IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

C.W.P. No. of 2022

Mehtab Singh Son of Sh. Chandgi Ram (aged about 70 years) Ex. Distt. Manager HAFED Rohtak, resident of house no. 157/19 Hanuman Nagar, Narwana Distt. Jind ( Haryana) AADHAR No. 302862794199 Mobile No. 9416024131  **…… …. …Petitioner**

VERSUS

1. Managing- Director, The Haryana State Cooperative Supply and Marketing Federation ( HAFED) Sector- 5, Panchkula

2. Distt. Manager, The Haryana State Cooprative Supply and Marketing Federation ( HAFED), Rohtak

**-----------Respondents**

**CHANDIGARH (SURESH AHLAWAT)**

**DATED: 30 .03.2021 ADVOCATE**

**COUNSEL FOR THE PETITIONER**

Civil Writ Petition under Article 226/227 of the Constitution of India, for issuance a Writ in the nature of Mandamus directing the respondents to grant the interest @18% P.A. on the amount of pensionary benefit i.e. G.P.F. , leave encashment and suspension period etc released by the respondents after an inordinate delay of 10 Years which has been withheld by the respondents wrongly, illegally, arbitrary and without any legal justification . AND

further issue any other appropriate writ, order or direction which this Hon’ble Court may deem fit, just and proper in the peculiar facts and circumstances of this case.

*RESPECTFULLY SHOWETH*

1. **That** the petitioner is a resident of District Jind (Haryana) and as such being a citizen of India, he is fully competent to invoke the extraordinary writ jurisdiction of this Hon’ble Court under Article 226/227 of the Constitution of India by way of the present writ petition.
2. That the petitioner was appointed as field Inspector on 25.10.1976 later on he was promoted to the post of Store keeper and further in 2008 he was promoted from the post of Store Keeper to Manager( Graded -C) Petitioner was retired from service upon attained the age of superannuation i.e. on 31.12.2011 from the post of Manager “C” Grade . When petitioner was retired form service i.e. on 31.12.2011, than two charge-sheets dated 5.8.2008 and another charge sheet dated 31.10.2011 were pending against him and respondents withhold his retirement dues near about Rs. 8 lakhs till the finalization of these charge-sheets . In this regard true copy of the office order dated 28.6.2013 is attached herewith as **Annexure P-1.**
3. **That**
4. That in the month of April 2008 when petitioner was posted at Paddy stock store at Dhamtan Distt. Jind as store keeper , an inquiry was conducting in the matter for mis-appropriation of Paddy/Rice stocks and gunnies than he was suspended from service on 23.5.2008 and further on 5.8.2008 a charge sheet was issued to him along with other employees. Thereafter, on 13.4.2010 respondents awarded punishment to the petitioner for stoppage of two annual grade increments without cumulative effect. Than against the said punishment order ,petitioner made an appeal on 31.5.2010 before the Board of Administrators of Hafed. This Punishment Authority on 13.9.2011 reduced the punishment from two annual increment to one annual increment without cumulative effect, keeping in view the peculiar facts and circumstances and further suspension period of the petitioner i.e 23.5.2008 to 11.1.2009 converted into leave of kind due need not be interfered with. Than petitioner again filed the appeal on 21.10.2011 against the order dated 13.9.2011passed by the Board of Administrators of Hafed before the Ld. Registrar Co-Operative Societies ,Haryana at Panchkula.
5. That in meantime i.e after the 2-3 years from the retirement of the petitioner (i.e. on 31.12.2011) respondents released the amount of Rs.. 2,23,358/- to him without interest from his pending retirement benefits ( gratuity + leave encashment) out of Rs. 8 Lakhs. As detail given as under for proper adjudication of this Hon,ble Court :-

on 22.10.2013 paid Rs. 75,011/- Chque no.000363 (CBI

on 01.07.2014 paid Rs. 1,28,867/- Chque No. 000813 (CBI)

on 07.07.2014 paid Rs. 19,480/-

**Total Rs. 2,23,358/-**

1. That when the above mentioned retrial dues has been paid, then petitioner represented to the respondents to grant the interest @18 p.a. on it, than respondents sought the advice in this regard from the Finance Department Haryana but no interest has been paid till dated. A true copy of the office letter dated 8.8.2019 of the respondents is attached herewith as **Annexure P-2.**
2. That second charge sheet issued which was issued on 12.2.2015 ( i.e after 3 years of his retirement ) has been dropped on 10.1.2019 by the respondents . Than on 6.2.2019 respondents released the amount of Rs. 38,120/- to the petitioner from his pending retrial dues without any interest. Petitioner already represented to the respondents to give interest on delayed payment .A copy of the representation dated 14.1.2019 and letter dated 6.2.2019 issued by the respondent to release the payment of Rs. 38,120/- are attached herewith as **Annexure P-3.**
3. That punishment order which was awarded to the petitioner in first charge sheet has been decided on 17.6.2020 by Ld. Registrar on the basis of appeal which was filed by the petitioner against impugned order dated 13.9.2011 passed by the Board of Administrators of Hafed, in which petitioner was awarded punishment of stoppage of one increment without cumulative effect and suspension period w.e.f. 23.5.2008 to 11.1.2009 has been regularized /treated as duty period for all intents and purposes . Than on 18.2.2022 respondents released the salary arrear of the petitioner during the period of suspension amount of Rs. 60,000/-.
4. That when the petitioner exonerated from the charges than he is entitled for interest on delayed payment but the respondents paid the part payment till date in broken pieces without interest where as he was retired on 31.12.2011.
5. That when the petitioner joined the respondents/department his services were governed by the erstwhile PWD (I.B.) Circle Clerical Established Rules 1955. In these rules ,there was a provision to pass the department exam for further promotion i.e. Clerk to S.D.C. Petitioner successfully passed the said exam during the month of Dec.1972 for next promotion i.e clerk to SDC. But in the year 1975, when the promotions were made i.e clerk to SDC from the departmental passed candidates than petitioner could not be promoted being fully eligible instead of passing the departmental exam, for the reason best known to the respondents, whereas junior persons like Subhash Chander Kumar,Hemraj Garg, Harish Chander Kapoor ,Rajraniand and Gopal Ballab were promoted from the post of clerk to S.D.C. Than petitioner submitted various representations to the respondents but all in vain.
6. **That** in year1979 again same junior persons were promoted from the post of S.D.C. to Accounts Clerks who were earlier promoted from the post of clerk to SDC in 1975 but again petitioner was not promoted .
7. **That** in the year 1995again same juniors persons were promoted from the post of Accounts Clerk to Deputy Superintendent .This was the third round of promotion for them from the post of clerk to SDC (in the year 1975) than Accounts clerk ( in the year 1979 ) further Accounts clerk to Deputy Suptd. in the year 1995) But again petitioner could not be promoted instead of fully eligible whereas , no inquiry or complaint was pending against the petitioner during this period.
8. **That** petitioner had rendered total 41 years ( 1967 to 2008 ) prestigious service as clerk without any complaint/inquiry /stigma but unfortunately , no promotion was given to the petitioner during the 41 years of his service career, due to grave omission /error of the department (which is admitted and not disputed by respondents ) . Lastly, on 31.1.2008 petitioner was retired from service after attaining his age of superannuation as clerk without taking any promotion and without any type of blame.
9. **That** petitioner fought continuously of his legal right upon various platforms and he filled various complaints in this regard before Lokayukta Haryana, C,M, Window and others platforms before and after his retirement (i.e in the year 2008) for the promotions , lastly on the basis of various complaints and directions of the Lokaukta, than higher authority of the departments ordered to conduct the inquiry in this matter , than respondents realized that there was a big blunder on his part, further after conducting the inquiry by the respondents it was found that Superintendent Engineer (S.E.) Jind mis-pleaded and wrongly recommended with concealment of record of the petitioner vide his office no.1041-42/9EC dated 1.7.2015, lastly respondents constrained to accept his demand/ request and considered his case and granted three deemed date of promotions, i.e. as S.D.C, Accounts clerk and Deputy Superintendent w.e.f 4.3.1975, 7.9.1979 and 24.11.1995 respectively vide letter dated 29.7.2019 issued by the respondent no.2. Copy of the letter dated 29.7.2019 is attached herewith as **Annexure P-1.**

It is pertinent to mention here that petitioner obtained the Noting of the file of the department regarding inquiry under RTI application dated 4.2.2021 which was conducted in the matter of petitioner. True extract copy of the noting is attached herewith as **Annexure P-2.**

1. **That** now respondents have granted three promotions from the various deemed dates vide letter dated 29.7.2019(Ann.P-1) but now, one year 8 months have been lapsed, no monetary/consequential benefit arisen from letter dated 29.7.2019 (Ann.P1) has been granted till date i.e pay him the difference of salary etc. between due and drawn with interest.

**9. That** now age of the petitioner is 72 years and he is suffering from various ailments /diseases but respondents became adamant on this point, which has not been paid signal penny till date. Petitioner is running from pillar to post being senior citizen and official of the respondents every time stated that your case has been sent for sanction at Head Office. *It is the bounded duty of the respondents to release all the arrears to the petitioner . It is further to mention here that respondents are doing step-motherly treatment in the case of petitioner which is continuing ,as no arrear has been given as yet.*

**10. That** Petitioner also made the various representations to the respondents to grant the benefits of the letter dated 29.7.2019 (Ann.P-1) but all in vain . Then, finally petitioner sent the legal notice on 12.3.2021 through his counsel to the respondents to implement the letter dated 29.7.2019. But the respondents not responding regarding this till date. Copy of legal notice dated 12.3.2021 sent by the petitioner to the respondents is attached here with as **Annexure P-2.**

***11. That*** *there is sufficient judicial weight of precedents in favour of the petitioner because respondents want to unsettle the settled position for the benefits which arisen vide letter dated 29.7.2019* considering it notional promotion instead of deemed date of promotion.

**12. That** the following main law points arise in this writ petition for the kind consideration of this Hon’ble Court:-

a) Whether the action of the respondents is arbitrary and discriminatory which violative of Articles 14 and 16 of the Constitution of India?

b) Whether a grave manifest injustice has been caused to the petitioner?

**13.**  That there is no other alternative remedy of appeal or revision available to the petitioner except to approach this Hon’ble Court by way of the present writ petition under Article 226 of the Constitution of India.

**14.**  That the petitioner has not so far filed any such or similar writ petition either in this Hon’ble Court or in the Hon’ble Supreme Court of India for seeking the same relief against the impugned action of the respondents.

PRAYER

It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to call for the records of the present case and after perusal thereof may be pleased to issue: -

i) a writ in the nature of Mandamus directing the respondents to pay him (petitioner) the difference of salary between the accrual drawn and deemed date of promotions, i.e. as Sub Division Clerk (S.D.C), Accounts clerk and Deputy Superintendent w.e.f 4.3.1975, 7.9.1979 and 24.11.1995 respectively vide order/letter dated 29.7.2019 (Annexure P-1) issued by the respondent no.2 along with all consequential benefits with interest @18% p.a.

ii) Any other appropriate writ, order or direction to which this Hon’ble High Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.

iii) Filing of true typed of annexures s and certified copies of annexures be also dispensed with;

CHANDIGARH Through Counsel:-

*Dated:- (SURESH AHLAWAT)*

*VERIFICATION Advocate*

Verified that the contents of Para No. 1 to 11 and 13 and 14 of the writ petition are true and correct to my knowledge. Legal submissions made in para Nos. 12 are believed to be true on the advice received from the learned Counsel. No part of it is false and nothing has been kept concealed there from.

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

C.W.P NO. OF 2021

Manphul Singh Saini …………. Petitioner

Versus

State of Haryana and others. ……………Respondents

*TOTAL AMOUNT OF COURT FEE AFFIXED*

CHANDIGARH (SURESH AHLAWAT)

DATED : 30 .3.2021 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

IN C.W.P. NO. OF 2021

Manphul Singh Saini …………. Petitioner

Versus

State of Haryana and others ……………Respondents

Affidavit Manphul Singh Saini son of Sh. Maha Singh resident of House no. 103/27 Subhash Nagar ,Rohtak Road Jind.

I , the above named deponent do hereby solemnly affirm and declare on oath as under: -

1. That the deponent has gone through the contents of the accompanying contempt petition which have been drafted by the counsel on my instructions. The contents of the same are admitted to be true and correct and be read as part and parcel of this affidavit.

2. That no such or similar petition has earlier been filed either before this Hon,ble Court or Hon,ble Supreme Court.

DATED :- . 2021

CHANDIGARH

*VERIFICATION*

Verified that the contents of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been kept concealed therein.

CHANDIGARH