

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

CWP No.26879 of 2013 (O&M)

Date of Decision: April 25, 2017

Indal Singh

...Petitioner

Versus

Municipal Corporation and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Sukhmani Tiwana, Advocate
for the petitioner.

Mr. Tarun Vir Singh Lehal, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

1. The petitioner is seeking a direction to be issued to the respondents to pay him a salary in accordance with the pay scale in the revised pay scales of Rs.325-495, as and when revised.

2. The petitioner was appointed as a Mali in the Municipal Corporation/Committee by appointment letter dated 17.01.1985 in the pay scale of Rs.325-495, which pay was reduced on account of instructions issued on 2.1.1986 and his pay was fixed in the scale of Rs.300-430. The pay scale of Rs.300-430 was revised w.e.f. 01.01.1986 to Rs.750-1350, whereas pay scale of Rs.325-495 was revised w.e.f. 01.01.1986 to Rs.810-

1440. The petitioner thereafter filed an application before the Labour Court, Bhatinda under Section 33-C(2) of the Industrial Disputes Act, 1947, claiming the difference in pay, which application was decided by the Labour Court, Bhatinda by its order dated 14.06.1990. The Labour Court, Bhatinda allowed the application, holding the reduction as impermissible. The decision of the Labour Court was challenged by the Municipal Council, Bhatinda in Civil Writ Petition No.2249 of 1991 and other connected matters. The contention raised by the Municipal Council that the application filed under Section 33-C(2) of the Industrial Disputes Act was not maintainable, was accepted, however, while disposing of the writ petition on 5.7.2011, it was held that the Municipal Committee had no right to reduce the pay scale of the workmen after their appointment. Since the High Court had held that the reduction in pay was not sustainable, the petitioner approached the Department concerned for payment of salary, as mentioned in his letter of appointment. Since no reply was received, the instant writ petition has been filed.

3. Ms. Sukhmani Tiwana, learned counsel appearing on behalf of the petitioner urges that the petitioner is entitled to be paid a salary in the pay scale of Rs.325–495, whereas, the respondents are paying him a salary in the pay scale of Rs.300– 430. It is argued that the pay scale of Mali in the Horticulture Department in the State of Punjab is in the pay scale of Rs.325–495 and therefore, on the basis of equal pay for equal work, the petitioner would be entitled to the same scale.

4. Per contra, Mr. Tarun Vir Singh Lehal, learned counsel appearing on behalf of the respondents submits that the pay scale of the

Mali to the petitioner herein had been given inadvertently and therefore, would not be entitled to a higher scale.

5. I have heard both the counsel for the parties and have with their assistance gone through the pleadings of the case.

6. The short point involved is ***“whether the petitioner herein would be entitled to the pay scale of Rs.325–495, as claimed”***.

7. Admittedly, the petitioner was appointed as a Mali by the Municipal Council, Bhatinda on 17.01.1985, as per office order, in the pay scale of Rs.325–495, which was reduced to Rs.300-430. In the application filed under Section 33-C (2) of the Industrial Disputes Act 1947, the Labour Court directed the respondents herein to pay the difference in the salary, on account of reduction of the same. The High Court in CWP No.2419 of 1991 decided on 5.7.2011 also held that the reduction in the salary is not permissible, while further holding that the Municipal Committee has no right in law to reduce the pay scale, after his appointment letter has been issued. It was also held that the petitioner is entitled to receive pay in the scale, in which, he was originally appointed. Once a finding had been returned that the petitioner would be entitled to the pay scale, as mentioned in his letter of appointment, it became incumbent upon the respondents to comply with the said order and re-fix the pay of the petitioner in terms of his letter of appointment. It would be worthwhile to note that after the writ petition filed by the Municipal Council, Bhatinda, challenging the orders of the Labour Court was disposed of, the same was not challenged, meaning thereby that the observations made have become final between the parties.

8. In view of the judgment, having attained finality, the

respondents have no option, but to release the salary of the petitioner in the pay scale of Rs.325–450. The respondents had fixed the salary of the petitioner on the basis of its instructions issued in 1982, therefore, it cannot be said that the these had been inadvertently mentioned in the letter of appointment. The action of the respondents in reducing the pay of the petitioner, after he had been appointed and on the basis of instructions which came to be withdrawn subsequently, would not be sustainable. On the date the petitioner was appointed, instructions dated 28/01/1982 were in force, on the basis of which, the pay scale of the petitioner was fixed. If fresh instructions were subsequently issued re-fixing the pay by reducing the same, such instructions could not have been applied retrospectively to the detriment of the petitioner.

9. Therefore, in view of the above, this court is of the opinion that the petitioner is entitled to the pay scale, as per his letter of appointment and would be entitled to all consequential benefits of subsequent revisions in the pay scale thereafter. The petitioner would be entitled to all arrears of pay within a period of 3 months on receipt of certified copy of this order along with interest @ 6% per annum. In case the same is not released, the arrears of payment would carry an interest @ 9% per annum to be paid by the person responsible in making delay in payment.

10. The writ petition stands allowed accordingly.

April 25, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No