

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

CWP No. 16804 of 2011(O&M)

Date of Decision: 15.09.2016

NASIB KAUR

... Petitioner

VS.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. A.S. Salar, Advocate,
for Mr. S.S. Salar, Advocate,
for the petitioner.

Mr. R.S. Pathania, DAG, Punjab.

Mr. Harsh Aggarwal, Advocate,
for the respondent No. 2.

KULDIP SINGH, J. (Oral)

The petitioner-Nasib Kaur wife of late Gurmail Singh has filed the present writ petition seeking release of the retiral benefits such as salary, General Provident Fund (GPF), Gratuity in respect of her deceased husband-Gurmail Singh.

Brief facts of the case are that Gurmail Singh was appointed as Fitter in Punjab Roadways, Ludhiana Depot. Later on, Gurmail Singh was transferred to the Municipal Corporation, Ludhiana as Head Mechanic in the year 1980 to enable the Corporation to run local bus service. Gurmail Singh worked in Municipal Corporation, Ludhiana as Head Mechanic till he suddenly disappeared on 02.01.1989. Municipal Corporation, Ludhiana on account of the absence of Gurmail Singh started departmental proceedings which culminated in the termination order passed on 15.01.1990 with retrospective effect from 02.01.1989, the date from which Gurmail Singh went missing and

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Later on Transport Wing of the Municipal Corporation, Ludhiana was scrapped on 31.08.1995 and the staff which was transferred to Corporation for local transport service was transferred back to their parent department. Since, Gurmail Singh was not traceable, the son of the petitioner approached the Civil Court, Ludhiana and obtained a decree from the Civil Court declaring him dead. On the basis of the said decree of the Civil Court, death certificate was issued on 19.06.2009. Thereafter, it also comes out that the petitioner made a representation dated 18.08.2009 to the Municipal Corporation, Ludhiana claiming the retiral benefits and appointment on compassionate grounds. The Full House of the Municipal Corporation, Ludhiana had taken the compassionate view in the matter and had withdrawn the dismissal order against Gurmail Singh vide resolution No. 1006 dated 16.04.2010 and the same was communicated vide letter dated 20.05.2010 (*Annexure P- 3*). The petitioner claims that she made several representations but the respondents did not pay her the retiral benefits of her husband.

The respondent No. 2-Municipal Corporation, Ludhiana in reply has not disputed the factual position of transfer of the service of Gurmail Singh and the passing of the dismissal order and subsequent revocation of the same. It is pleaded that Gurmail Singh was on deputation with the Corporation and was having lien over his substantive post in Punjab Roadways Ludhiana under Chapter X, Volume-I. Part-I read with Chapter III Volume-I, Part-I of the Punjab Civil Services Rules, therefore the State is the principal employer and is liable to pay all the retiral benefits. The plea of the delay was also taken.

On the other hand the State has also admitted that the services of Gurmail Singh has been transferred to Municipal Corporation, Ludhiana in the year 1980 but has claimed that since the service of Gurmail Singh were

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transferred to Municipal Corporation, Ludhiana, therefore the State is not liable to pay the retiral benefits.

I have heard learned counsel for both the parties.

The admitted position emerging from the pleadings of the parties is that in the year 1980, Gurmail Singh who was employed in Punjab Roadways, Ludhiana Depot, which is under the Department of Transport, Government of Punjab, was transferred to Municipal Corporation, Ludhiana as Head Mechanic in the year 1985. Gurmail Singh was working there as such in Municipal Corporation, Ludhiana and suddenly went missing on 02.01.1989. Though, he was initially dismissed from service by Municipal Corporation, Ludhiana on account of absence but his termination order was revoked in the year 2010 on the basis of death certificate dated 19.06.2009.

Now, the position is that the Gurmail Singh is deemed to have died while in service of Municipal Corporation, Ludhiana and on account of his death while in service, the family of the deceased employee is entitled to certain benefits such as GPF, gratuity, leave encashment and family pension. The question here is that as to who shall pay the same i.e. whether the State Government or Municipal Corporation, Ludhiana?

Learned counsel for the Municipal Corporation, Ludhiana has relied upon the Rule 3.13 of the Punjab CSR Vol. 1 Part 1 chapter 3 which reads as under:-

“Rule 3.13

- (a) *Two or more Government servants cannot be appointed substantively to the same permanent post at the same time.*
- (b) *A Government servant cannot be appointed substantively except as a temporary measure, to two or more permanent posts at the same time.*

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- (c) *A Government servant cannot be appointed substantively to a post on which another Government servant holds a lien.”*

Admittedly, the services of some of the employees of Punjab Roadways, Ludhiana were transferred to Municipal Corporation, Ludhiana in the year 1980. The petitioner died in the year 1989 while in the service of Municipal Corporation, Ludhiana. Since, the Transport Department of the Municipal Corporation, Ludhiana was shut, therefore, the service of the remaining employees were transferred back in the year 1995 to the Punjab Roadways, Ludhiana i.e. the parent department. It goes to show that the deceased was the permanent employee of the Punjab Roadways and his services were transferred to Municipal Corporation, Ludhiana and apparently he had his lien over his post in Punjab Roadways, Ludhiana. Therefore, the primary liability to pay the pension, gratuity, leave encashment and other retiral benefits is that of State of Punjab. However, since Gurmail Singh-deceased served upto 01.09.1989 in Municipal Corporation, Ludhiana, therefore, the GPF, leave encashment, gratuity contributed/accrued and the share of the pension for the said period is to be borne by Municipal Corporation, Ludhiana, since, he died in harness while in service of Municipal Corporation, Ludhiana, The Municipal Corporation, Ludhiana is also to provide the financial assistance/compassionate appointment as per its policy, if the similar benefits have been extended to other similarly situated employees.

For this purpose, Municipal Corporation, Ludhiana shall submit all the necessary documents alongwith their share of the retiral benefits to Punjab Roadways, Ludhiana which shall prepare the pension case of the husband of the petitioner and release the pension and other retiral benefits. The

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Municipal Corporation, Ludhiana is given three months time from the date of passing of the judgement for preparing the necessary papers and thereafter submit the same to Punjab Roadways, Ludhiana which shall process the case and release the retiral benefits in the next two months.

In view of the above observation, the present writ petition stands allowed.

September 14, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

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Whether speaking / reasoned

Yes / No

✓

Whether Reportable

Yes / No