

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM No. 13068 of 2014 and
CWP No. 16379 of 2013
Date of decision: 15.10.2015**

Bal Krishan

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. K.G. Chaudhary, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

Mr. S.K. Arora, Advocate for respondent No. 3.

Mr. Ravinder Kumar, Advocate for
Mr. Ravi K. Mattoo, Advocate for respondent No. 4.

LISA GILL, J.(ORAL)
CM No. 13068 of 2014

It is informed that applicant-Pammi, S/o Sh. Bant has since
passed away on 14.5.2015.

Present application for being impleaded as respondent
in this writ petition has been rendered infructious and is disposed
of accordingly.

CWP No. 16379 of 2014

Prayer in this writ petition is for quashing of Order dated
17.7.2013 (Annexure P-2) passed by the Director, Local Bodies,
Punjab-respondent No. 2, whereby resolution No. 27, dated
10.07.2010 passed by respondent No. 3-Nagar Council, Nabha

under Section 236 of Punjab Municipal Act, 1911 has been annulled. Vide resolution dated 10.7.2010 petitioner-Bal Krishan was promoted to the post of Sweeper Mate from the Post of Sweeper. It is observed by the Director that promotion has been wrongly afforded to the petitioner as there are other employees senior to him, thus eligible for promotion prior to him. Executive Officer, Nagar Council, Nabha is observed to have acted in an improper manner. Therefore, resolution No. 27 was annulled and petitioner reverted to his original post.

Director, Local Bodies passed the impugned order on the basis of a legal notice dated 25.10.2012 submitted by one Pammi, S/o Bant. Pursuant to a direction to the Nagar Council to submit its report, Nagar Council vide its report dated 22.4.2013 revealed that as per the seniority list, the petitioner is reflected at Sr. No. 77 and there are number of other employees senior to the petitioner. Complainant Pammi is reflected at Sr. No. 42 of the said list. It is in this situation, impugned order dated 10.7.2014 was passed.

Learned counsel for the petitioner vehemently argues that the impugned order has been passed without any show cause notice or even an opportunity of hearing to the petitioner who was promoted to the post of Sweeper Mate on 12.8.2010. He has been working on the post with complete honesty, dedication and without any complaint qua his work and conduct. Therefore, petitioner could not have been reverted unceremoniously in this fashion without any notice or opportunity of hearing in violation of the principles of natural justice. He further submits that the complainant-Pammi, S/o Bant has passed away on 14.5.2015.

In the reply filed on behalf of respondents No. 1 and 2, it is submitted that resolution No. 27 dated 10.7.2010 passed by respondent No. 3 has rightly annulled under Section 236 of the Punjab Municipal Act, 1911. Seniority list reflects a number of other employees senior to the petitioner. It is contended that though the post of a Sweeper is of non-provincialized Cadre and appointing authority is the Municipal Council, impugned order dated 17.7.2013 has been passed in accordance with provisions of law, promotion of the petitioner being illegal.

Respondent No. 3-Nagar Council while not denying passing of resolution No. 27 has taken a stand that promotion of the petitioner has been afforded wrongly. Such promotion could not have been made as admittedly there are a number of employees senior to him eligible for promotion.

Having heard learned counsel for the parties, it is apparent that petitioner was undoubtedly promoted to the post of Sweeper Mate on 12.8.2010, pursuant to resolution No. 27, dated 10.7.2010. He has been working on the said post since that date. Written statement filed on behalf of respondent No. 3 does not reveal any complaint regarding his work and conduct. It is also not in dispute that the Director, Local Bodies took cognizance of the matter on a complaint preferred by another employee. It is not denied that no opportunity was afforded to the petitioner before passing of the impugned order. Respondent No. 3 also never afforded any opportunity of hearing to the petitioner before sending the report as called for by the Director.

Keeping in view, the facts and circumstances of the case,

it is considered expedient to set aside the order dated 17.7.2013 Annexure P-2. Considering the stand taken by respondent No. 3, Nagar Council, Nabha and the fact of the petitioner belonging to a non-provincialized Cadre where the appointing authority is respondent No. 3, matter is remitted to respondent No. 3 to take an appropriate decision thereon in accordance with law after affording proper and effective opportunity of hearing to the petitioner. It is clarified that there is no expression of opinion on the merits of the case which shall be decided expeditiously by the competent authority preferably within a period of four weeks from the date of receipt of certified copy of this order.

Writ petition is accordingly disposed of.

October 15, 2015

Poonam (II)

(LISA GILL)
JUDGE