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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-21318-2020
Date of Decision: 26.02.2024

Om Pal Singh Panwar ..... Petitioner

Versus

Haryana Seeds Development Corporation ..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jai Bhagwan Sharma, Advocate, for the petitioner.

Mr. Ashish Yadav, Advocate, for the respondent.

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<u>JASGURPREET SINGH PURI, J.</u> (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 16.09.2020 (Annexure P-1) to the extent only denial of interest on delayed payment of Gratuity amount Rs.9,34,241/- which was released on 18.09.2020 after seven years of retirement without giving any reason of non-payment of interest and also imposing recovery of Rs.10,000/- on account of loading/unloading, shifting and cleaning charges and to direct the respondents to pay the interest to the petitioner on the delayed payment.

2. The brief facts of the present case are that the petitioner was working as a Manager in the respondent-Haryana Seeds Development Corporation which is a State Government Undertaking. The petitioner

retired on 30.11.2013 on attaining the age of superannuation. However, after his retirement, he was re-engaged for a period of one month as Manager on contract basis on a consolidated salary of Rs.20,000/- for that month and his contractual period terminated on 05.12.2013. After the retirement of the petitioner and during the aforesaid period of re-engagement on the consolidated salary on contractual basis, an FIR was lodged with regard to some bungling of 360 quintals of seeds and even departmental proceedings were also initiated against various officers, including the present petitioner. The petitioner was not granted his gratuity and the remaining pensionary benefits were paid to the petitioner. Thereafter, in the FIR, the petitioner was acquitted on 26.11.2019 and so far as the inquiry was concerned, it kept going on.

3. The petitioner filed a writ petition bearing CWP-17140-2015 before this Court which was disposed of by a Co-ordinate Bench of this Court vide order dated 26.11.2019 (Annexure P-3) and Co-ordinate Bench of this Court while disposing of the aforesaid writ petition had directed that once there is no impediment in release of the pensionary benefits especially gratuity, the respondents were directed to consider the claim of the petitioner for release of gratuity and pass an appropriate order and it was further directed that in case there is no impediment in release of the gratuity of the petitioner then the same shall be released to the petitioner within a period of one month after the passing of the order and further while passing an order, the respondent shall also consider the claim of the petitioner for grant of interest on the payments which are to be released on the ground that from the date when the petitioner retired there was no impediment in releasing the

gratuity as the aforesaid FIR was registered after his retirement. The aforesaid operative part of the order dated 26.11.2019 passed by a Co-ordinate Bench of this Court is reproduced as under:-

> "*Once, there is no impediment in the release of the pensionary benefits especially gratuity, the respondents are directed to consider the claim of the petitioner for the release of the gratuity in view of the facts and circumstances as it exists now and pass an appropriate order within a period of three months from the date of receipt of certified copy of this order. In case, there is no impediment in the release of the gratuity, the same shall be released to the petitioner within a period of one month of the passing order. Further, while passing an order, the respondents shall also consider the claim of the petitioner for the grant of interest on the payments, which are to be released now on the ground that on the date when the petitioner retired, there was no impediment in the release of the gratuity as the above-said FIR was registered after his retirement.*
>
> *Present writ petition stands disposed of in the above terms.*"

4. Thereafter, since the respondents did not pass the orders in compliance of the aforesaid order, the petitioner preferred a contempt petition before this Court bearing COCP-1923-2020 which was however disposed of since the gratuity amount was released to the petitioner and before the decision of the aforesaid contempt petition, the impugned order dated 16.09.2020 (Annexure P-1) was passed in pursuance of the earlier order passed by this Court vide Annexure P-3. The aforesaid impugned

order dated 16.09.2020 has been challenged in the present petition.

5. The learned counsel for the petitioner submitted that the petitioner was entitled to grant of his gratuity at the time of his retirement on 30.11.2013 and thereafter, he was only re-engaged on contractual basis for a period of one month on consolidated salary and during that period the FIR was registered against the petitioner and against some other employees which culminated into acquittal and the respondents have wrongfully withheld the gratuity of the petitioner and while referring to the order dated 16.09.2020 (Annexure P-1), he submitted that even otherwise also qua the petitioner, the charge-sheet was dropped and rather withdrawn by the aforesaid order but even after withdrawing the charge-sheet although by taking a lenient view qua the petitioner, it was directed that expenditure/loss of Rs.10,000/- be recovered from the petitioner from his retiral benefits. Learned counsel submitted that the respondents after the acquittal of the petitioner in the criminal trial and the respondents themselves in the same order (Annexure P-1) by withdrawing the charges against the petitioner could not have imposed a penalty of Rs.10,000/- since it amounts to taking inconsistent stand. He also submitted that there is no authority of law with the respondents to have directed the recovery of Rs.10,000/- once the charges against the petitioner itself were withdrawn by way of same order and at the same breath, the aforesaid recovery was recovered which was without the authority of law. He also submitted that even otherwise also after the retirement of the petitioner, the master and servant relationship ceased to exist and during the extended period on contractual basis on a consolidated salary, the petitioner cannot be termed to be an employee after his retirement

and submitted that even otherwise also the aforesaid amount could not have been recovered from the petitioner. He also submitted that when a Co-ordinate Bench of this Court vide Annexure P-3 had directed that in case there is no impediment in releasing the gratuity, then the respondents shall also consider the claim of the petitioner for grant of interest on the payments. He further submitted that however when the impugned order was passed, the aforesaid direction was not complied with by the respondent-Managing Director and it was only in the last three words of the impugned order that it has been so stated that the gratuity be paid 'without any interest'. He submitted that once this Court had directed the respondents to consider the interest component the same could not have been denied only by stating that without any interest because it cannot be termed as any consideration of the right of the petitioner and therefore, even otherwise also the action of the Managing Director was contemptuous in nature. He submitted that the impugned order is liable to be quashed and the interest on the gratuity be paid to the petitioner since now the gratuity has already been paid to the petitioner at the time of passing of the order dated 16.09.2020 (Annexure P-1).

6. On the other hand, learned counsel for the respondents submitted that the charges against the petitioner vide Annexure P-1 were dropped and withdrawn only by taking a lenient view but whatever was the actual expenditure or loss of Rs.10,000/- that was rightfully ordered to be recovered from the petitioner. He also submitted that the gratuity of the petitioner was rightly withheld in view of the provisions of Section 4(6) of the Payment of Gratuity Act and now since the gratuity has already been

paid to the petitioner, he was not entitled to grant of interest because it cannot be said that the gratuity was wrongfully withheld. He also submitted that against the impugned order an appeal is also maintainable under Rule 6.10 of the Service Rules.

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

8. So far as the preliminary objection taken by the learned counsel for the petitioner that against the impugned order by which interest has been declined to the petitioner is concerned an appeal would lie, this Court is of the view that the same is not sustainable. Learned counsel has referred to Rule 6.10 of the Service Rules which is reproduced as under:-

> "***Appeal 6.10 1)*** *Save in case of an order passed by the Board of Directors every employee shall be entitled to appeal against any order of imposing any penalty specified in regulation 6.2.*
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> ***2)*** *(*) & (**) An appeal under sub-regulation (1) shall lie:--*
>
> > ***a)*** *When the order imposing the penalty is passed by the Managing Director to the Chairman of the Board of Directors.*
>
> ***3)*** *No appeal shall lie against the order passed by appellate authority under sub-regulation (2).*
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> *(*) the rule 6.10 2(a) has been amended by the Board in its 110th meeting held on 22.6.1998 as under:-*
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> *An appeal under Sub-clause-I shall lie:-*
>
> ***(a)*** *In the case of Class-1, II & III employees of the Corporation, when the order imposing the penalty is passed by the managing Director, to the Chairman of the Board of Directors.*

(b) *In the case of Class-IV employees of the Corporation, when the order imposing the penalty is passed by the Chief Manager (P&A) to the Managing Director of the Corporation.*

(**) The Board of Directors in their 133rd meeting held on 24.3.2004 have amended the existing Regulation 6.10 of HSDC Employees Service Regulation 1989, in the following manner:-

Appeal 6.10 (1) *save in case of an order passed by the Board of Directors every employee shall be entitled to appeal against any order of imposing any penalty specified in regulation 6.2.*

2) *An appeal under sub-regulation 91) shall lie:--*

a) *When the order imposing the penalty is passed by the Managing Director to the Financial Commissioner and Principal Secretary /Commissioner and Secretary to Govt. Haryana, Agriculture Deptt.*

b) *No appeal shall against any order passed by appellate authority under sub-regulation (2).”*

9. By way of the impugned order, a penalty of Rs.10,000/- was imposed upon the petitioner. However, a perusal of the impugned order by which the aforesaid penalty imposed would show that in the order itself, the charges against the petitioner have been withdrawn and at the same breath the aforesaid penalty has been imposed. An authority especially when it is an instrumentality of the State cannot pass such kind of order whereby it intends to approbate and reprobate. An authority has to apply its mind consciously and cannot blow hot and cold in the same breath. After making a specific order of withdrawal of the charges against the petitioner, the Managing Director had imposed a penalty of Rs.10,000/- upon the petitioner

which is otherwise on the face of it not sustainable and it amounts exceeding of jurisdiction and therefore, such plea of the learned counsel for the respondent that the petitioner should have filed an appeal against the aforesaid imposition of penalty of Rs.10,000/- is absolutely unfounded and unsustainable. Even otherwise also this is a third round of litigation preferred by the petitioner and now on this ground, this Court does not deem it fit and proper to relegate the petitioner to the alternate remedy for the aforesaid amount which is otherwise without any basis and is otherwise liable to be quashed. Apart from the above, such a preliminary objection was not even taken in the written statement filed by the respondents.

10. The petitioner stood retired on attaining the age of superannuation on 30.11.2013 and thereafter, all his retiral benefits were released except for the gratuity. He was re-employed for a period of one month on contractual basis and on consolidated salary. During that period, an FIR was lodged in which the petitioner was acquitted. In the departmental proceedings although the inquiry report went against the petitioner and other employees but eventually vide impugned order dated 16.09.2020 (Annexure P-1), the charges against the petitioner were withdrawn even if by taking a lenient view. After withdrawing the charges, the respondent-Managing Director could not impose any kind of penalty against the petitioner. By way of the impugned order, the gratuity was directed to be released and according to the learned counsel for the parties, the gratuity has now been released to the petitioner. The petitioner is now claiming the interest on the aforesaid gratuity for the delayed payment. The plea taken by the learned counsel for the respondent is that gratuity could have been forfeited and

withheld in view of the provisions of Section 4(6) of the Payment of Gratuity Act. However, there is nothing on the record to show as to by what order the gratuity was directed to be forfeited or withheld. The gratuity being part of the pension if at all is to be forfeited or is to be withheld, the same can be done only by making a conscious decision by passing an order by a competent authority and it cannot be done by way of a casual exercise. There is nothing on the record to show that any conscious decision was taken under the Payment of Gratuity Act which is sought to be invoked by the counsel for the respondent now. Even otherwise also, as per the impugned order, the loss has now been recovered from the other employees and not from the petitioner and still a penalty of Rs.10,000/- was fastened upon the petitioner.

11. The gratuity was required to be paid to the petitioner immediately after his retirement but the same was not paid. When the petitioner filed a petition before this Court, a Co-ordinate Bench of this Court had disposed of the aforesaid petition vide order dated 26.11.2019 (Annexure P-3) with a direction to the respondents to pass an order on the payment of gratuity and so far as the interest part is concerned, it was also directed to consider the claim of the petitioner for grant of interest on the payment but a perusal of the impugned order (Annexure P-1) would show that the aforesaid aspect for grant of interest has not been considered by the Managing Director. A perusal of the last line of the aforesaid impugned order (Annexure P-1) would simply show that it has been so stated that the pending retiral benefits be released within seven days without any interest. This Court is of the view that such kind of order by merely writing that the

benefits be released without any interest does not amount to consideration as to why the petitioner is not entitled for the grant of interest. Therefore, the Managing Director has not complied with the orders passed by this Court vide Annexure P-3, since the aforesaid denial of interest is without any consideration in accordance with law.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 16.09.2020 (Annexure P-1) to the extent of denial of interest and recovery of Rs.10,000/- from the petitioner is set aside. The respondents are directed to pay interest on gratuity from the date of its accrual on his retirement till the date of its actual disbursement @ 6% per annum (simple) within a period of three months from today.

13. In case, the aforesaid amount is not paid to the petitioner within a period of three months from today, then the petitioner shall be entitled to future interest @ 9% per annum instead of 6% per annum (simple).

14. The petitioner shall also be entitled to costs in view of the following reasons:-

(i). This is the third round of litigation.

(ii). When the impugned order dated 16.09.2020 (Annexure P-1) was passed, the Managing Director has withdrawn the charge-sheet against the petitioner and at the same breath has imposed a penalty upon the petitioner which is now set aside which on the face of it shows non-application of mind and an arbitrary action on the part of the Managing Director.

(iii). When a Co-ordinate Bench of this Court passed an order vide

Annexure P-3, with a specific direction that in case there is no impediment in releasing the gratuity then the respondents shall consider the claim of the petitioner for grant of interest on payment, the Managing Director was duty bound in compliance of the aforesaid orders, to have considered the claim of the petitioner for grant of interest in accordance with law and not in the manner in which the aforesaid interest has been denied to the petitioner by simply stating that the benefits be released without any interest. This was not at all any consideration in accordance with law and therefore, the orders passed by this Court vide Annexure P-3 appear to have been violated by the Managing Director.

15. This Court is of the view that instead of initiating any other appropriate proceedings against the Managing Director, it would be just and proper and in the interest of justice to impose cost upon the respondent. The costs are assessed at Rs.25,000/- to be paid to the petitioner by the Managing Director from his own pocket and not from the State Exchequer within the aforesaid period of three months.

26.02.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No