IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 116

Civil Writ Petition No.22241 of 2017(O & M)
Date of Decision: *September 28, 2017*

Joginder Singh

..... PETITIONER

VERSUS

The Financial Commissioner, Department of Cooperation, Punjab & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. Balwinder Singh Sehra, Advocate, for the petitioner.

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Jaspal Singh, J

The instant writ petition has been preferred by petitioner – Joginder Singh seeking issuance of a writ in the nature of certiorari, quashing order dated April 27, 2017 (Annexure P-8) passed by respondent No.1 – The Financial Commissioner, Department of Cooperation, Punjab and order dated November 02, 2015 (Annexure P-5) passed by respondent No.2 – The Registrar, Cooperative Societies, Punjab.

Petitioner retired on April 30, 2014 as per resolution dated April 28, 2014 on attaining the age of superannuation, from respondent No.3 – The Bhogiwal Agricultural Cooperative Multipurpose Society, Village Bhogiwal, District Sangrur (for short, 'Society'), after putting in 36 years of service. Retiral benefits of petitioner were calculated vide Resolution dated April 28, 2014 (Annexure P-1) passed by the Managing Committee of the Society. Meanwhile, Registrar, Cooperative Societies, Punjab issued instructions vide letter No.RCS/Credit/CAS/424 dated October 04, 2012 (Annexure P-2) to implement the revised pay scale to be paid to the employees of the Primary Agricultural Service Societies in the State of Punjab with a rider that Society should be in profit for the last three years and the total salary to be paid to the employees should not accede 75% of the gross income of the Society and the above expenditure will be made by the Society of its own sources. Petitioner served a legal notice dated March 02, 2015 (Annexure P-3) claiming enhanced pensionary benefits on the basis of instructions dated October 04, 2012 (Annexure P-2). As no decision was taken by the authorities on the legal notice, petitioner preferred CWP No.17577 of 2015 which was disposed of by this Court vide judgment dated August 24, 2015 with a direction to respondent No.2 that after associating the petitioner, a detailed speaking order be passed within a period of four months from the receipt of certified copy of the order.

Subsequently, respondent No.3 – Society decided legal notice of petitioner vide order dated October 05, 2015 (Annexure P-4) holding that he is not entitled to revised pay scale as per Annexure P-2 as Society was not in profit for the last three years.

Subsequently, pursuant to judgment dated August 24, 2015 passed by this Court, respondent No.2 also decided the legal notice of petitioner vide order dated November 02, 2015 (Annexure P-5) holding that there is no merit in the legal notice and petitioner is not entitled to revised pay scale and retiral benefits as per revised pay scale.

The aggrieved petitioner approached the Financial Commissioner by way of revision petition (Annexure P-6) under Section 69 of the Punjab Cooperative Societies Act, 1961 which was dismissed vide order dated April 27, 2017 (Annexure P-8).

While assailing the impugned orders (Annexure P-5 and P-8), learned counsel for the petitioner has vehemently argued that the same are not in consonance with the rules/instructions. The authorities have not taken into account that Society has been in profit for the years 2008-09, 2009-10 and 2010-11. As per the audit of the Society, gross income of the Society on March 31, 2011 was ₹ 6,45,452/- and expenditure on salary was ₹ 4,87,646/-, which is less than 75% of its gross income. As such, instructions Annexure P-2 are applicable to the case of the petitioner. Moreover, as per the balance sheet as on March 31, 2012, Society was in profit to the tune of ₹ 78,789/-. Learned counsel has argued that the impugned orders are illegal and liable to be set aside by way of acceptance of this writ petition.

This Court has heard learned counsel for the petitioner and gone through the record available but does not find any substance in the contentions raised by learned counsel for the petitioner.

The petitioner retired from the department of respondent No.3 on April 30, 2014 from the post of Secretary. The Society, vide resolution dated April 28, 2014, calculated gratuity and leave encashment of petitioner as per the service rules and petitioner agreed and satisfied with the amount. Meanwhile, respondent No.2 revised the pay scales of employees of Primary Agricultural Cooperative Service Society in the State of Punjab as per recommendations of 5th Pay Commission w.e.f. December 01, 2011. Petitioner issued demand notice dated March 02, 2015 claiming a sum of ₹ 6,40,945/- as retiral benefits. Pursuant to judgment dated August 24, 2015 passed by this Court, Society replied vide letter dated October 05, 2015 (Annexure P-4) that Society has already paid the retiral benefits to petitioner and nothing is payable. Vide impugned order dated November 02, 2015 (Annexure P-5), respondent No.2 hold that Secretary/petitioner agreed to repay the embezzled amount and accepted retiral dues to the tune of ₹ 2,31,091/- as leave encashment and ₹ 3,50,000/- as retirement gratuity. Moreover, Resolution dated April 28, 2014 includes the written acceptance of petitioner wherein he mentioned that he accepts the gratuity and leave encashment given by the society and will not raise any further claim regarding the same.

Though, it is the contention of learned counsel for petitioner that an employee of the Society had got recorded from petitioner that he was fully satisfied with the payment made/calculated to be paid to the petitioner vide aforesaid resolution, but a perusal of resolution dated April 28, 2014 clearly shows that the resolution itself was written by the petitioner himself. Petitioner accepted the amount as calculated vide resolution and as a token of his acceptance, he had signed the resolution. Moreover, petitioner has not denied the fact that he deposited an amount of ₹ 6,34,475/- against the embezzled amount. This Court is of the opinion that it is merely an afterthought that another employee got recorded his satisfaction to the amount of retiral dues. The authorities have passed the orders after hearing all the parties and petitioner cannot stay away from his own written consent recorded in the resolution.

In the light of what has been discussed above, there is no merit in the instant writ petition and the same is dismissed.

No costs.

(Jaspal Singh)
Judge

September 28, 2017
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No