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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18655-2022
Date of decision: 26.04.2024

LAXMI CHAND

...Petitioner

VERSUS

HARYANA AGRO INDUSTRIES CORPORATION LTD. AND ANR.
...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rajiv Kumar Saini, Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ 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 the impugned order dated 03.02.2021 (Annexure P-20) and the impugned charge-sheets dated 08.09.2018 (Annexure P-22) and 17.12.2020 (Annexure P-23) issued by the Managing Director of the respondent-Corporation and further to issue a writ in the nature of *mandamus* directing the respondents to release all the retiral/pensionary benefits to the petitioner and also to pay him the minimum pay scale for the post of Mandi Inspector along with all consequential benefits as he has been working on the said post of Mandi Inspector on additional charge from 01.10.2005 till his retirement i.e. 31.03.2018.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was working as a Class-IV employee in the respondent-Corporation and he retired on 31.03.2018 and while he was in service, in the year 1999, there was one charge-sheet issued against him in which punishment order was passed against him for recovery. Thereafter, a suit for recovery was filed against the petitioner which was decreed. He further submitted that thereafter, the petitioner filed an appeal before the learned First Appellate Court, which was also dismissed and against which, an RSA was filed and in the RSA, execution was stayed by this Court vide Annexure P-21. He further submitted that as per the reply filed by the respondent-Corporation, the total outstanding amount which was recoverable from the petitioner even prior to his retirement was only Rs.1,63,620/- along with interest @ 6% per annum, whereas after his retirement, the entire retiral benefits have not been released to the petitioner till date only because of the aforesaid reason. He further submitted that apart from the above, after the petitioner retired from service, there were two charge-sheets served upon him by the respondent-Corporation vide Annexure P-22 and Annexure P-23. He further submitted that the allegations contained in the aforesaid charge-sheets were that in the year 2010-2011, which was more than 4 years prior to the date of issuance of aforesaid charge-sheets, there was some less moisture gain and due to which the aforesaid charge-sheets were issued to the petitioner after his retirement. He further submitted that there was no authority of law with the respondent-Corporation to have issued the aforesaid charge-sheets after the retirement of the petitioner because the master and servant relationship ceased to exist and there is no provision governing the respondent-Corporation, wherein there is any provision

for initiating any proceedings after the retirement nor the Punjab Civil Services Rules, as applicable to the State of Haryana were applicable to the respondent-Corporation at the time when the aforesaid charge-sheets were issued to the petitioner and therefore, the aforesaid two charge-sheets are liable to be quashed on the aforesaid ground of being issued without the authority of law.

3. On the other hand, Mr. Padamkant Dwivedi, learned counsel for the respondents submitted that it is correct that the petitioner has retired on 31.03.2018 and so far as the aforesaid two charge-sheets are concerned, the same were issued to the petitioner after his retirement vide Annexure P-22 and Annexure P-23. He further submitted that there was no provision for issuance of any charge-sheet after the retirement since at that point of time, the respondent-Corporation had not adopted the Punjab Civil Services Rules, as applicable to the State of Haryana. He also submitted that so far as the outstanding amount against the petitioner while he was in service and which is a decretal amount is concerned, although execution proceedings have been stayed by this Court in RSA, the same may be protected so that in case of dismissal of the aforesaid RSA, amount can be recovered from the petitioner.

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

5. So far as the issue pertaining to the authority with the respondent-Corporation to have issued aforesaid two charge-sheets vide Annexure P-22 and Annexure P-23 is concerned, it is crystal clear that after the retirement of the petitioner, the aforesaid two charge-sheets were issued to him which were without the authority of law. It is a settled law that after the retirement of an employee, the master and servant relationship ceases to exist and even otherwise also, the subject matter of the charge-sheets was pertaining to the

year 2010-2011. However, there is an exception to the same. The exception is that in case there is any provision of law which authorizes the organization to issue charge-sheet, then the same can be done but in the present case, no such provision has been shown to this Court and even as per the learned counsel for the respondent-Corporation, there was no provision in the Rules of the respondent-Corporation nor the Punjab Civil Services Rules, as applicable to the State of Haryana were adopted by the respondent-Corporation. Therefore, the aforesaid two charge-sheets i.e. Annexure P-22 and Annexure P-23, are hereby set aside and quashed.

6. So far as the second issue pertaining to the recovery of outstanding amount of Rs.1,63,620/-, which was a decretal amount along with interest is concerned, it will be in the interest of justice to direct that the consolidated amount of Rs.2,00,000/- may be withheld till the decision of the aforesaid RSA. However, so far as the remaining retiral benefits of the petitioner are concerned, it was totally unjustified to have withheld the same. The petitioner retired in the year 2018 and almost 6 years have elapsed that he has not been paid his retiral benefits. So far as the aforesaid two charge-sheets i.e. Annexure P-22 and Annexure P-23 are concerned, they were totally without jurisdiction and at the most, the respondent-Corporation may have withheld some amount pertaining to the decretal amount, but the entire retiral benefits could not have been withheld by the respondent-Corporation and in this way, after the retirement of the petitioner in the year 2018, he was not paid any money.

7. In view of the above, the present writ petition is partly allowed. The respondent-Corporation is directed to calculate and pay the retiral benefits to the petitioner, along with interest @ 6% per annum (simple), within a period

of three months from today. However, an amount of Rs.2,00,000/- as aforesaid shall be withheld only till the time the aforesaid RSA is decided. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months from today, then the petitioner shall be entitled for future rate of interest @ 9% per annum.

8. At this stage, learned counsel for the petitioner submitted that petitioner while in service had also worked as Mandi Inspector and discharged the duties on a higher post and in view of the judgments of the Hon'ble Supreme Court in ***Smt. P. Grover versus State of Haryana and another, (1983) 4 SCC 291*** and ***Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87,*** a Division Bench judgment of this Court in ***Balbir Singh Dalal versus State of Haryana, 2002 (4) SCT 422***, judgments passed by a Coordinate Bench of this Court in ***P. D. Kaushik versus State of Haryana and others, CWP-16541-2015*** and ***Nihal Singh versus State of Haryana and others, CWP-7642-2018*** and also a Full Bench judgment of this Court in ***Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207***, the petitioner is entitled for the difference of salary for the time when he had discharged the duties on a higher post.

9. On the other hand, Mr. Padamkant Dwivedi, learned counsel for the respondents submitted that the aforesaid fact has to be verified from the record and the register as to whether the petitioner had discharged any duties on a higher post or not and regarding which, respondent No.1-Managing Director of the respondent-Corporation will consider the claim of the petitioner and will pass a speaking order within a period of three months from today.

10. Consequently, so far as the aforesaid prayer of the petitioner for grant of difference of pay for the time when he had discharged the duties on a higher post is concerned, respondent No.1-Managing Director of the respondent-Corporation is directed to pass a speaking order, within a period of three months from today after verifying the record and in the light of the judgments of the Hon'ble Supreme Court and this Court as aforesaid.

(JASGURPREET SINGH PURI)
JUDGE

26.04.2024
Chetan Thakur

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