

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

CWP No.14401 of 2013 (O&M)

Date of decision : July 23, 2016

Ashok Kumar Watta

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Peeush Gagneja, Advocate for the petitioner.

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

Ms. Jasvir Kaur, Advocate for respondent No.4.

KULDIP SINGH J. (ORAL)

Petitioner, who was working as Leading Fireman, seeks issuance of writ in the nature of mandamus, directing the respondents to release the service benefits of the petitioner such as pension, commuted pension, gratuity, leave encashment, provident fund, ADA/DA/Bonus and other dues. He also seeks the issuance of writ in certiorari quashing the order dated 31.05.2013 (Annexure P-8), vide which the petitioner was voluntarily retired.

It comes out that the petitioner was working as a Leading Fireman with the Municipal Council, Abohar. His wife was ill and was getting treatment from Medanta Hospital, Gurgaon, For the treatment of his wife, the petitioner had to raise loan from his friends and relatives, which he was unable to repay. His wife ultimately expired.

Since, the petitioner was unable to repay the loan raised for the treatment of his wife, vide letter dated 01.03.2013 (Annexure P-1), he sought voluntarily retirement from service with a further prayer that the

service benefits such as gratuity, provident fund etc. should also be released to him on the day of retirement and only then he be relieved from duty.

Thereafter, it comes out that the petitioner sent reminder dated 03.05.2013 (Annexure P-2) followed by another reminder dated 21.05.2013 (Annexure P-3), wherein he reminded the Executive Officer, Municipal Council, Abohar that only 10 days are left for expiry of the notice and necessary steps be taken, immediately and the petitioner be granted voluntarily retirement.

Consequently, the Executive Officer wrote a letter dated 21.05.2013 (Annexure P-4) to the petitioner, informing that the Municipal Council is in lack of funds as it has huge liability. Therefore, the payment of retiral benefits cannot be made immediately and that if he still wants to get retirement from the service, then he can be granted voluntarily retirement after paying some amount and the remaining amount will be paid at the earliest. It is further contended that in the event of his consent, after the completion of the notice period, he will be retired.

The petitioner further addressed a letter dated 27.05.2013 (Annexure P-5), stating that the petitioner may be voluntarily retired after taking necessary action.

Thereafter, the Executive Officer addressed the communication dated 30.05.2013 (Annexure P-6) to the petitioner that on the basis of his application, he would be granted voluntarily retirement from service on 31.05.2013 and on the availability of funds with the Municipal Council, he will be paid dues.

The said letter was replied by the petitioner on the same day

vide Annexure P-7, wherein he stated that he never gave the consent for release of dues later on. He always stated that he may be relieved from duty after payment of benefits, on the date of retirement. He had applied for voluntarily retirement because he was in dire need of money as he had to repay the loan, which he had raised for getting the treatment of his wife from Medanta Hospital, Gurgaon. He prayed that after the payment of retiral dues and other benefits, he may be relieved from duty, so that he may repay the loan. In the last, he again prayed that he may be relieved from duties after payment of retiral benefits.

Nowhere in the said reply, the petitioner had informed the respondent-Municipal Council that he withdraws his request for voluntarily retirement. Accordingly, he was retired from service on 31.05.2013.

Vide Annexure R-1/1, it also comes out that the Executive Officer got *ex-facto* permission of the Municipal Council, vide Resolution No.91, dated 07.11.2013 regarding retirement of the petitioner from service.

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

The question for determination is whether the retirement of the petitioner is illegal?

I am of the view that the retirement of the petitioner cannot be called illegal. The petitioner was informed that the retiral benefits cannot be given to him at the time of retirement. Even then, he did not withdraw his application/request for voluntarily retirement. Rather requested that the retiral benefits be released to him on the day of retirement and only then he be relieved from duty.

Since, the request of voluntarily retirement from service was never withdrawn by the petitioner, therefore, the voluntarily retirement of the petitioner from service, which was later on rectified in the meeting of Municipal Council, Abohar, cannot be called illegal.

Now, coming to the payment of the dues to the petitioner, it comes out that now all the dues have been released to the petitioner. However, learned counsel for the petitioner has contended that these were released with delay.

On behalf of the Municipal Council, the delay is not denied and rather it is pleaded that the Municipal Council was short of funds. Keeping in view the huge liability, the Municipal Council was unable to pay the dues to its employees.

I am of the view that the lack of funds is no ground for delaying the payment of funds. If any reason, whatsoever the payment of retiral benefits has been delayed, the Municipal Council is liable to pay the interest thereon.

Accordingly, the present writ petition is partly allowed and the respondent-Municipal Council is directed to pay interest @ 9% per annum on the delayed payment of all the pensionary benefits, for which the payment was made beyond two months from the date of retirement.

As such, the present writ petition is allowed to the abovenoted extent.

(KULDIP SINGH)
JUDGE

July 23, 2016

sarita

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No