

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19262-2016 (O&M)

Date of Decision:-31.01.2019.

Gulshan Kumar

.....Petitioner

Versus

Chandigarh Administration through the Secretary, Department of Local Government and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate for the petitioner.

Mr. Karan Vir Singh, Advocate for
Mr. J.S. Toor, Standing Counsel for U.T. Chandigarh.

Ms. Deepali Puri, Advocate for respondent No.2-MC.

ARUN MONGA, J. (Oral)

1.) The present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of *certiorari* to quash the order dated 09.06.2016 (Annexure P-10) and the order dated 23.08.2016 (Annexure P-13) which have been impugned herein. Vide the said orders, the petitioner was denied benefit of first extension in service after attaining the age of superannuation on turning 58 years.

2.) The lead contention of the petitioner is that the impugned orders are in contravention of the Notification dated 30.10.2015 (Annexure P-6), which envisages that extension in service is to be granted to those employees against whom either no prosecution sanction has been conveyed

or no departmental proceedings under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, are pending or contemplated.

3.) Learned Senior counsel for the petitioner submits that the sole ground of rejection, as reflected from the impugned order dated 09.06.2016, is that the petitioner is involved in a vigilance inquiry No.20/VIG/C, dated 29.05.2015, which was stated to be under investigation. He states that the petitioner submitted a representation dated 13.06.2016 (Annexure P-12), stating that he has never been involved in any such vigilance inquiry. The petitioner, in no uncertain terms, gave the following undertaking vide his said representation:-

“1. That I have not been charge sheeted under Rule 8 of Punjab Civil Services Rules punishment and appeals Act 1970.

2. I have not been awarded any major penalty ever three years before my retirement.

3. No criminal case and permission to prosecute me in criminal case is pending against me.”

4.) Learned Senior counsel submits that petitioner's case was totally covered by the Punjab Government Notification dated 30.10.2015, *ibid*, as adopted by Chandigarh Administration. The petitioner in his representation dated 13.06.2016 (Annexure P/12) also stated that FIR No.1 dated 13.01.2016 was, in fact, pending against one Sh. Amin Chand, who was his colleague. Therefore, the same had no significance qua the case of the petitioner. Learned Senior counsel points out that interestingly, the said Sh. Amin Chand was granted the benefit of extension of service on attaining the age of superannuation, despite pendency of a specific vigilance inquiry against him. The same is reflected from his extension order, Annexure P-

18, dated 12.05.2016. In particular, he points out that extension granted to Sh. Amin Chand was subject to the condition, that in case any prosecution sanction is conveyed in a criminal case registered against him vide FIR No.1 dated 13.01.2016, then the extension granted would be terminated.

5.) Notwithstanding, the petitioner's representation, on the other hand, was rejected summarily, vide impugned order dated 23.08.2016 (Annexure P/13), without making any inquiries with regard to the pendency of the vigilance inquiry. It was stated once again that he was being retired and relieved from the service, subject to the outcome of the vigilance inquiry, *ibid*.

6.) The respondents have filed their respective replies and the only stand taken therein is that the petitioner's case was considered and was rightly rejected as per the applicable rules and instructions No.1890-F II (8-2017)/732 dated 02.02.2017. Even though in the pleadings, reliance has been placed on these instructions but neither the same have been reproduced therein nor copy thereof has been placed on record. In addition to the written statement, an affidavit of one Ms. Asha Sharma, Inspector, P.S. Vigilance, Union Territory, Chandigarh has been filed, wherein it is stated that the FIR No.01 dated 13.01.2016, was registered with the Police Station Vigilance, U.T. Chandigarh; the role of the petitioner was also examined; it was found that the petitioner had made a mistake at the time of entry in the measurement book; his mistake did not cause any loss to the Government; he had no intention to commit any crime and that the department had sent cancellation report.

7.) Concededly, per office order dated 12.05.2016 (Annexure P-18), the colleague of the petitioner who was directly involved in an FIR, has

been granted the benefit of extension of service on attaining the age of superannuation. On the other hand, it is also admitted that after investigation of the role of the petitioner in the same FIR (though it was not registered against him), it was found that he was not guilty and a cancellation report was accordingly filed.

8.) I have gone through the respective pleadings of the parties. Having heard the learned counsel for the respective parties, I am of the view that the impugned orders dated 09.06.2016 (Annexures P-10) and 23.08.2016 (Annexure P-13) do not stand the judicial scrutiny and are not tenable.

9.) A bare perusal of the RTI information dated 11.01.2018 (Annexure A-1) wherein the information was sought with regard to the vigilance inquiry No.20/VIG/C dated 29.05.2015, it has been unequivocally stated that the FIR No.01 dated 13.01.2016 was registered against Sh. Amin Chand. As already noted the said Sh. Amin Chand, who was involved in the FIR/inquiry was given the benefit of extension of service on attaining the age of superannuation. Whereas, the petitioner was denied the same on the ground that a vigilance inquiry is pending, though not against him. It is rather intriguing that a person who was directly involved in the ongoing investigation vide FIR No.01 dated 13.01.2016 as also the vigilance inquiry, was given the benefit, but the petitioner, for no fault of his, had to suffer the consequences of the pendency of a vigilance inquiry qua his colleague. To be noted here that it is nowhere the case of the respondents that at the relevant time any departmental proceedings under Rule 8 of Punjab Civil Services (Punishment & Appeal) Rules were pending or even contemplated.

reason.

10.) With regard to the relief to be granted in the present petition, even though the petitioner was entitled for the same at the time of filing of the petition, however, during the pendency of the petition, the period of extension of 2 years has lapsed. Therefore, the benefit of extension in service cannot be granted at this stage. In view thereof, the present writ petition is partly allowed to the extent that impugned orders dated 09.06.2016 and 23.08.2016 (Annexures P-10 and P-13, respectively) are set aside, with liberty to the petitioner to seek appropriate remedy qua denial of the benefit of extension of service on attaining the age of superannuation.

11.) The learned Senior counsel states that the petitioner is entitled to compensation for wrongful denial of his right of extension in service after superannuation. A perusal of the writ petition and the prayer thereof reflect that the scope of the present writ petition was confined only to seek the extension in service beyond the age of superannuation. The right of the petitioner to seek compensation, if entitled, is left open to be resorted in appropriate proceedings, in accordance with law.

(ARUN MONGA)
JUDGE

January 31, 2019.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.