

Sr. No.229

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

**CWP No.24379 of 2016 (O&M)
Date of Decision: 23.07.2019**

Mukesh Chander Jaswal

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.D.Bawa, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Mr. Sanjiv Soni, Advocate,
for respondent No.3.

ARUN MONGA, J.(ORAL)

1. Petitioner herein is aggrieved against non-release of his salary with effect from 01.01.2014 and has filed the present petition seeking issuance of a writ in the nature of mandamus directing the respondents to disburse his salary with interest.

2. The petitioner initially joined the Municipal Corporation, Amritsar as a Legal Advisor on 24.06.1999. He retired on 30.06.2013 as Legal Advisor, Municipal Corporation, Amritsar. Vide order dated 19.07.2013 (Annexure P-1) passed by respondent No.3, he was engaged as retainer for attending the Municipal Corporation's cases in different Courts on contract basis on monthly remuneration of Rs.30,000/- initially for six months from 01.07.2013 or till the engagement of another retainer.

3. The petitioner had been providing and respondent No.3 had been availing of his services till 28.12.2016, when vide letter of even date Annexure P-15, he was asked to stop appearing in the local Courts on behalf of respondent No.3. The petitioner's remuneration from 01.01.2014 onwards was not paid despite demands. Hence, the writ petition.

4. Respondents No.1 and 2 filed a short reply stating that a resolution is required to be made by the Municipal Corporation and that any individual officer of the Corporation had no power to take any decision for extension of service of the petitioner.

5. Respondent No.3 filed separate counter admitting that the Commissioner, Municipal Corporation had engaged the petitioner on a monthly remuneration of Rs.30,000/- on contractual basis vide order dated 19.07.2013 (Annexure P-1) but pleaded that the same was neither got approved from the Government nor put up before the Corporation. It was admitted that petitioner's case for contractual assignment was referred to the Government vide letter dated 13.04.2015 (Annexure P-3) which was followed by letters dated 25.05.2015 (Annexure P-4) and dated 09.11.2015 (Annexure P-5). The Government had, vide letter dated 30.03.2016 asked respondent No.3 to get the necessary resolution passed from the Corporation to enable approval of contractual engagement. The matter was put up before the House, but the Municipal Corporation did not accord its approval. As per Government's Instructions dated 01.11.2011 (Annexure R-3/3), monthly remuneration of Rs.10,000/- can be paid to law

officers/legal advisor engaged on contractual basis. On these averments, the petitioner's claim was rejected.

6. I have gone through the record of the case and heard learned counsel for the parties.

7. It was a case of contractual engagement post retirement of the petitioner. The stand of respondents No.1 and 2 that it was a case of extension of service, is factually wrong and has to be simply ignored.

8. Admittedly, respondent No.3 had issued the order dated 19.07.2013 (Annexure P-1) and pursuant thereto, the petitioner had been providing his services which were duly availed by respondent No.3 till 28.12.2016. The petitioner's grievance is over non-payment of remuneration from 01.01.2014 onwards. Obviously for the earlier period, the agreed remuneration @ Rs.30,000/- has been paid to him.

9. There is nothing in the order dated 19.07.2013 (Annexure P-1) or even otherwise pleaded to show that the petitioner was informed that his engagement was subject to approval from the Municipal Corporation and/or from the Government. If any such approval was at all required, but for any reason, it was not taken/given, the petitioner cannot be faulted for that, penalized and denied his dues. Furthermore, the stand of respondent No.3 sounds contradictory. When in the same situation prevailing for the entire period of the petitioner's engagement, respondent No.3 paid him the agreed remuneration for the period prior to 01.01.2014, but was refused to pay him any amount as

remuneration for the subsequent period of his engagement.

10. Contractual engagement with the petitioner was for payment at the specific remuneration of Rs.30,000/- per month. The Executive Instructions dated 01.11.2011 (Annexure R-3/3) providing for payment of remuneration @ Rs.10,000/- per month cannot over-ride the specific contract. Reliance thereon by respondent No.3 is, therefore, misplaced.

11. As a result of the above discussion, the petition is allowed and respondent No.3 is directed to pay the petitioner the amount of his remuneration @ Rs.30,000/- per month from 01.01.2014 to 28.12.2016 with interest @ 6% per annum from the date of accrual till payment.

12. Let the needful be done within a period of 2 months from the date of receipt of a certified copy of this order, failing which a penal interest will be payable @15% per annum.

13. Allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

23.07.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No