

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

**CWP No.18811 of 2002(O&M)
Date of decision:3.2.2016**

Sarwan Singh

... Petitioner

Versus

The State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. SS Behl, Advocate,
for the petitioner.

Dr. Puneet Kaur Sekhon, Addl.A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was punished for failing to deposit the correct amount charged from the truck owner at the Octroi post where the petitioner was deputed as an Octroi Clerk. As a result, two increments of the petitioner were stopped with cumulative effect. Mr. SS Behl, learned counsel appearing for the petitioner submits that major penalty was imposed without holding a regular inquiry. The petitioner came to know about the passing of the order when his salary was reduced to reimburse the loss caused to the State exchequer sometime in the year 1999. In this petition, there is no challenge to the order inflicting punishment and the claim is restricted to back salary for the period of suspension. The petitioner retired from service on June 30, 2011 as a Junior Assistant.

2. In the written statement filed by the State, a preliminary

objection has been taken that the punishing authority acting under Section 39 of the Punjab Municipal Act, 1911 imposed the penalty without holding an inquiry. It is urged that the petitioner has not availed the alternative remedy of filing an appeal before the appellate authority as provided under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 which are applicable to the employees of Municipal Committee, Rajpura by virtue of bye laws framed by it and published vide notification dated July 1, 1977. It may be mentioned that the petitioner was suspended on March 12, 1998 on account of embezzlement of Rs.2430/- committed by the petitioner. The defalcation came to light with the original receipt of Octroi (04) was issued to the truck driver concerned worth an amount of Rs.2700/- but the petitioner deposited only Rs.270/- with the Municipal funds. The remaining amount was called embezzlement.

3. In this petition there is no order, which is impugned.

4. Mr. Behl submits that even till the present the punishment orders have not been conveyed to the petitioner. In para. 6 of the petition, it has been asserted that neither the petitioner was served with any charge-sheet nor any regular inquiry was held against him. No order imposing any punishment was passed against him. He was reinstated in service vide order dated May 17, 1999 pending inquiry and ultimately he retired from service.

5. A combined reply has been filed to the averments in the petition contained in para. 5 & 6 which assertions have been refuted and it has been explained that inquiry was not held as the matter was brought

to the notice of the police. Rest of the contents of these paragraphs were pleaded are wrongly stated. It has been further explained that the local police did not register a case of embezzlement against the petitioner because he had deposited Rs.2430/- in the Municipal Council fund. It is pleaded that such a statement was made before the Inquiry Officer admitting that the petitioner had deposed as such during the inquiry and had put his signatures on the statement recorded in token of its correctness. The regular inquiry was conducted by one Sh. Ravish Kumar, Octroi Superintendent and the petitioner made the confession of embezzlement before the Inquiry Officer and he was thus found guilty on the basis of admission. The Inquiry Officer submitted a report which was put up to the House of Municipal Council, Rajpura, which decided the suspension period of the petitioner is not to be treated as duty period and no service benefits for that period should be given to him. The petitioner did not file appeal against the order and in this way the order of punishment was accepted by the petitioner as final. There is no prayer in this petition for setting aside the punishment order.

6. The petitioner has not filed any replication to the written statement controverting the averments made therein. If this is the factual position, then the request of Mr. Behl for remanding the issue to the Municipal Council, Rajpura to re-examine the question of suspension and whether the petitioner would be entitled to salary etc. for that period is not correctly posed for answer and would be an erroneous approach if this Court were to pass an order remanding the issue to the Administrator to take a final decision regarding payment of arrears of salary for the

period. It has been mentioned in para. 8 of the writ petition that the petitioner has been paid all his retiral benefits including the amount lying in his Provident Fund, gratuity, leave encashment and arrears of increments due.

7. If the petitioner still complains that he has not been served with the copy of the order then he fails to remind himself that this writ petition has been pending since 2002 and no effective steps were taken to apprise this Court of this lacuna or to amend the petition after making effort for discovery of the adverse order and its supply. It was always open to the petitioner to have applied for discovery and inspection of record in the Municipal Council and if he had made such a request I am sanguine it would have been entertained and the adverse order communicated to him to deal with.

8. In any event, it is the view of this Court that a writ petition would not lie in case adverse order is not placed on record and a suitable challenge brought to it for a declaration of illegality and thus not binding on him. In view of all these vital deficiencies and lacunas in the pleaded case in the body of the petition, no directions can be issued to the effect that the petitioner ought to be granted three increments for the years claimed or for fulfilling any of the other prayers made in the writ petition. In view of the above facts and circumstances, in the opinion of the court no interference is called for in this petition and the same is ordered to stand dismissed.

9. If the petitioner is still dissatisfied, he may yet apply for a copy of the adverse order and take recourse to his appellate remedy in

terms of the bye laws/regulations of the Municipal Council, Rajpura.

However, this order will not be treated as an expression of opinion on the merits of the claim for grant of annual increments and salary for the period of suspension nor would the order be treated as postponing the period of limitation in favour of the petitioner, if it has expired in the meanwhile with respect to the cause of action.

3.2.2016
monika

(RAJIV NARAIN RAINA)
JUDGE