

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3563 of 2016

DATE OF DECISION: FEBRUARY 23, 2016

VARINDER SINGH & OTHERS

...PETITIONERS

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes/No

PRESENT: MR. SUSHIL JAIN, ADVOCATE FOR THE PETITIONERS.

M. JEYAPPAUL, J.

1. The petitioners aggrieved by the rejection of their plea for pay parity with Sanitary Inspector in Municipal Corporation, Chandigarh, stoppage of recovery of alleged excess payment, promotion to the post of Chief Sanitary Inspector and retransfer to Municipal Corporation, Chandigarh from Chandigarh Administration, have preferred the present writ petition.

2. The writ petitioners were appointed as Sanitary Inspectors in the office of Medical Officer of Health, Chandigarh Administration. Petitioners No.1 to 3 joined as such on 4.5.1987 and petitioner No.4 joined on 6.5.1987. The Administrator, Union Territory, Chandigarh, exercising his powers conferred by Section 428A(2)(h) of the Punjab Municipal Corporation Act, 1976, which was extended to the Union Territory, Chandigarh, transferred the writ petitioners vide notification dated

1.11.1995 to the Municipal Corporation, Chandigarh. Thereafter, the Administrator, Union Territory, Chandigarh vide notification dated 7.2.2000, exercising the powers conferred under the above provision of law ordered retransfer of the control of office of “Pest Control and Malaria Eradication Programme” from Municipal Corporation, Chandigarh to Director, Health Services, Chandigarh Administration w.e.f. 24.5.1994. The writ petitioners were transferred back to Chandigarh Administration vide letter dated 29.3.2000. The period spent by the writ petitioners in the Municipal Corporation, Chandigarh was ordered to be treated as period on deputation. An audit objection was raised with regard to the grant of scale of ₹1800-3200 to the writ petitioners after retransfer to the Chandigarh Administration w.e.f. 1.4.2000. A show cause notice was issued on 5.3.2004 to explain as to why recovery of excess payment made w.e.f. 1.4.2000 be not effected from their salary.

3. The writ petitioners have claimed parity of pay scale for the post of Sanitary Inspector in Municipal Corporation even after retransfer to MPHS in the Chandigarh Administration. They sought for quashing the orders passed for recovery of the alleged excess payment made to them. They have also claimed promotion to Group-B post of Chief Sanitary Inspector which is actually not existing in the Chandigarh Administration. Finally, they have sought for retransfer from Chandigarh Administration to Municipal Corporation, Chandigarh.

4. The Tribunal having seriously adverted to the issues involved in the Original Application filed before it, chose to reject the plea of the writ

petitioners, but directed the respondents not to recover the excess payment made to the writ petitioners upto 5.3.2004 when the show cause notice was issued by the respondents to the writ petitioners calling upon them to explain as to why the recovery be not effected.

5. Learned counsel appearing for the writ petitioners vehemently submitted that the Sanitary Inspectors appointed alongwith the writ petitioners, but transferred to Municipal Corporation, Chandigarh have been promoted to the post of Chief Sanitary Inspector. But the writ petitioners do not have any promotional avenues. It is further submitted that on parity with the similarly placed Sanitary Inspectors serving in the Municipal Corporation, Chandigarh, the writ petitioners who have already served in that capacity in Municipal Corporation, Chandigarh are entitled to pay protection.

6. The fact remains that the writ petitioners were originally appointed as Sanitary Inspectors only in the office of the Medical Officer of Health, Chandigarh Administration. On account of formation of Municipal Corporation, Chandigarh, the Administrator, Union Territory, Chandigarh Administration, drawing powers under the provisions under Section 428A(2)(h) of the Punjab Municipal Corporation Act, 1976 which was extended to Municipal Corporation, Chandigarh, transferred the writ petitioners to Municipal Corporation, Chandigarh vide notification dated 1.11.1995. Thereafter, the Administrator, Union Territory, Chandigarh Administration, by virtue of the above provision of law retransferred the petitioners to Chandigarh Administration vide letter dated 29.3.2000.

Presently, the writ petitioners are serving as Sanitary Inspectors in Chandigarh Administration where they were originally appointed. The period during which they served in Municipal Corporation, Chandigarh was treated as period on deputation. The moment they were retransferred to Chandigarh Administration from Municipal Corporation, Chandigarh, they are bound by the Service Rules and Regulations of Chandigarh Administration. An audit objection has been rightly raised as regards the excess payment made to the writ petitioners in spite of the fact that they had already been retransferred to Chandigarh Administration. Being employees of Chandigarh Administration, they cannot claim promotion to the post which has not at all been created by the Chandigarh Administration. The question of transferring the writ petitioners to Municipal Corporation, Chandigarh from Chandigarh Administration where they had been originally appointed cannot be entertained by the Court of Law as no such legal right has accrued to the petitioners.

7. The Tribunal has rightly rejected the claim of the writ petitioners. We do not find any merit in the writ petitioners and therefore, the writ petition stands dismissed.

(M. JEYAPPAUL)
JUDGE

February 23, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE