

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

LPA-862-2024

Date of decision : 04.04.2024

Chaudhary Charan Singh Haryana Agricultural University, Hisar

.....Appellant

Versus

Dr. Santosh Sangwan and another

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Naveen S. Bhardwaj, Advocate, for the appellant.
Mr. Lalit Rishi, Advocate, for respondent No.1.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The consideration in the present Letters Patent Appeal is to the order dated 11.01.2024 passed by the learned Single Judge in Civil Writ Petition No. 7016 of 2020, whereby the writ petition was allowed; the orders dated 03.03.2020 (Annexure P-4) and 11.03.2020 (Annexure P-5) were set aside; and the appellant University was restrained from recovering the amount of Gratuity and leave encashment paid to the writ petitioner (private respondent herein).

2. A perusal of order dated 03.03.2020 (Annexure P-4) would go on to show that on account of dismissal of LPA No. 891 of 2017 on 04.02.2020, the University had cancelled the appointment order dated 14.07.2010, in respect of the writ petitioner against the post of Assistant Professor (HDFS). The communication dated 11.03.2020 (Annexure P-5) as such by the University was addressed to the writ petitioner seeking refund of the Gratuity to the extent of Rs. 4,73,323/- and Leave Encashment amounting to Rs. 6,87,196/- along with interest as per the indemnity bonds furnished by the writ petitioner, within a period of 15 days of the receipt of the letter, and it was

proposed that if the amount is not refunded to the University, action will be taken as per rules.

3. The reason which weighed with the learned Single Judge in quashing the same was that though the order of appointment of the writ petitioner was set aside in the first round of litigation at the instance of one Poonam in CWP No. 15950 of 2010, on 17.05.2017 (Annexure P-1), however, in LPA No. 891 of 2017, an interim order had been passed on 12.07.2017 protecting the employee. The LPA had been finally disposed of as having been rendered infructuous, in the presence of all the concerned counsels, including the employee and the University, while observing that the employee had been permitted to work for more than nine years and on attaining the age of superannuation on 31.08.2019, retiral benefits had been paid to her on furnishing indemnity bonds dated 16.12.2019 (Annexures R-3 and R-4). Resultantly, it was held that the interim order dated 12.07.2017 as such had merged in the final order of the LPA and, therefore, the benefits which had been received by the employee could not be said to be not in a lawful manner.

4. The argument raised that in the bonds, it was undertaken that if there was a judgment against the employee in the LPA, the University shall be entitled to recover the retiral benefits, was met with the reasoning that no judgment had been passed against the employee as it was disposed of as having been rendered infructuous. Therefore, the pension and retiral benefits being the Constitutional Rights guaranteed under Article 300A of the Constitution of India, the employee could not be deprived of the same under the technicalities.

5. Mr. Bhardwaj has vehemently argued that a contract having been entered into, the employee was duty bound to adhere to the terms of the

contract and, therefore, the leaned Single Judge was not justified in allowing the writ petition and the retiral dues received by the employee thus had to be refunded to the University. We are of the considered opinion that the reasoning which has been recorded by the learned Single Judge is justified in the facts and circumstances of the case. When the LPA was decided, the counsels representing the employee and the University were present and it was not brought to the notice of the learned Co-ordinate Bench at that point of time that there was any indemnity bond furnished by the employee and the matter should be decided on merits. The appeal was thus disposed of as infructuous on 04.02.2020. The relevant portion of the order reads 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 learned Single Judge was well justified in holding that Article 300A of the Constitution of India would come into operation and it is settled principle that pension and retiral benefits are not a bounty. It is not disputed that the employee has worked during the said period and thus earned Gratuity and retiral benefits. It is not the case of the University that it was forced or saddled with an additional employee on a post which was not sanctioned and, therefore, unnecessary burden has been put on it. Even otherwise, since the interim order dated 12.07.2017 had been passed by the Co-ordinate Bench, we are of the considered opinion that the maxim *Actus Curiae Neminem Gravabit* (no act of Court shall harm any litigant) would come into play. Reliance can be placed upon judgments of the Apex Court in ***Mohammed Gazi Vs. State of M.P. 2000 (4) SCC 342***. The relevant portion reads as under:-

*“5. In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit – an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia – the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in **Raj Kumar Dey v. Tarapada Dey, 1987 (4) SCC 398** and **Gursharan Singh v. NDMC, 1996 (2) SCC 459 : 1996 (1) RRR 563 (SC)**. ”*

7. Keeping in view the above cumulative discussion, we are of the considered opinion that the order passed by the learned Single Judge is not liable to be interfered with in the facts and circumstances of the case. Since the University has taken work and duties from the employee and utilized her man power, therefore, it is not justified to claim the refund of the amount.

8. Accordingly, there is no merit in the present appeal and the same is dismissed *in limine*.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

April 04, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	No