

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.1834 of 2011 (O&M)
Date of Decision: 16.09.2016

SARWAN KUMAR SAHOTA

.... Petitioner

vs.

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Surinder Garg, Advocate for the petitioner
Mr. R.S. Pathania, DAG, Punjab
Ms. Naiya Gill, Advocate for respondents No.3 & 4.

Kuldip Singh J.(Oral)

Sarwan Kumar Sahota, retired Executive Officer, Grade-I who worked in different Municipal Councils, initially filed the writ of mandamus for release of 25% gratuity, re-fixation of pay, grant of two annual increments and grant of 18 years service benefits as well as recovery of Rs.3,95,472/- recovered from him for the interest on the pension fund which was to be recovered from respondent No.3 and not from the petitioner. During the pendency of the present petition, all the other benefits were released. Now, the dispute survives only for the recovery of Rs.3,95,472/-, as stated above.

It comes out that when the petitioner was posted at Municipal Council Sultanpur, Lodhi from 1.2.1994 to 7.3.1996, a pension scheme called as Punjab Municipal Employees Pension and General Provident Fund Rules, 1994 ('in short 1994 Rules') was formulated, which were published in the Government notification on 16.3.1994. Under the said Rules, the employees were to exercise the option under Rule 3 for availing the benefit

of said Rules. A Pension Fund was to be established under Rule 4 and the share of money contributed by the committee along with the interest standing in CPF account to the credit of the employee was to be transferred to the said fund. The relevant extract from the said Rules is reproduced as under:-

“5. Transfer of amount to the fund.-(1) The share of money contributed by the committee along with interest accrued thereon standing in the Contributory Provident Fund account to the credit of an employee of a committee, who opts for these rules or who is governed by these rules, shall stand transferred to the Fund to the extent it was contributed by the committee during the period of service of the employee alongwith any loss caused to the contribution either by the committee or by the employee through withdrawal during the tenure of service of the employee or due to any other reason which shall be made good by the committee or the employee, as the case may be, by paying the amount alongwith interest due for that period to the Fund.”

Now the allegation surviving against the petitioner are that he was the Drawing and Disbursing Officer and he was to transfer the funds and according to the stand of the respondent No.4 Municipal Council, Sultanpur Lodhi, petitioner did not transfer the said CPF amount of the employees to the Pension fund pertaining to his own case and the case of the other employees, resulting in loss to the Municipal Council as the fund was to be transferred along with the interest. Petitioner retired from service on 30.4.2004. After his retirement, he claimed his dues, which were not paid and ultimately he is stated to have furnished an affidavit (Annexure P-8) dated 14.08.2007, in which he submitted to the Municipal Council Sultanpur, Lodhi that he had withdrawn Rs.3,95,472/- (earlier amount

Rs.50,000/- approximately) which was share of the Pension Fund and that he requested that the same may be deducted from the arrears of his pension/commuted value of pension/pension.

He also undertook that he will not move to any Court for the release of the amount, which is deducted from his pension. Subsequently, he approached this Court by way of present writ petition in the year 2011.

The stand of respondent No.4 is that being the Drawing and Disbursing Officer, it was duty of the petitioner to transfer the said amount of pension contribution of himself and other employees of the Municipal Council, which he did not do. Thus, he is liable for the loss occurred to the other employees along with the penal interest @ 18%. It was stated that a sum of Rs.61,543/- was deposited vide Draft No.016291 dated 18.11.1997 and a sum of Rs.23,168.40/- was deposited vide Draft No.0559161 dated 22.6.1998, total amounting to Rs.84,711.40/- to M.C. Nawanshahar, which includes the pension and contribution of Rs.5,726.70/- for the period 28.1.1994 to 7/95. Therefore, it was the duty of M.C. Nawanshahar to send the pension contribution to the Director, Local Government.

Respondent Nos.1 and 2 have taken the stand that amount of contribution made into CPF of the petitioner along with interest was transferred to GPF of the petitioner and the petitioner had withdrawn the amount of GPF, whereas this was required to be transferred to the pension fund. The petitioner had taken the benefit, so the petitioner was required to refund the amount of committee's contribution made in the petitioner Contributory Fund Account along with the interest to the pension fund.

The petitioner has filed an affidavit dated 28.10.2015, wherein he has clarified that he had withdrawn only Rs.30,000/- from CPF in the

year 1996 and on the said date, Rs.58,877/- being the amount of CPF was lying to his credit and even Rs.20,609/- was also lying in his account qua CPF. The remaining amount of CPF lying in his credit was not transferred to the Pension Fund of the deponent after coming into force of Pension Rules. Although, only Rs.30,000/- were withdrawn, the amount has swollen to Rs.3,95,472/- till his retirement by adding interest from time to time, as per Pension Rules 1994, which was not deposited in the pension fund and was to be deposited with 18% per annum interest. Therefore, he had withdraw only Rs.30,000/-.

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

Admittedly, the petitioner remained posted as Executive Officer, Municipal Council Sultanpur, Lodhi from 1.2.1994 till 7.3.1996. Thereafter, he was transferred to Municipal Council, Kapurthala and again posted back in Municipal Council Sultanpur, Lodhi from 6.6.1996 to 19.6.1997. It comes out that when the Pension Rules of 1994 came into force w.e.f. 1.4.1990, the share of the Council was to be transferred to Pension Fund in terms of Rule 5 *ibid*. However, this was not done, for which the petitioner, being the Executive Officer and Drawing Disbursing Officer, is liable. Therefore, for not transferring his own CPF, he is liable to pay interest for the period from 1.2.1994 to 7.3.1996 @ 18% as per the Pension Rules. When he was transferred, his successor should have easily transferred the amount of the Pension Funds and for the same the petitioner cannot be blamed. If the petitioner had not transferred the contribution of the Council qua him and other employees to the Pension Fund, the Municipal Council could easily start the departmental proceedings and

recover from him the loss caused to the Municipal Council. However, this was never done. As per the written statement of respondent No.4 itself, the amount was later on transferred to Nagar Council Nawanshahar, whereas it was required to be sent to Director Local Bodies where the pension fund was maintained.

So far as, the affidavit (Annexure P-8) is concerned, the respondents cannot take the benefit of the same. No one can be restrained from approaching the Court. Since the pensionary benefits were not released, the petitioner was left with no alternative but to submit to the dictates of the respondent Council to submit the affidavit. Therefore, only the amount which is legally recoverable from the petitioner, is required to be recovered and not the whole amount of Rs.3,95,472/-.

In the circumstances, it is ordered that petitioner is liable to pay the interest @ 18 % on his own contribution of the Municipal Council, Sultanpur Lodhi for the period from 1.2.1994 to 7.3.1996 and 6.6.1996 to 19-6-97 @ 18 %, as per the Pension Rules and the said interest, so calculated, shall be retained by the Municipal Council, Sultanpur Lodhi and the remaining amount out of Rs.3,95,472/- shall be refunded to the petitioner by the respondents.

The balance amount shall be refunded to the petitioner by the respondents within two months from the date of the receipt of a certified copy of this order.

The Municipal Council shall be liable to make good the loss caused to the pension fund by depositing the amount, so refunded to the petitioner.

The writ petition is accordingly allowed in the above mentioned terms.

16.09.2016
gk

(Kuldip Singh)
Judge

Whether speaking / reasoned	Yes
Whether reportable	Yes