

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17485 of 2009 (O&M)

Date of Decision: 15.09.2016

RAM SARAN SINGH (Deceased) through LRs

.... Petitioner

vs.

PUNJAB MANDI BOARD AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Virender Soni, Advocate
for the petitioner
Mr. Ajab Singh, Advocate
for the respondents

Kuldip Singh J.(Oral)

CM No.6641 of 2015

It comes out that application for impleading the LRs of petitioner had already been filed which is not listed today. In the interest of justice, the application is taken on board today for hearing.

It is stated that Ram Saran Singh-petitioner has expired on 14.06.2014. Copy of the death certificate is attached. The application is allowed. The legal heirs of deceased Ram Saran Singh are ordered to be brought on record. Amended memo of parties is taken on record.

CWP No.17485 of 2009

Ram Saran Singh deceased has filed the present writ petition for quashing the impugned order dated 19.11.2008 (Annexure P-11), vide which the payment of salary for the suspension period from 2.5.1994 to 31.03.2004 was declined. Petitioner also sought the writ of mandamus directing the respondents to release pension, gratuity, leave encashment and

other service benefits.

The short facts which are required to be noticed are that Ram Saran Singh was appointed as Auction Recorder in market committee, Phagwara on 28.08.1975. He was promoted as Mandi Supervisor-cum-Fee Collector on 19.03.1983. He was transferred from one Market Committee to another. However, the respondents fixed Market Committee, Hoshiarpur as his parent Committee. On 02.05.1994, the petitioner was suspended by Market Committee, Raiya vide Resolution No. 6, allegedly on the ground of absence from duty. Three year later, a charge sheet was issued on 11.11.1997. Petitioner was reinstated in service on 07.08.2003 (Annexure P-2), pending the enquiry and joined on 01.04.2004. He retired from service on 15.03.2005. Later on, on receipt of the enquiry report, a sub committee was formed by Market Committee, Hoshiarpur, which vide the enquiry report dated 28.05.2005 (Annexure-P-7) found that petitioner is innocent and exonerated him from all the charges. It also comes out that the petitioner had approached this Court by way of filing a Civil Writ Petition No. 4774 of 2008, which was disposed of on 25.03.2008 (Annexure-P-10) with the direction to the respondents to decide the representation (Annexure-P-5). In pursuant to the said order, the representation has been decided vide Annexure P-11, vide which, the salary for the suspension period has been declined on the ground that it is time barred under Financial Rules Volume-I Chapter 2 Rule 2.25 (E) (6) (A) and that under Punjab Civil Services Rules Volume I Part 1 Chapter 7 Rule 7.2 (2). The employee was required to submit a certificate that he is not gainfully employed in any service or business or doing any other work which he did not submit. The pensionary benefits were also not released to him. After the passing of the

said order, the petitioner again approached this Court by filing the present writ petition. Pending the writ petition, the petitioner died and the same is being now pursued by his legal heirs.

Respondents No. 1 and 2 in the written statement stated that the Market Committee is to release the pensionary benefits and they have nothing to do with the same. Respondents No. 3 and 4 took the preliminary objection that during the suspension period, petitioner was arrested in FIR No. 40 dated 26.03.2001 registered at Police Station Bhogpur, District Jalandhar under Section 354, 323, 506, 148 and 149 IPC, in which Section 308 IPC was added later on. He was arrested on 27.04.2001 and was released on bail on 17.05.2001 and is now on regular bail. It was submitted that despite repeated number of letters, the pension papers were not submitted by the petitioner to the authorities. The department had sent letter No.81 dated 25.04.2008, registered letter No. 401 dated 20.07.2008, public notice dated 08.09.2008 pasted at his house, registered letter no.30 dated 11.01.2010 and also publication in Daily Newspapers Ajit and Jagbani on 9.6.2010 and 11.06.2010 respectively. It was admitted that the parent department of the petitioner was fixed vide letter dated 3.12.2004 by Mandi Board. It was stated that the enquiry officer vide report no. 79 dated 19.02.2004 held that the allegations against him stands proved. However, the market Committee exonerated him after due consideration of the enquiry report of sub committee. It was submitted that the certificate regarding non employment was not submitted. The other facts of suspension and enquiry were not denied. It was referring to the Financial Rules in Volume I, referred to above. It was stated that his claim has become time barred.

I have heard counsel for the parties and have also carefully gone through the file.

First of all, I will take up the controversy regarding the salary for the period during which the petitioner remained under suspension i.e. from 2.5.1994. to 31.03.2004. It is undisputed that the charge sheet was issued after three years and the inquiry continued for more than ten years. It was nearly ten years later that he was reinstated, pending the enquiry. The enquiry report was submitted after his retirement in the year 2005. The enquiry report was considered by his parent department, which after considering the same passed the order Annexure P-8, vide which he was exonerated from all the charges and his suspension period was considered as duty period . The final decision is reproduced as under:-

“The Committee has examined the order of suspension of Shri Ram Saran Singh, Ex-Mandi Supervisor, his charge sheet and reply given by the employee and enquiry report and examined at length and also examined the report issued by the Sub Committee and in the and we have reached to this conclusion that against the employee, no serious charges were proved and the employee remained under suspension for 10 years and during this period he has not been given any salary and usual allowances, therefore, this employee is hereby exonerated from all the charges and his suspension period is to be considered as his duty period and accepted the same.”

Since the petitioner was exonerated and the suspension period was to be treated as duty period, therefore, the irresistible conclusion is that the petitioner is entitled to salary and allowances for the said period, except for the period during which he remained in police as well as judicial custody i.e. from 27.04.2001 to 17.05.2001 in a criminal case.

Now, coming to the next contention regarding release of pensionary benefits. The plea of the respondents is that pension papers were not submitted by the petitioner despite repeated registered letters and publication in the newspaper. However, the documents on file itself speaks that both the parties exchanged communication in this regard and that it is not that the petitioner voluntarily failed to submit necessary papers for release of pension. In any case, there was no reason for not releasing the other pensionary benefits, for which the pension papers were not required to be submitted.

The letters of the petitioner (Annexure P-12) dated 05.07.1994 shows that the petitioner had submitted the requisite certificate required under the Rules. The letter (Annexure P-13) dated 25.04.2008 was addressed by the department to the petitioner for submission of the necessary papers. The letter (Annexure P-14) dated 29.04.2008 by the petitioner shows that the petitioner had addressed a communication to the Secretary Market Committee, Hoshiarpur that is service record has not been completed by either market committee and until and unless the record is not completed, he cannot fill in the necessary papers. He also stated that he used to appear in their office everyday but no record has been completed, rather simple formality is being conducted. The Market Committee, Hoshiarpur addressed further communication (Annexure P-17) on 28.07.2008 for completion of pension papers. However, the affidavit (Annexure P-16) dated 04.06.2008 shows that the necessary affidavit was submitted by the petitioner. Further communications were also replied by the petitioner, vide (Annexure P-18) dated 29.07.2008. The letter (Annexure P-21) of Market Committee, Jalandhar City shows that the service book was sought from

Secretary market committee Hoshiarpur for its completion which shows that till the said date his service book was not even completed. Therefore, the petitioner was not at fault for non-completion of his service book and non-submission of pension papers. Accordingly the petitioner is entitled for release of all the pensionary benefits i.e. Pension, gratuity, leave encashment etc. which are admissible to him under the rules with interest @ 9 % per annum, starting three months from the date of retirement till payment.

Consequently, the present writ petition is allowed and the following relief is granted.

The petitioner shall be entitled to full salary and other allowances for the suspension period on 02.05.1994 to 31.03.2004, except the period of his custody from 27.04.2001 and 17.05.2001.

The respondents shall also release pension, leave encashment, gratuity and other retiral benefits, as admissible under rules, within three months with the interest @ 9 % per annum, starting from the 01.07.2005 till the actual payment.

15.09.2016
gk

(Kuldip Singh)
Judge

Whether speaking / reasoned

Yes

Whether reportable

Yes