

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26975-2017 (O&M)
Date of Decision:-06 .03.2020.

Rajinder Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Surinder Garg, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Mr. Joginder Sharma, Advocate for respondent No.3.

SANJAY KUMAR, J. (Oral)

CM-10775-CWP-2019

This application is ordered and the replication of the petitioner is taken on record.

CWP-26975-2017

The petitioner, while working as a Clerk/Junior Assistant in the service of the Municipal Council, Mansa, District Mansa, was placed under suspension, *vide* order dated 07.08.2017 (Annexure P-1) passed by its Executive Officer. Aggrieved thereby, he filed the present writ petition.

It is an admitted fact that the petitioner retired from service on 31.01.2018, while under suspension.

It appears that the suspension of the petitioner from service was

necessitated by the fact that he was placed under arrest and remained in

custody for more than 48 hours in connection with FIR No.11 of 2017 on the file of Police Station Vigilance Bureau, Bathinda. It is also an admitted fact that separate disciplinary proceedings were not initiated against him during the period that he remained in service, prior to his retirement upon attaining the age of superannuation.

Mr. Surinder Garg, learned counsel for the petitioner, would contend that the order of suspension is vitiated by the fact that the Executive Officer of the Municipal Council did not have the power or authority to place the petitioner under suspension. Reference in this regard is made to Section 39 of the Punjab Municipal Act, 1911, which provides that the power of suspension, removal or dismissal from service in relation to employees would vest only in the Municipal Committee. He would also press into service Section 4 of the Punjab Municipal (Executive Officers) Act, 1931, which deals with the powers of an Executive Officer and explicitly postulates that the powers conferred by Section 39 of the Punjab Municipal Act, 1911, shall not be exercised by an Executive Officer.

Learned counsel would also place reliance on the judgment of a learned Judge of this Court in **Municipality, Malout, District Faridkot Vs. Presiding Officer, Labour Court, Bathinda 1993(1) S.C.T. 250**, which affirmed the aforestated legal position with regard to an Executive Officer not being authorized to pass an order of suspension against an employee of the municipal body.

Per contra, Mr. Joginder Sharma, learned counsel for the Municipal Council, Mansa, would place reliance on the Division Bench judgment of this Court in **Kiran Shama (Smt.) Vs. State of Haryana and others, 1996 (5) SLR 670**, which held to the effect that mere passing of a

formal order of suspension by the competent authority subsequently would not mean that it was passed with retrospective effect, when such suspension flowed out of the deeming provision owing to detention of the employee in custody for a period exceeding 48 hours. However, it may be noticed that in that case, the order of suspension eventually came to be passed by the competent authority. That was a case relating to the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and Rule 4-A thereof dealt with the issue of suspension. Insofar as deemed suspension, relatable to detention in custody for a period exceeding 48 hours is concerned, the Rule is in *pari materia* with the provisions of Rule 4 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, which would have application to the petitioner. Therefore, irrespective of whether the suspension was by way of a deeming fiction or not, the order in that regard had to be passed by the competent authority, viz., the appointing authority.

In the case on hand, the only order of suspension was passed by the Executive Officer of the Municipal Council, Mansa, and not by its Committee, in terms of Section 39 of the Punjab Municipal Act, 1911. Therefore, no valid order of suspension was ever passed, be it before or after the placing of the petitioner under suspension. In that view of the matter, the period of suspension undergone by the petitioner cannot be held to be sourced in law and he is therefore deemed to have continued in service even during the said period.

The writ petition is accordingly allowed setting aside the order dated 07.08.2017 (Annexure P-1) passed by the Executive Officer of the Municipal Council, Mansa. The period of suspension undergone by the petitioner pursuant thereto shall be treated as period spent in service with all

consequential benefits.

No order as to costs.

(SANJAY KUMAR)
JUDGE

March 06, 2020.

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Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes