certiorari* to quash the order dated 03.03.2020 (Annexure P-4) by which the appointment of the petitioner to the post of Assistant Professor (HDFS) made vide order dated 14.07.2010 has been cancelled with a further direction to quash the order dated 11.03.2020 (Annexure P-5) by which the retiral benefits i.e. gratuity and leave encashment already granted to the petitioner were ordered to be recovered. Further direction has been sought to release the payment of NPS to the petitioner alongwith market rate interest.

2. The brief facts of the present case are that the petitioner was

appointed to the post of Assistant Professor (HDFS) on the basis of advertisement issued by the respondent-University. She was selected and was appointed by the respondent-University vide order dated 14.07.2010 and she joined on the same date. Thereafter, the aforesaid selection of the petitioner was challenged by one of the unsuccessful candidates namely, Poonam before this Court in CWP No.15950 of 2010 and a Single Bench of this Court vide judgment dated 17.05.2017 set aside the selection and the Selecting Authority was also directed to re-do the interview process. The aforesaid judgment passed by the learned Single Judge dated 17.05.2017 has been attached with the present petition as Annexure P-1. Thereafter vide orders dated 06.07.2017 (Annexure P-2) the respondent-University in compliance of the orders passed by the learned Single Bench set aside the appointment order of the present petitioner with immediate effect. The aforesaid judgment passed by the learned Single Bench was assailed by the present petitioner by filing an intra-court appeal before this Court in LPA No.891 of 2017. The LPA Bench on 12.07.2017 i.e. after about six days of the aforesaid order Annexure P-2 directed that in the meantime operation of order dated 06.07.2017 (Annexure A-1) shall remain stayed. The aforesaid order dated 12.07.2017 is reproduced as under:-

“Notice of the application for 29.08.2017, the date already fixed.

In the meantime, operation of the order dated 06.07.2017 (Annexure A-1) shall remain stayed.”

3. During the pendency of the LPA, the petitioner retired on 31.08.2019 and on her retirement, the University paid the retiral benefits to the petitioner pertaining to gratuity and leave encashment etc. which were received by the petitioner. However, at the time when the respondent-

University released the benefits to the petitioner, an indemnity bond as well as an undertaking was furnished by the petitioner vide Annexure R-3 and R-4 respectively. As per indemnity bond, the petitioner undertook that he assures and agrees to indemnify the retiral benefits to the extent of amount of payment made by the University on account of retiral benefits with interest, if the Hon'ble Punjab and Haryana High Court passed the orders against the applicant in the pending LPA No.891 of 2017 and on account of any failure on the part of the applicant, the University shall be legally entitled to recover the said amount from the movable and immovable properties of the applicant. The relevant portion of the aforesaid indemnity bond is reproduced as under:-

“The applicant undertakes, assures and agrees to indemnify the Retiral Benefits to the extent of amount of payment made by University to the applicant on account of retiral benefits with interest and the said amount, if the Hon'ble Punjab and Haryana High Court passed orders against the applicant in the pending L.P.A.No.891/2017 and on account of any failure on the part of the applicant, the university shall be legally entitled to recover the said amount of retiral benefits with interest from the movable and immovable properties of the applicant or in the alternative from the family of the applicant i.e. legal representatives of the applicant as per details given in the schedule hereinto annexed with the indemnity bond. The applicant as well as the legal representatives of the applicant shall be bound by this indemnity bond.”

4. Alongwith the aforesaid indemnity bond, an undertaking was also furnished vide Annexure R-4 by the petitioner by stating that in the event of decision of LPA No.891 of 2017 pending before the Punjab and Haryana High Court the amount any due towards her shall be returned to the University and the University may recover the same from her. The aforesaid

undertaking is reproduced as under:-

“UNDERTAKING

I, Dr. Santosh Sangwan D/o Sh. Sunder Singh Hooda was working as Assistant Professor in the Department of HDFS and retired from the University services on 30/08/2019 after attaining the age of superannuation and hereby undertake that in the event of decision of LPA No.891/2017 pending before the Punjab & Haryana High Court the amount any due towards me shall be returned to the University and the University may recover the same from me. Neither I nor my heirs (in case of my death) shall file any claim against the University towards the amount due/recoverable by the University and I/my family shall be bound to the decisoin of the LPA No.891/2017.”

5. The aforesaid LPA finally came up for hearing before a Division Bench of this Court on 04.07.2020 i.e. after the retirement of the petitioner and after she received the benefits and the same was disposed of as having become infructuous. Before the LPA Bench, it was the submission of the counsel for the present petitioner-appellant that the appellant was permitted to work as Assistant Professor (HDMS) for more than nine years and retire alongwith release of the retiral benefits on attaining the age of superannuation and the application which was filed by one other person for impleadment as well as the main appeal have been rendered infructuous. It was also so observed by the LPA Bench that the learned counsel for the University also does not seriously contest the aforesaid factual aspect and he has no objection to the appeal being disposed of as infructuous with natural consequence of the University proceeding to declare the result and finalise the selection and appointment of the candidates to the post of Assistant Professor (HDFS) pursuant to the earlier advertisement. The relevant portion of the aforesaid order dated 04.02.2020

is reproduced as under:-

“In view of the aforesaid subsequent developments, Mr. R.K. Malik, Senior Advocate submits that the appellant having been permitted to work as Assistant Professor (HDMS) for more than nine (09) years and retire alongwith release of the retiral benefits, on attaining the age of superannuation, the present application (CM-749-2018) as well as appeal have been rendered infructuous.

Learned counsel for the University does not seriously contest the aforesaid factual aspect and, thus, has no objection to the appeal being disposed of as infructuous with natural consequence of the University proceeding to declare the result and finalise the selection and appointment of the candidates to the post of Assistant Professor (HDFS) pursuant to the advertisement dated 17.08.2009.

In view of the above, the application for impleadment as well as appeal are disposed of, as infructuous. The respondent-University is directed to finalise the recruitment process, in terms of the judgment passed by the learned Single Judge within one month from receipt of certified copy of this order.”

6. The aforesaid LPA was decided on 04.02.2020. However, after few days the respondent-University passed the impugned order vide Annexure P-4 on 03.03.2020 by stating that the appointment order dated 14.07.2010 issued to the petitioner is cancelled and set aside. Thereafter another impugned order was passed vide Annexure P-5 dated 11.03.2020 in which it has been directed that since the appeal was disposed of having been rendered infructuous, all the interim orders operating stand dismissed and nullified and therefore, the earlier orders dated 06.07.2017 have been restored. Therefore, the petitioner was liable to return the amount of gratuity amounting to Rs.4,73,323/- and leave encashment amounting to Rs. 6,87,196/- alongwith interest @ of SBI on F.D as per indemnity bond /undertaking within a period of 15 days. Both the aforesaid orders Annexure

P-4 and P-5 are challenged by the petitioner in the present writ petition.

7. Mr. R.K. Malik, learned Senior Counsel with Mr. Sandeep Dhull, learned counsel has submitted that so far as the first impugned order Annexure P-4 dated 03.03.2020 is concerned, the same is totally illegal and perverse on the face of it. He submitted that the petitioner was appointed on 14.07.2010 and although his selection was cancelled on 06.07.2017 in pursuance of the judgment passed by the Single Bench of Court but when the matter came up before the LPA Bench, then on 12.07.2017 it was so directed that the operation of order dated 06.07.2017 shall remain stayed. He submitted that once the operation of the order itself was stayed, then it would mean that it was never in existence at that point of time. He submitted that during the pendency of the LPA when the petitioner had attained the age of superannuation and was retired by the University itself and was given the retiral benefits, then after the retirement the master and servant relationship ceased to exist and therefore, now when the order dated 03.03.2020 (Annexure P-4) has been passed, the same could not have been passed because there was no authority of the University to have cancelled or set aside the order by which she was appointed. He submitted that after the petitioner retired and attained the age of superannuation, no order could have been passed for setting aside the order of appointment and rather the University ought to have proceeded to comply with the directions issued by the LPA Bench for further process of selection from the other candidates since the petitioner already stood retired.

8. The learned Senior Counsel also submitted that so far as impugned order dated 11.03.2020 (Annexure P-5) is concerned, the same is also liable to be set aside in view of the fact that the operation of the order

dated 06.07.2017 was stayed by the LPA Bench and ultimately the LPA became infructuous on the basis of the statement made by the learned counsel for the appellant in LPA that considering the fact that he has already served for 9 years and has superannuated and also obtained the retiral benefits and at that point of time the operation of the termination order was already stayed, no useful purpose will be served and the appeal would become infructuous and it was because of this reason that the LPA was disposed as having been rendered infructuous and even the counsel for the University had also stated that once it has become infructuous, then the natural consequence of further selection process will start which they actually started and they subsequently appointed the aforesaid Poonam who had challenged the selection of the petitioner before the learned Single Bench. He submitted that now the University cannot take a U-turn and rely only upon the indemnity bond which was furnished by the petitioner in this regard. On the issue of furnishing of the indemnity bond, he also referred to the language used in indemnity bond which has been annexed by the University as Annexure R-3 and a plain reading of the aforesaid language would show that he had indemnified herself that she will return back the retiral benefits with interest only when the High Court passed the orders against the applicant in the LPA whereas no such order has been passed against the petitioner by the LPA Bench and the LPA was only disposed of accordingly. He submitted that therefore the aforesaid indemnity bond cannot be enforced against the petitioner now for the purpose of recovery of the retiral benefits already given to the petitioner. He submitted that to the same effect was the undertaking Annexure R-4 and therefore, the action of the University in issuance of the orders Annexures P-4 and P-5 are totally

illegal and are liable to be set aside and the petitioner cannot be compelled to pay back the gratuity and leave encashment or any other benefit received by her for the time she served the University for nine years.

9. On other hand, Mr. Shobit Sharma, learned counsel appearing on behalf of the respondent-University submitted that the action of the respondent in issuance of the aforesaid impugned orders was correct in view of the fact that the petitioner herself at the time of pendency of the LPA furnished indemnity bond and undertaking and there is no order of the LPA Bench rectifying the appointment of the petitioner and therefore, the indemnity bond and undertaking can be enforced qua the petitioner.

10. I have heard the learned counsel for the parties.

11. The short point involved in the present case is only as to whether the University after releasing the retiral benefits to the petitioner pertaining to gratuity and leave encashment etc. can recover the same from the petitioner at this stage. Undoubtedly, the petitioner was selected to the post of Assistant Professor (HDFS) and she joined the service and thereafter her selection was challenged by one Poonam and thereafter by way of a judgment of Single Bench of this Court vide Annexure P-1 her appointment was set aside with a direction to re-do the process of interview. On the basis of the aforesaid judgment of the learned Single Bench, the order of appointment of the petitioner was set aside by the University vide orders dated 06.07.2017. However, the petitioner filed LPA against the aforesaid judgment of the learned Single Bench and in LPA a specific order was passed on 12.07.2017 whereby the operation of the aforesaid order dated 06.07.2017 was stayed. In other words, the aforesaid order dated 06.07.2017 whereby the services of the petitioner were terminated did not operate even

till the time when the LPA was finally disposed of vide Annexure P-3. During the interregnum period, the petitioner kept on serving the University for a period of nine years and when the matter came up for final disposal before the LPA Bench it was because the petitioner already got superannuated and the University itself had retired her and she had served for 9 years, was paid the retiral benefits, although after getting an indemnity bond and undertaking from her. However, a perusal of the aforesaid indemnity bond would show that she has indemnified herself only to the extent that she will pay back the amount only when in case any judgment of the LPA comes against her. A perusal of the judgment of the LPA would show that there is no judgment against the present petitioner and it was only because the petitioner had retired during the pendency of the LPA that the same became infructuous. Even if the interim order dated 12.07.2017 passed by the LPA Bench whereby the operation of the order dated 06.07.2017 was stayed got merged in the final order of the LPA, still at the time of the disposal of the LPA vide Annexure P-3, the interim order was still in operation and before that date, the petitioner had already retired and got the benefits and therefore, it cannot be said that the benefits which have been received by the petitioner were not in a lawful manner. The argument raised by the learned counsel for the University that once the LPA was disposed of and there was no order for setting aside the order of the learned Single Bench, the petitioner was not entitled for gratuity and leave encashment is misconceived and unsustainable. At the time when the LPA was decided, the interim order was still in operation and during the operation of the interim order dated 12.07.2017, the petitioner was retired by the University itself and was given the benefits and it is undisputed that the

petitioner actually served the University for nine years.

12. So far as the argument raised by the learned counsel for the respondent-University that the petitioner herself has furnished indemnity bond and undertaking and therefore now she is estopped from claiming the aforesaid benefit is concerned, the same is also unsustainable in view of the fact that a plain language of the aforesaid indemnity bond would show that she has indemnified only to the extent that in case a judgment comes against her only then she will pay back the entire retiral benefits to the University whereas a perusal of the judgment of the LPA Bench would show that there is no judgment against the present petitioner and it has only been disposed of as having been rendered infructuous in view of the factual position at that point of time and at that point of time, the interim order dated 12.07.2017 was still in operation. Apart from the above, it is not in dispute that the petitioner served the University for nine years and for that period she got the retiral benefits and the University itself had got the petitioner retired and gave the benefits to her. It is a settled law that pension and retiral benefits are Constitutional Rights guaranteed under Article 300A of the Constitution of India and a person cannot be deprived of the Constitutional Rights by taking such kind of hypertechnicalities. It is not the case of the respondent-University that in addition to the present petitioner some other person was appointed and he also served on the same post to which any loss has been caused to the University whereas it is an admitted position that the aforesaid Poonam who had challenged the appointment of the petitioner was later on appointed vide Annexure R-6 by the University on 16.03.2020 after the disposal of the LPA.

13. In view of the aforesaid facts and circumstances, the present

petition is allowed. The impugned order dated 03.03.2020 (Annexure P-4) and order dated 11.03.2020 (Annexure P-5) are hereby set aside and quashed. The respondent-University is restrained from recovering the amount of gratuity and leave encashment granted to the petitioner.

14. So far as the claim of the petitioner for grant of NPS is concerned, the petitioner shall be at liberty to file a fresh representation to the respondent-University within a period of two months from today and in the event of her doing so, the University shall pass a speaking order on the aforesaid grievance of the petitioner pertaining to the NPS within a next one month and in the light of the present judgment.

11.01.2024

rakesh

Whether speaking : Yes/No

Whether reportable : Yes/No

(JASGURPREET SINGH PURI)

JUDGE