

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

**CWP No. 6064 of 1994 (O&M)
Date of decision:22.01.2016**

K.R.Garg

....Petitioner

Versus

State of Punjab and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.K.Malik, Sr. Advocate with
Mr. Vikas Chatrath, Advocate
for the petitioner.

Mr. K.K.Gupta, Additional A.G., Punjab.

Mr. Sandeep Khunger, Advocate for Improvement Trust.

P.B. Bajanthri, J.

In this petition, the petitioner has questioned the orders dated 09.05.1991 (Annexure P-8), 30.05.1991 (Annexure P-10), and 03.04.1992 (Annexure P-14) by which allotment of flat was firstly stayed and then nullified.

2. Petitioner while working as Executive Officer, Municipal Council, Kotkapura, was transferred to Improvement Trust, Ludhiana on

03.10.1990. Accordingly, petitioner joined Improvement Trust, Ludhiana as an Executive Officer. Allotment of flats/plots under the Town Improvement Trust is governed by the Rules called as Town Improvement Trust (Utilization of Land and Allotment of Plots) Rules, 1983 (hereinafter for short referred as "1983 Rules"). It provides 2% quota flats/plots to be reserved for employees of Improvement Trust for the period from 1983 to 2005. The petitioner being Executive Officer, Improvement Trust, Ludhiana submitted an application on 24.01.1991 for allotment of plot/flat under the '8.4 Acres Scheme' or '5.53 Acres Scheme' of the Trust on the premise that he is a "Trust Employee". On 31.01.1991, a resolution was passed for allotment of one flat under '5.53 Acres Scheme' subject to approval from the Government (Annexure P2). The State Government vide communication dated 13.03.1991 made it clear that approval of the Government is not required and Trust may take action after following procedure under Rule 11 of the 1983 Rules. Consequently, with reference to the resolution it was proposed to allot flat No.38 F.F. to the petitioner under '5.53 Acres Scheme' on 19.04.1991 (Annexure P4). Thereafter, allotment letter was issued on 02.05.1991 and on 08.05.1991, petitioner paid a sum of Rs.52,500/- towards its price. Subsequently, on 13.05.1991 agreement to sell was also executed.

3. It was noticed that Mr. Gupta Ram one of the Trust employee had approached this court relating to allotment of flat No. 38FF under '5.53 Acres Scheme' which flat was allotted to the petitioner. In this background, petitioner requested Chairman, Improvement Trust, Ludhiana to allot alternative flat.

4. Meanwhile, the Regional Deputy Director, Local Government,

Ludhiana vide order dated 09.05.1991 (Annexure P-8) stayed the resolution dated 19.04.1991 relating to allotment of flat to the petitioner under '5.53 Acres Scheme' for the reason that he is an Executive Officer belonging to the Municipal Committee cadre and only the Executive Officer of the Trust cadre can be allotted flat. The petitioner submitted representation on 10.12.1992 appraising that once he was transferred from Municipal Committee to the Trust, he would be an employee of Improvement Trust etc., therefore, the allotment of flat was in accordance with 1983 Rules.

5. Joint Secretary (M) vide letter/note stated that prescribed procedure under Rules has not been followed while allotting flat to the petitioner and sought justification from the Trust (Annexure P10). The petitioner under protest received a sum of Rs. 52,500/- on 09.01.1992 the amount which was deposited by him towards allotment of flat No. 38 F.F. On 04.05.1992 Resolution dated 19.04.1991 relating to allotment of flat No. 38 F.F. under '5.53 Acres Scheme' to the petitioner was nullified by the Government. Thus, petitioner has questioned nullifying the resolution dated 19.04.1991.

6. Learned counsel for the petitioner submits that under the 1983 Rules 2% quota flats/plots were to be reserved for employees of Improvement Trust. Petitioner was permanently transferred to the Trust under Rule 5 of the recruitment rules, therefore, by virtue of that transfer he was a Trust employee and not Municipality employee. Hence, allotment of flat vide resolution dated 19.04.1991 (Annexure P-4) is in accordance with aforesaid provision of law. Therefore, the impugned actions are illegal and are to be set aside.

7. Learned counsel for the petitioner further submits that before staying the resolution dated 19.04.1991 and nullifying the same, the petitioner was not heard. Staying and nullifying of resolution dated 19.04.1991 has got civil consequences therefore, without hearing the petitioner is in violation of principle of natural justice. Hence, impugned actions are liable to be set aside.

8. The petitioner in support of the non-observance of principle of natural justice relied on the decision of this Court reported as 1991(1) RLR18 (*Mahajan Co-operative House Building Society versus State of Punjab*). In support of the contention that the petitioner is a Trust employee he relied on the decision reported in 1999(2) SLR 472 (*Balbir Singh versus State of Haryana*) and further contended that once he is transferred from Municipality to Trust he would be deemed to be an employee of Trust. Thus, the allotment of flat is in accordance with 1983 Rules and there is no infirmity or flaw in such allotment.

9. Per contra, learned State counsel contended that petitioner as an employee of Municipality, was transferred to Improvement Trust not on permanent basis. The petitioner has abused his position and power as the Executive Officer and got allotment of flat even though he was not a Trust employee. One of the method of recruitment to the post of Executive Officer in Improvement Trust is by 'transfer or on deputation'. Both the transfer and deputation is only for the purpose of temporary arrangement, as there is a provision for direct recruitment and promotion to that post. Thus, petitioner is not a Trust employee, and not entitled to allotment of flat/plot under 2% quota which was ear-marked for Trust employees only.

10. Learned counsel for the Trust vehemently contended that petitioner is a Municipality employee who was transferred to Improvement Trust, Ludhiana. The petitioner took undue advantage of his post and power and misled the Trust to secure allotment. Noticing the error committed by the Trust, the allotment of flat was rightly stayed and subsequently nullified and the amount paid so far was remitted to the petitioner. There is no flaw in the impugned action of the Trust as well as Government. It was further contended that the petitioner was not entitled to be heard in the matter before nullifying the resolution dated 19.04.1991 for the reasons that petitioner being an Executive Officer of the Trust as on the date of the passing resolution, he was aware of the procedure and rules for allotment of plot/flats in the Trust. Appointed reference was made to the fact that as per the record the petitioner was suspended on some allegations and his services were repatriated to the Municipality and he retired as a municipal employee only and not as a Trust employee. He never questioned the validity of repatriation of his services from Trust to Municipality. These factual aspects reveal that petitioner is a municipal employee and not that of the Trust. Even if a notice was given to him things would not have improved namely status of the petitioner would not have changed from municipal employee to that of trust employee. Hence, question of non-compliance of natural justice or denial of hearing before nullifying resolution is not warranted. In support of this contention he relied on the decision taken in the case titled as ***Karam Singh Versus State of Punjab and others*** reported in 1979 PLR 426.
11. Heard learned counsel for the parties and record perused.
12. To sustain the resolution dated 19.04.1991, the petitioner is

required to establish that he is a Trust employee. Having regard to the fact that petitioner was a Municipal employee who was transferred to Improvement Trust, Ludhiana temporarily or that his services were returned to Municipality and he retired as Municipal employee, conclusively establish that he was not Trust employee. It is to be noted that even though the petitioner was transferred from Municipality to Improvement Trust, Ludhiana under the Rules of recruitment but still his lien remained in Municipality. In other words, it was only a temporary arrangement provided under the rules. Rules of recruitment for the post of Executive Officer provides for direct recruitment, promotion and if both the sources are not available then only by transfer or on deputation. Having regard to the provision of law employed for the purpose of posting/transfer it is crystal clear that a transferred employee would retain lien over his parent authority. The petitioner has not disputed or questioned his repatriation to municipality nor he claimed that he is permanently transferred to Improvement Trust. In the absence of petitioner's status that he is an Improvement Trust employee resolution dated 19.04.1991 by which flat No. 38 F.F. was allotted under '5.53 Acres Scheme' is not in order. The impugned actions nullifying the resolution thus is in accordance with Town Improvement Trust (Utilization of Land and Allotment of Plots) Rules, 1983.

13. The petitioner contended that he has not been heard before staying/nullifying resolution dated 19.04.1991. We are not impressed by this contention for the reasons that firstly he being an Executive Officer, is guilty of abusing the power so as to secure an illegitimate benefit. Secondly, no advertisement to fill up 2% quota earmarked to Trust employees was issued

and no opportunity was given to those Trust employees who were eligible for allotment of flats. Thirdly, before allotment of flat to the petitioner trust has not complied Rule 11 -Manner of allotment and Rule 12-Manner of draw of lots. Hence, principle of natural justice is not attracted in the present matter. Fourthly and most importantly, the resolution passed by the Trust was nullified by the State Government in exercise of its express powers under the statute. Unless the said statute contemplate a show cause before the State Government invokes its power, nothing can be added or read into that provision.

14. The Hon'ble Supreme Court in the case of ***City Industrial Development through its Managing Director Versus Platinum Entertainment and others*** reported in 2015(1) SCC 558 held as follows:-

49. State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well defined policy which shall be made 53 Page 54 known to the public. The disposal of Government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favoritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt pick and choose method while allotting the Government land.”

15. Having regard to cited reasons and binding precedent, the plea of violation of principle of natural justice is not attracted. Assuming that petitioner was given an opportunity yet the things were bound to remain same, namely, no change in the status of the petitioner from Municipal employee to Trust employee. It is now settled proposition of law that mere breach of rules of natural justice is not sufficient. Such breach of rules of natural justice must also entail avoidable prejudice to the petitioner. The petitioner was aware of his non-eligibility to apply for allotment of flat. Therefore, clearly no prejudice has been caused to him.

16. In view of above circumstances, we are of the considered view that even if petitioner was not given a notice, the final decision taken by the Government, is not bad in law. Since the facts and circumstances of the judgments relied upon by petitioner are not similar to the present one and are entirely different, these cited decisions do not advance the petitioner's case.

For the reasons stated above, the petition is dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

22nd January 2016
pooja saini