

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

**CWP NO. 13407 OF 1997
DATE OF DECISION : 01.05.2019**

Baldev Singh

...Petitioner

versus

The State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vikas Singh, Advocate,
for the petitioner.

Mr. Abhay Pal Singh, AAG, Punjab.

Mr. D. V. Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate,
for respondents No.3 and 4.

ARUN MONGA, J. (ORAL)

1. The writ petition has been filed, *inter-alia*, seeking the following relief :

- i) respondents be directed to pay the salary along with interest at the rate of 18% as per the grade of Government;*
- ii) case for embezzlement be registered against the respondent No.4;*
- iii) the appointment of the respondent No.4 be quashed and the petitioner be ordered to be promoted as Secretary;*
- iv) during the pendency of the writ petition, the petitioner be granted extra-ordinary leave;*

v) impugned order Annexures P-16, P-17 and P-19 be quashed and during the pendency of writ petition, the recovery against the petitioner be stayed."

2. Learned senior counsel for respondents No.3 and 4 at the outset submits that as regards the relief of challenge to the appointment of respondent No.4, the same does not survive. During the pendency of present writ petition, the appointment was challenged before the Deputy Registrar under the Punjab Cooperative Society Service Rules, 1986. Vide an order dated 09.06.1995 (Annexure R-3/1) passed by Deputy Registrar, Cooperative Society, said appointment was upheld. The order passed by Deputy Registrar, Cooperative Society was not challenged any further and had since attained finality.

3. As regards prayer for registration of case against respondent No.4 qua embezzlement during the pendency of petition is concerned, the same does not survive, as it has become infructuous by efflux of time.

4. As regards the relief of grant of salary, learned counsel for the petitioner submits that in view of the conceded stand of respondent No.3 in para 3 of the written statement "that salary of the petitioner was though payable, but it was withheld owing to the fact that he refused to accept the same unless he is paid the same in government pay grade". The respondents admitted in the written statement that petitioner was entitled to

pay-scale of ₹900-1350/- at the relevant time. The relevant para of the written statement is extracted herein below :

"3. The petitioner refused to receive the pay in the pay scale of ₹900-1350/- but demanded the pay in the government grade. Therefore, the society could not make any payment to him. It is now only that the petitioner had received these salary upto 31.12.1991 which was deposited in his Savings Bank Account after he had furnished the account number to the society. Therefore, the managing committee of the society was and is always willing to make the payment of the arrears to the petitioner. However, the society has to deduct the amount embezzled by the petitioner for which the award has already been passed against him on 16.02.1990 and appeal as well as revision have also been dismissed."

5. The above clearly reflects that the respondents do not dispute the entitlement of petitioner for payment of salary but owing to his alleged adamancy to get salary in the higher pay grade, the same was not paid. Apart from that, the respondent/society has submitted that amount of alleged embezzlement committed by the petitioner, as held against him vide impugned order/award dated 16.02.1990 (Annexure P-16) is to be deducted from the salary to be paid.

6. I have gone through the impugned order/award and am of the opinion that it does not stand judicial scrutiny and is not tenable. The same has been passed despite noting and observing that the society has not produced any record to prove

the charge of embezzlement levelled against the petitioner since the relevant record had got washed out in the floods and was not legible. The impugned award was passed against the petitioner merely on the ground that the audit note produced by the society, though the same was not a substantive evidence, was to be taken as a gospel truth. A finding, therefore, was given that the petitioner had committed embezzlement.

7. Learned counsel for the petitioner submits that in the earlier round of litigation initiated by the petitioner, Labour Court had given award dated 16.02.1990 (Annexure P-16) in his favour, whereby the salary to the petitioner was directed to be disbursed as per the government grades applicable at the relevant time. The said award was unsuccessfully challenged in this Court which in turn upheld it vide judgment dated 28.11.2013 rendered in CWP No.9149 of 1994 titled as "The Bhagwanpur Cooperative Agricultural Service Society Limited v. The Presiding Officer, Labour Court Jalandhar and another". I am of the view that the petitioner is entitled to payment of salary as per Labour Court award dated 16.02.1990 (Annexure P-16).

7. In the premise, the impugned award dated 16.02.1990 (Annexure P-16) and the appellate order dated 28.11.2013 and revisional order dated 05.08.1997 (Annexure P-19) are set-aside. The respondents are directed to disburse the salary of the petitioner with effect from 01.01.1992 until the date of his termination i.e 05.02.1998 with interest @ 6% per annum.

8. With these observations, the writ petition stands disposed of.

(ARUN MONGA)
JUDGE

MAY 01, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No