

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

208

CWP-1540-2008 (O&M)
Date of Decision:19.03.2024

Joginder Paul Sharma

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr.Abhilaksh Grover, Advocate for the petitioner.

Ms. Anupama Sharma, Advocate for respondents-Nigam.

Mr. Gaurav Jindal, Addl. A.G. Haryana.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing of order dated 27.12.2007 (Annexure P-15) wherein the request of the petitioner for his consequential benefits at the prevailing rates as ordered by this Hon'ble Court in CWP No.1942 of 2004 decided on 26.05.2005 (Annexure P-10) has been declined.

2. The learned counsel for the petitioner submitted that the petitioner was appointed to the post of Lower Division Clerk on 21.03.1966 and thereafter was promoted on the post of Upper Division Clerk on 13.07.1990 and as Assistant on 23.10.1973. However, on 09.12.1981, the petitioner was suspended from service and thereafter an FIR No.1015 under Sections 409/477-A/120-B of IPC was lodged against the petitioner on 18.12.1981 and subsequently departmental proceedings were also initiated

against him and the petitioner was removed from service on 11.11.1998. He further submitted that he had challenged the aforesaid removal order by filing a writ petition bearing No.2342 of 1999 and the order of removal was quashed by passing a detailed order and the petitioner was ordered to be taken back into the service and it was also directed that the petitioner will not be granted any back wages because he had not worked on the post. Thereafter, the petitioner filed another writ petition i.e.CWP No.1942 of 2004 before this Court by challenging the order dated 13.03.2003 (Annexure P-7) passed by the respondents-Nigam, wherein it was directed that the period from 11.11.1998 till 30.11.2001 will not be treated as a duty period for the purpose of annual increments and the same was also allowed by a Division Bench of this Court vide Annexure P-10 on 26.05.2005. The relevant portion of the aforesaid judgment is reproduced as under:-

It is apparent from the narration of the facts above that the order of dismissal of his appeal against the aforesaid order was set aside by this court in his earlier writ petition No.2342 of 1999, which was allowed on January 3, 2002. Accordingly, the respondents were directed to reinstate the petitioner. The petitioner was, however, held not entitled to backwages for the reasons that he had not worked on the aforesaid post from the date of his removal till the allowing of his writ petition. In these circumstances, the respondents had absolutely no justification to treat the aforesaid entire period as a period of extra-ordinary leave. Once the claim of the petitioner for backwages had been declined by this Court, then the petitioner, in any case, was entitled to other reliefs. The intention of the rule is also clear.

Accordingly, we allow the present writ petition and while quashing the orders Annexures P-8 and P-12, we direct the period in controversy, as noticed above, would be treated as a period spent by the petitioner on duty. The petitioner shall also be entitled to the other consequential benefits, except the arrears of his salary, as are admissible to him in accordance with law. Let the necessary directions be issued in this regard within a period of four months from the date a certified copy of this order is received.”

3. Learned counsel for the petitioner further submitted that in this way the petitioner at the most was not entitled to the arrears of salary but he is entitled to all the other benefits including House Rent Allowance, Dearness Allowance and other allowances especially for the purpose of fixation of the pensionary benefits on the basis of notional fixation of pay. He further submitted that, however, the respondents have not granted any of the benefits and at the most they would have denied the arrears of salary in pursuance of the aforesaid Division Bench judgement. He further submitted that the only reason which has come out from the reply filed by the respondents is that the aforesaid benefits are part of the salary and therefore, the petitioner has been denied for the same benefits. He further submitted that first of all the HRA is not a part of the salary and assumingly it is a part of the salary then notional fixation of pay has to be done because the only benefit which can be denied to the petitioner in pursuance of the aforesaid Division Bench judgement was the arrears of salary and nothing else.

4. Learned counsel for the petitioner further submitted that apart

from the above, the aforesaid judgment passed by the Division Bench of this Court on 26.05.2005 vide Annexure P-10 and it was directed that the necessary directions be carried on within a period of four months but some of the benefits were released to the petitioner after a delay of about 26 months from which the petitioner is also entitled for interest in this regard.

5. On the other hand, learned counsel for the respondents submitted that the respondents-Nigam has complied with the directions issued by the aforesaid Division Bench.

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

7. A perusal of the reply which has been filed by the respondents does not give any bifurcation of how much amount was paid and in what manner the aforesaid order/directions of Division Bench of this Court have been implemented.

8. In view of the the aforesaid, this Court deems it fit and proper to issue appropriate directions to the Managing Director of respondents-Nigam, to take a conscious decision by passing a speaking order after affording an opportunity of personal hearing to the petitioner or his counsel pertaining to the aforesaid grievances raised by the learned counsel for the petitioner. In the aforesaid order, the Managing Director of the respondents-Nigam will not only consider as to how, the benefit which is sought by the petitioner, is a part of the salary or not and even if assumingly it is a part of the salary then whether it should be considered for the purpose of notional fixation of pensionary benefits or not. The Managing Director will also pass a well reasoned speaking order as to why the petitioner should not be granted the interest on the delayed payment of what he has been given after the passing of the order by Division Bench

judgment at Annexure P-10.

9. Let the necessary exercise be carried out by the Managing Director of respondents-Nigam within a period of three months from today after affording an opportunity of personal hearing to the petitioner or his counsel.

10. It is expected that the Managing Director of the respondents-Nigam will make application of mind and pass a well reasoned speaking order in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

19.03.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No