

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1269 of 1991(O&M)

Date of Decision: 4.05.2017

Jalandhar Improvement Trust

... Petitioner

Versus

Hans Raj (since deceased) through LRs

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. SC Pathela, Advocate,
for the petitioner.

None for the respondents.

RAJIV NARAIN RAINA, J.(Oral)

The plaintiff-Hans Raj worked as a Pump Driver/Mechanic in the Jalandhar Improvement Trust in a scheme called Sullage Water Disposal Work of Bhai Dit Singh Nagar. On completion of the project, the works were handed over for maintenance to the Municipal Corporation, Jalandhar in terms of Section 55(2) of the Punjab Town Improvement Act, 1922 (for short 'the Act'). With the coming to an end of the Scheme he was surplus and would have been retrenched but was redeployed in the Municipal Corporation service as a fresh hand. Aggrieved by his re-employment, he brought a suit in the civil court at Jalandhar which was decreed by the Sub Judge, 1st Class, Jalandhar, on 21.11.1987 who set aside the order dated 30.4.1986 by which the services of the plaintiff were transferred to the Municipal Corporation. The impugned order was based on a resolution of the Trust dated 12.2.1986 transferring Bhai Dit Singh Nagar Development Scheme and disposal work to the Corporation for its upkeep in the future. The Trust justified its action citing Section 103 of the Act that the plaintiff could be transferred to some other body such as Municipal Committee when assets and liabilities were

transferred. Apart from his transfer, an issue of pay scale also arose with the pay revision claimed in the suit. Not only did the trial Court quash the order of transfer, it also held that the plaintiff is entitled to revised pay scale of ₹ 400-600.

Mr. Pathela appearing for the appellant Trust submits that the revised pay scale of ₹ 400-600 was granted in implementation of the decree since the appellate Court had upheld the decree of the trial Court and there was no stay order. He does not join issue on the point that once the pay scale was granted recovery is not possible in view of the recent decision of the Supreme Court in State of Punjab v. Rafiq Masih, (2015) 4 SCC 334. It is also his submission that on transfer to Municipal Corporation, Jalandhar, the plaintiff never joined the transferred post in the Corporation, meaning thereby, he abandoned the job.

If this is so, then I do not see any reason to uphold the transfer orders by setting aside the judgments and decrees of the Courts below.

The ruling in State of Mysore & anr. v. R.S. Kasi, AIR 1985 SC 651, is cited before me to support the contention that on transfer of scheme along with staff, such transfer gives rise to no cause of action or actionable claim. The decision based on the municipal law in *State of Mysore* and its ratio applies to this case. On transfer to the Municipal Corporation the relationship with the Trust was severed and irretrievable broken.

As a result of the above discussion, the findings of the Courts below declaring the order of transfer invalid are not sustainable. The transfer order is upheld. Pay is protected. In case, the petitioner did not join Municipal Corporation, and this fact is not disputed or ascertainable then I have no reason not to declare the petition infructuous as well.

The appeal is accordingly allowed. The decree in appeal is set aside with the limited protection as to pay, i.e. in case the plaintiff joined the Corporation service and served there. Copy of this order be sent to the respondent by the office as he was not represented.

4.05.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>