

Decision on the representation dated 06.02.2016 of Sh. H.C.Arora, Advocate in compliance of the orders of Hon'ble Punjab & Haryana High Court, Chandigarh.

In compliance with the order dated 23.05.2016 passed by Hon'ble Division Bench of High Court of Punjab & Haryana at Chandigarh in CWP (PIL) No.5996 of 2016 (H.C. Arora, Advocate S/o Late Shri Sunder Dass, R/o House No.2299, Sector 44-C, Chandigarh Vs. State of Haryana and Others) to decide the representation dated 06.02.2016 of the Petitioner within a period of two months from the date of receipt of certified copy of the orders, by passing a speaking order and after affording an opportunity of hearing to the concerned parties, the undersigned submits as under:-

The background of the case is that the petitioner Shri H.C.Arora, Advocate had filed a CWP (PIL) No. 5996 of 2016 under Articles 226/227 of the constitution of India titled as H.C. Arora, Advocate S/o Late Shri Sunder Dass, R/o House No.2299, Sector 44-C, Chandigarh Vs. State of Haryana and Others inter-alia praying for issuance of a writ in the nature of prohibition directing respondent Nos. 1 & 2 (Chief Secretary to Govt. Haryana and Secretary, Haryana Vidhan Sabha respectively) to not to disburse pension to respondent Nos.3 & 4 (Shri Ajay Singh Chautala, Ex-MLA and Shri Om Parkash Chautala, Ex-MLA respectively) in view of their conviction under Section 13 (1) (d) of the Prevention of Corruption Act, 1999 read with Section 418/467/471 of the Indian Penal Code, 1860 (IPC) and having being sentenced to imprisonment for the period of 10 years vide judgement dated 16.01.2013 passed by the Special CBI Court, Delhi, thereafter upheld by the Hon'ble Delhi High Court vide judgement dated 05.03.2015 and subsequently upheld by the Hon'ble Apex Court vide judgement dated 03.08.2015.

The representation dated 26.05.2016 of Shri H.C.Arora, Advocate had been received in this Secretariat on 30.05.2016. However, the certified copy of the order dated 23.05.2016 of Hon'ble Punjab & Haryana High Court, forwarded by the office of Assistant Registrar (Writs), Punjab & Haryana High Court vide letter dated 09.06.2016 has been received on 13.06.2016.

After receiving the aforesaid representation and certified copy of the order of Hon'ble High Court, the undersigned wrote a letter No.HVS-Legal Cell-100/2016/13080, dated 19.07.2016 to the Superintendent, Central Jail-2, Tihar, New Delhi to produce Shri Ajay Singh Chautala, Ex-MLA and Shri Om Parkash Chautala, Ex-MLA before him to afford an opportunity of personal hearing before deciding the matter. In response to the aforesaid letter dated 19.07.2016, Shri Naresh Shekhawat, Advocate, Punjab & Haryana High Court for and on behalf of Shri Ajay Singh Chautala and Shri Om Parkash Chautala, both Ex-MI.As appeared before the undersigned on 08.08.2016 and submitted the self-attested photo-copies of the



authority letters dated 03.08.2016 issued by Shri Ajay Singh Chautala and Shri Om Parkash Chautala in his name. Shri Naresh Shekhawat, Advocate has prayed for the adjournment of the matter for another date so as to afford an opportunity to submit comments/submissions in the matter. Accordingly, the matter has been adjourned for 10.08.2016 at 2.00 PM. Shri H.C.Arora, Advocate had also been informed telephonically about the latest status of the matter and the adjourned date. But Shri H.C.Arora, Advocate requested that he will appear on 11.08.2016 at 12.00 Noon to submit his submissions. Thereafter, the hearing has been re-scheduled for 11.08.2016 at 4.00 PM. Both the parties appeared before the undersigned and submitted their written statement/submissions. The written submissions submitted by Shri H.C.Arora, Advocate has been provided to Shri Shekhawat and the written statement/submissions supplied by Shri Shekhawat have been provided to Shri Arora. Both the parties concluded their arguments on the same day i.e. 11.08.2016.

Shri H.C.Arora, Advocate, the representationist, appearing in person during argument inter-alia contended that the pension payable to the Ex MLAs of Haryana Legislative Assembly is governed by Section 7A of the Haryana Legislative Assembly (Salary, Allowances and Pension of Members) Act 1975. He has further contended that Shri Om Parkash Chautala and Shri Ajay Singh Chautala were convicted by Special CBI Court, Delhi vide its judgment dated 16.01.2013 under Section 13 (1) (d) of the Prevention of Corruption Act, 1988 read with Sections 418/467/471 IPC and Shri Om Parkash Chautala and Shri Ajay Singh Chautala, now Ex-MLAs, along with two IAS Officers and several other persons were sentenced to varying terms of imprisonment. Shri Om Parkash Chautala and Shri Ajay Singh Chautala were sentenced to 10 years jail term for their role in recruitment of teachers. The appeals against the judgement of conviction filed Shri Om Parkash Chautala and Shri Ajay Singh Chautala were dismissed by the Hon'ble Delhi High Court vide its judgment dated 05.03.2015 and subsequently dismissed by Hon'ble Supreme Court of India vide its judgement/order dated 03.08.2015. He has, however, stated that the order dated 03.08.2015 passed by the Hon'ble Supreme Court of India in SLP (CRL) No. 3563/2015 (along with other connected Petitions, dismissing those petitions), is not available at the website of the Hon'ble Supreme Court of India and is not being enclosed with the representation/ submissions submitted by him.

Shri Arora further referred to Section 7(b) of the Representation of the People Act, 1951, which defines the word "disqualified" and Section 8 of the said Act which contains certain grounds on the basis of which a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State can be disqualified on his conviction by the Court of Law, from the membership of either House of Parliament or of the Legislative Assembly or Legislative Council of a State, as the case may be. He has laid emphasis on the provisions contained in Section 8 (4) of the Representation of People Act, 1951 and contended that the disqualification on the basis of conviction shall become effective once the appeal filed by such



Member of Parliament or Vidhan Sabha is disposed off and stated that in the instant case, with the dismissal of the appeal filed by Shri Chautalas, by the Hon'ble High Court of Delhi on 05.03.2015, the disqualification of Shri Ajay Singh Chautala and Shri Om Parkash Chautala became effective from the date of their conviction i.e. 16.01.2013 and thus despite having been disqualified to be chosen as a member of Vidhan Sabha, Shri Ajay Singh Chautla and Shri Om Parkash Chautala drawing pension at the rate of Rs.50,100/- PM and Rs. 2,15,430/- per month respectively, in gross violation of provisions contained in Section 7 (1-A) of the Haryana Legislative Assembly (Salary, Allowances and Pension of Members) Act, 1975.

It has also been contended by Shri Arora that at the time of their conviction on 16.01.2013, Shri Ajay Singh Chautala and Shri Om Parkash Chauutala were not liable to be disqualified immediately, as they had filed an appeal before the Hon'ble High Court of Delhi against the judgment of conviction. However, when the said appeal had been rejected by the Hon'ble Delhi High Court on 05.03.2015, the term of their Membership of Haryana Vidhan Sabha had already expired on 27.10.2014. Thus, as they stood automatically disqualified for being chosen as a Member of Haryana Vidhan Sabha, they were not entitled to draw any pension and any such pension disbursed to them with effect from 16.01.2013 onwards was liable to be recovered from them on account of their disqualification with effect from the date of conviction i.e. 16.01.2013.

In the end, he has contended that as regards disqualification on conviction, the same takes place by operation of law. No order formally disqualifying such a person, even if he is a Representative of the People (MLA), is required to be passed either by Hon'ble Speaker or by Hon'ble Election Commission of India. After dismissal of appeal against conviction, the convicted MLA becomes automatically disqualified from being chosen as a Representative of People during the period of disqualification and in the instant case, the Chautalas stand disqualified for a period of six years, in addition to 10 years period of imprisonment and therefore, they are not entitled to draw pension for the period from 16.01.2013 to 15.01.2029, in terms of the provisions of Haryana Legislative Assembly (Salary, Allowances and Pension of Members) Act 1975.

On the other hand, Shri Naresh Shekhawat, Advocate appearing for and on behalf of Shri Ajay Singh Chautala and Shri Om Parkash Chautala rebutted all the averments made and contentions raised by Shri H.C.Arora and contended that the CWP No. 5996 of 2016 titled as H.C. Arora vs. State of Haryana and others filed by Shri H.C.Arora, Advocate before Hon'ble High Court of Punjab and Haryana purportedly in public interest as public interest litigation, in view of the law laid down by the Hon'ble Supreme Court of India, was not maintainable as the said petition was not aimed at redressal of genuine public wrong or public injury, rather was founded on personal vendetta. The filing of such petition was not bona fide, rather it was

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politically motivated petition. The Hon'ble Supreme Court of India, in the matter of Gurpal Singh Vs. State of Punjab, AIR 2005 SCC 2755, has held as follows:-

"11. Public litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and /or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona-fide and not for personal gain or private motive or political motivation or other oblique consideration by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

12. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interest. Such groups and interests include the proper environmentalists, consumers, racialand ethnic minorities and others." (See Dr. B Singh V. Union of India and others (2004 (3) SCC 363).

13. When a particular person is the object and target of a petition styled as PIL, the Court has to be careful to see whether the attack in the guise of public interest is really intended to

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unleash a private vendetta, personal grouse or some other mala fide object. Since in service matters public interest litigation cannot be filed there is no scope for taking action for contempt, particularly, when the petition is itself not maintainable. In any event, by order dated 15.04.2002 this Court had stayed operation of High Court's order."

He has further contended that even otherwise, the pension is being granted to Shri Ajay Singh Chautala and Shri Om Parkash Chautala legally in view of provisions of Haryana Legislative Assembly (Salary, Allowances and Pension of Members) Act, 1975 (hereinafter referred to as Act, 1975) and the petitioner Mr. H.C. Arora, neither had the locus standi to challenge the grant of pension to Shri Ajay Singh Chautala and Shri Om Parkash Chautala nor such public interest litigation was maintainable before the Hon'ble High Court in view of the law well settled by Hon'ble Supreme Court of India that in service matter, no PIL should be entertained. The Hon'ble Supreme Court, in the matter of Gurpal Singh Vs. State of Punjab, AIR 2005 SCC 2755, has held as under:-

"8. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, high Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Durydhan Sahu and others v. Jitendra Kumar Mishra and iothers (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matter continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that ain the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary

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costs. It would be desirable for the Court to filter out the frivolous petitions and dismiss goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

Mr. H.C Arora had earlier filed CWP No.1788 of 2016 titled as H.C. Arora, Advocate Vs. State of Haryana and the Hon'ble Division Bench of Punjab and Haryana High Court was not inclined to grant any relief to the petitioner as reflected in the order dated 05.02.2016, reproduced as under:

"The petitioner has filed this writ petition seeking direction to respondents No.1 and 2 not to disburse pension to respondent No. 3 and 4, being Ex-MLAs.

Before approaching this court, the petitioner has not made any representation to the competent authority, who is disbursing the pension.

In view of the abovesaid fact, the petitioner prays that he may be permitted to withdraw this petition with liberty to submit representation with regard to the prayer made in this petition, to the competent authority.

Dismissed as withdrawn with the aforesaid liberty.

Sd/-

(SATISH KUMAR MITTAL)

JUDGE

February 05, 2016

Sd/ -

(HARINDER SINGH SIDHU)

JUDGE

It has further been contended that the grant of pension to a member of Haryana Legislative Assembly is governed by the provisions of Haryana Legislative Assembly (Salary, Allowances and Pension of Members) Act, 1975 and the Rules framed thereunder. Section 2(e) defines "Member" which means a member of the Assembly other than the Minister, or the Speaker or the Deputy Speaker. Section 7A provides for pension. Section 7A clearly state that every person, who has served as a Member of Haryana Legislative Assembly is entitled for pension and Shri Ajay Singh Chautala and Shri Om Parkash Chautala have served as Member for different terms. As per sub-section 1(A) of the Section 7(A) of the Act, 1975, the pension shall not be admissible under sub-section (1) to a member in respect of terms and during the period for which he is disqualified under the Representation of the People Act, 1951.

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They were neither "disqualified" for any term nor for any duration of period as a "Member". They had served as member during different terms and the pension has been granted to them as per law, sanctioned by the competent authority after examining the relevant provisions of law.

He has laid emphasis on sub-section 1(A) of Section 7 A of the Act, 1975 according to which the pension is not admissible under sub-section 1 to a member in respect of the term and during the period for which he is disqualified and it is factually correct that both Shri Ajay Singh Chautala and Shri Om Parkash Chautalas had served as members and they were never disqualified for the term or duration of the term. He has further submitted that still further, section 7(b) of the Representation of People Act, 1951 provides for the definition of "Disqualified" only. "Disqualified" means disqualified for being chosen as, and from being a member of either House of parliament or of the legislative Assembly or the legislative council of the State. It has also been pointed out that the word "disqualified" relates to disqualification for the acts mentioned in Section 8, 8-A, 9-A, 10, 10-A of the Representation of People Act, 1951. In fact, the word "disqualified" does not relate to the question of pension, but it relates to the contest of election for being elected as a member. Consequently in view of the said provisions of Law, pension of Shri Ajay Singh Chautala and Shri Om Parkash Chautala cannot be withheld. He has also been submitted that it is also relevant to point out that the word 'disqualified' used by the complainant relates to the conduct of elections and not to the payment of pension, because in the present case the member has duly served in the Legislature and alleged 'disqualification' under Act, 1951 does not arise in respect of the payment of pension to a member who had never been disqualified for any term or period as such. He further laid emphasis that the primary purpose of the diverse provisions of the Election Law which may appear to be technical is to safeguard the purity of election process, and the Courts will not ordinarily minimize their operation (Harcharan Singh Vs. Mohinder Singh AIR 1968 SC 1500).

In the end it has been submitted that right to pension flows from the Statute and not from the order granting pension. The competent authority had examined the matter in detail in the light of the provision of the Act, 1975 and thereafter the pension had been granted. The representation of the petitioner is mis-conceived. Still further, it is the settled law that the pension granted to a Public Servant/Member on his retirement is his "property" within the meaning of Article 31 (1) of the Constitution of India and the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person and therefore, the representation submitted to Mr. H.C.Arora may be rejected.

For adjudicating the matter judiciously, it would be necessary to go through the relevant provisions with regard to grant of pension to the Ex-Legislators and the provisions with regard to the disqualification under the Representation of People Act,

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1951 carefully. According to Section 7A (1) of the Haryana Legislative Assembly (Salary, Allowances and Pension of Members) Act, 1975, every person shall be paid a pension of ten thousand rupees per mensem if he has served as a Member for a period not exceeding five years and an additional pension of one thousand five hundred rupees per mensem for every additional year or part thereof exceeding a period of five years and if the period of the first membership falls less than the term of five years of the Assembly, it will be treated as full period of five years for the purpose of pension.

Provided that family pension shall be admissible, as may be prescribed to surviving spouse and after his or her death to the children (upto the age of eighteen years) of members who had been drawing pension under this Act.

Further Section 7A (1-A) provides that no pension shall be admissible under sub-section (1) to a member in respect of the term and during the period for which he is disqualified under the Representation of the People Act, 1951."

A bare perusal of Section 7A (1) reveals that every person becomes eligible to draw pension with taking of oath as MLA and the proviso to said Section makes the living spouse of the deceased Member or his/her children upto the age of 18 years eligible to draw family pension. Further Section 7A (1-A) makes a member disentitled to draw pension only in respect of the term and during the period for which he is disqualified under the Representation of People Act, 1951. Thus, this provision does not make disentitled any member to draw the pension during the period before his disqualification. It is a fact that Shri Ajay Singh Chautala and Shri Om Parkash Chautala (now Ex-MLAs) have never been disqualified neither under the provisions of Representation of People Act, 1951 nor under the provisions of Anti Defection Law.

Further, Section 7(b) of the Representation of People Act, 1951 defines the word 'disqualified' as under:-

"Disqualified" means disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State"

Besides, Section 8 of the Representation of People Act, 1951 incorporates certain grounds on which a Member on his conviction for certain offences is liable to be disqualified which are as under:-

"8. Disqualification on conviction for certain offences --- (1) A person convicted of an offence punishable under:-

- (a) *Section 153-A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of*

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- harmony) or section 171-E (offence of bribery) or section 171-F (offence of undue influence or impersonation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376-A or section 346-B or section 376-C or section 376-D (offence relating to rape) or section 498-A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or subsection (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860) ; or
- (b) The Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or
- (c) Section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or
- (d) Sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or
- (e) The Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or
- (f) The Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or
- (g) Section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
- (h) Section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or
- (i) Section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub-section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or

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- (j) Section 6 (offence of conversion of a place of worship) of the places of Worship (Special Provisions) Act, 1991;
- (k) Section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971); or
- (l) The Commission of Sati (Prevention) Act, 1987 (3 of 1988); or
- (m) The Prevention of Corruption Act, 1988 (49 of 1988); or
- (n) The Prevention of Terrorism Act, 2002 (15 of 2002).

[Shall be disqualified, where the convicted person is sentenced to:-

- (i) only fine, for a period of six years from the date of such conviction;
- (ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six-years since his release.]

(2) A person convicted for the contravention of—

- (a) any law providing for the prevention of hoarding or profiteering; or
- (b) any law relating to the adulteration of food or drugs, or
- (c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961)

And sentenced to imprisonment for not less than 6 months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or

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application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court."

A thorough reading of Sections 7 and 8 as aforesaid reveals that word "disqualified" relates to disqualification for the acts/offences mentioned in Section 8 including its sub-sections. None of the provisions of these sections allow to withhold the pension of any Ex-Member. In fact, the word "disqualified" does not relate to the question of pension, but it relates to the contest of election for being elected as a member

It would be unnecessary to go into the merit as to whether the Civil Writ Petition (PIL) is maintainable or not as it is beyond the jurisdiction of the undersigned. However, I am in full agreement and appreciate the judgements/orders of Hon'ble Apex Court and Hon'ble High Court as produced/re-produced by the counsel appearing for and on behalf of the private respondents. But the instant case is related to the grant of pension to the Ex-Members.

In view of the provisions of Law as discussed in the foregoing paragraphs, I am of the considered opinion that Shri Ajay Singh Chautala and Shri Om Parkash Chautala, both Ex-MLAs are fully entitled to draw pension and their pension cannot be withheld only on the ground of their conviction because they have never been disqualified neither under the provisions of the Representation of People Act, 1951 nor Anti Defection Law. Accordingly, the representation of Shri H.C.Arora is ordered to be filed.

R.K. Nandal
 (R.K.NANDAL)
 Secretary
 22.08.2016