IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2104 of 2019

238 **Date of Decision:15.02.2023**

Surinder Kumar

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ashish Grover, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Malkeet Singh Balianwali, Advocate,
for respondent No. 4.

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JASGURPREET SINGH PURI, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of the order dated 31.08.2018 (Annexure P-6) by which the Director, Local Government had endorsed the decision taken by the Municipal Corporation, Ludhiana for withholding 25% pension of the petitioner, being contrary to the settled law.

The brief facts of the present case are that the petitioner was working as Assistant Corporation Engineer (civil) in the office of respondent No. 4 Corporation and he retired on 31.08.2012 from the aforesaid post. After his retirement, when his case pertaining to pension was processed, respondent

No.4 Municipal Corporation on 22.04.2013 (Annexure P-1) sanctioned only 75% of the pension as provisional pension and in this way 25% of the pension of the petitioner was withheld. Thereafter, vide Annexure P-3 on the basis of earlier writ petition filed by the petitioner, a letter was issued by the Department of Local Bodies, Punjab to the Commissioner, Municipal Corporation with regard to the aforesaid position pertaining to withholding of 25% of the pension on the ground that the petitioner did not submit Measurement Books (MBs) and that was the reason as to why 25% pension was withheld and a clarification was sought from the Municipal Corporation that as to whether the petitioner has committed any financial irregularity or not and directed that a report should be submitted in this regard within a period of one week. This letter Annexure P-3 is dated 18.01.2018 which was after a period of about five years after the retirement of the petitioner. The petitioner had earlier filed CWP No. 16541 of 2017 whereby this Court had directed the Director, Local Government to look into the grievance of the petitioner and while referring to the aforesaid writ petition, the petitioner vide Annexure P-4, wrote a letter to the Director, Local Government, Punjab that he has been given 75% provisional pension and he was not in possession of any MBs and he should be allowed 100% regular pension from the date of his retirement without any delay. Thereafter, even a legal notice was also served vide Annexure P-5.

In pursuance of the directions issued by this Court to the Department of Local Bodies, the impugned order Annexure P-6 was passed on 31.08.2018 by the Director, Local Bodies, Punjab whereby the Director, Local

Bodies had ordered that the release of 75% pension to the petitioner by the Municipal Corporation is endorsed by him. This order Annexure P-6 is under challenge in the present petition.

Learned counsel for the petitioner submitted that it is a case where the petitioner had retired on 31.08.2012 and there had been no show cause notice or charge-sheet or any kind of disciplinary proceedings against the petitioner and it was after his retirement that suddenly the Municipal Corporation sanctioned only 75% of his pension as a provisional pension and withheld 25% of the pension on the ground that at the time of retirement, he did not hand over some measurement books to his successor and unless the same are returned by him, the remaining 25% of the pension will not be paid to him. He submitted that such kind of hypothetical and vague reason given by the Municipal Corporation on the basis of which 25% of the pension has been withheld is totally contrary to the law especially in view of Full Bench judgment of this Court in **Ishwar Singh versus State of Punjab** 1991 (1) SCT 543 FB. He submitted that in the absence of any proceeding against the petitioner either by way of disciplinary or by way of any criminal proceeding etc., no such pension can be deducted from the pension of the petitioner since grant of pension is a Constitutional right which is protected under Article 300-A of the Constitution of India. He submitted that the action of the Municipal Corporation was totally contrary to the law. He further submitted that now when in pursuance of the directions issued by this Court, the Director, Local Bodies was asked to pass an order to look into the grievances of the petitioner then vide Annexure P-6 the Director, Local Bodies also did the same thing by passing an illegal order contrary to law. The Director, Local Bodies has endorsed the order passed by the Municipal Corporation, Ludhiana. He submitted that a perusal of the aforesaid impugned order would show that the Municipal Corporation has withheld 25% of the pension of the petitioner on the basis of the report of a Record-Keeper but did not conduct any disciplinary enquiry in that regard. Although some unilateral enquiry may have been conducted on its own end but so far as the present petitioner is concerned, he had specifically denied that he does not have any kind of MBs with him. Furthermore, it has also come up in the impugned order that when a clarification was sought by the Department of Local Bodies from the Municipal Corporation that whether any financial loss has been caused, it has been so stated in the order itself that no report on that count has been sent by the Municipal Corporation. It has further been stated in the impugned order that no such record to the effect that since when these MBs are not in circulation is available in the Accounts Branch and no bills are pending in the Municipal Corporation from which it could be ascertained that these MBs are involved. Still the impugned order has been passed by the Director, Local Bodies which is totally perverse and against the record and contrary to law. He submitted that the petitioner is entitled for 100% of his pension in view of the aforesaid facts and circumstances and directions be issued to the respondents to release the remaining amount alongwith interest.

On the other hand, Mr. Malkeet Singh Balianwali, learned counsel appearing on behalf of the respondent-Municipal Corporation, Ludhiana submitted that when the petitioner had retired, he had retained nine

MBs and he did not give the charge of the same to the successor and that was the reason as to why his 25% pension was withheld. He submitted that without the aforesaid MBs, the further communication with the contractors who had done the work could not be completed. He further submitted that even after the repeated requests made to the petitioner to return the MBs, the same has not been done. He further submitted that the competent authority/appointing authority of the petitioner earlier was the Director, Local Bodies and after the year 2005 it is the Secretary, Department of Local Bodies, Punjab and disciplinary action if any could have been taken at the end of the Government and not by the Municipal Corporation.

Ms. Akshita Chauhan, learned DAG, Punjab submitted that no disciplinary proceedings have been initiated against the petitioner but the Director, Local Bodies vide impugned order has endorsed the order of the Municipal Corporation on the ground that the petitioner did not return back the MBs at the time of his retirement.

I have heard the learned counsels for the parties.

The petitioner had admittedly retired on 31.08.2012. Admittedly no disciplinary proceedings or any kind of proceedings whatsoever were initiated against the petitioner at any point of time till date. After the retirement of the petitioner, the Municipal Corporation vide Annexure P-1 unilaterally withheld 25% of the pension of the petitioner and sanctioned only 75% as provisional pension. The reason which has been put-forth by the Municipal Corporation and the State of Punjab is that the petitioner did not hand over the Measurement Books (MBs). This Court is of the view that in the absence of any disciplinary proceedings or any other proceedings whatsoever against the petitioner at any stage, withholding of the pension of the petitioner which is a Constitutional right is without the authority of law. The petitioner has repeatedly denied the possession of the aforesaid MBs. He submitted that he has honourably retired from service on 31.08.2012 and therefore the order which have been passed by the Joint Commissioner/Municipal Corporation vide Annexure P-1 is contrary to the law laid down by this Court in ***Ishwar Singh's*** case (supra).

The arguments raised by learned counsel for the petitioner does carry weight.

Even a perusal of the impugned order which has been passed by the Director, Local Bodies, it has come up that it has been so stated that he has only relied upon the report of the Municipal Corporation and the Municipal Corporation has only relied upon the statement of a Record-Keeper and in the entire process it means that it is only on the report of the Record-Keeper that the petitioner has not returned the aforesaid MBs that the pension of the petitioner has been withheld. Neither there is any finding of fact by any authority nor any proceeding has been initiated against the petitioner before withholding his pension. Apart from the above, even the State Government had asked the Municipal Corporation that as to whether any financial loss has been caused to the Municipal Corporation due to the withholding of the MBs to which in the impugned order itself which has been so stated by the Director, Local Bodies that no such report has been sent by the Municipal Corporation and in this way it can be safely presumed that no financial loss has been caused to the Municipal Corporation with regard to the same by drawing adverse inference.

It is settled law that the right to get the pension is not the bounty of the State and it is a Constitutional right of property protected under Article 300-A of the Constitution of India. The same can be denied to any individual only under an authority of law. In the facts and circumstances of the present case, denial of 25% of the pension to the petitioner is impermissible and therefore without any authority of law.

Consequently, the present petition is allowed and the impugned order Annexure P-6 is hereby set aside. The respondent Corporation is directed to calculate the amount of pension which has been withheld by the Corporation from the time of his retirement till date and calculate the arrears of the same and thereafter shall be paid to the petitioner within a period of three months from today alongwith interest @ 6% per annum and in case the aforesaid amount is not paid to the petitioner within the aforesaid period of three months from today, then the petitioner will be entitled for future interest @ 9% per annum instead of 6%.

(JASGURPREET SINGH PURI)
JUDGE

February 15, 2023
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Whether speaking : Yes/No
Whether reportable : Yes/No