

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

235

CWP-2579 of 2019

Date of Decision:27.02.2023

Jagdish Kumar

....Petitioner

Versus

State of Punjab and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sarvesh Malik, Advocate,
for petitioner.

Ms. Lavanya Paul, DAG, Punjab
for respondents No.1 and 2.

Mr. Pawan Kumar, Advocate,
for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

The present writ has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of a letter dated 14.09.2018 (Annexure P-11) vide which it has been so written by the Director, Local Government Department, Punjab to the Municipal Council, Nabha that further action be initiated for registration of a complaint with the Magistrate regarding the embezzlement done by the petitioner, with a further prayer for issuance of a writ in the nature of *mandamus* directing the respondents to release the gratuity alongwith interest to the petitioner.

Learned counsel for the petitioner submitted that it is a case where the petitioner joined as Octroi Clerk in the respondent-Municipal Council on

08.09.1983. Thereafter, vide Annexure P-1 he was suspended on 07.11.2002 since there was an allegation of an embezzlement of an amount of Rs.5767/- only. However, just after one week thereafter, i.e. on 15.11.2002 (Annexure P-2) he was reinstated. The petitioner thereafter was charge-sheeted on 12.12.2002 vide Annexure P-3 to which the petitioner filed reply vide Annexure P-4. Thereafter, punishment order was passed on 27.12.2002 vide Annexure P-5 by which the annual increment for one year was stopped and it was recommended that the period of his suspension be treated as leave of kind due. The aforesaid punishment period expired after a period of one year and thereafter the petitioner retired on 31.08.2015. however, the aforesaid order of punishment was also sent to the Government of Punjab by the Municipal Council for seeking approval and no such approval has been given by the Government of Punjab till date. He submitted that after his retirement on 31.08.2015 he has not been paid his gratuity and it has been held without any justification and rather vide Annexure P-11 it has been so written by the Director, Local Government Department, Punjab to the Municipal Council for getting registration of a case against the petitioner and such a letter is not only unjustified but also totally without jurisdiction as the said letter has been issued in the year 2018 whereas the petitioner was charge-sheeted in the year 2002 wherein order of punishment had been passed and now after a long period of 16 years such kind of letter has been written which is impugned in the present petition and therefore the petitioner is entitled for the grant of gratuity alongwith interest.

On the other hand, Mr. Pawan Kumar, learned counsel appearing on behalf of the Municipal Council submitted that when the petitioner was

charge-sheeted and punishment order was passed, they had written number of times to the State Government for the purpose of seeking of approval but no approval has been granted till date. However, now in the year 2018 vide impugned Annexure P-11 the State Government has directed the Executive Officer, Municipal Council, Nabha to initiate action against the petitioner for registration of a complaint before the Magistrate. He submitted that however the aforesaid amount stood deposited by the petitioner at that point of time and that was the reason as to why gratuity has not been paid to the petitioner.

Ms. Lavanya Paul, learned DAG, Punjab however stated that the contesting party in the present case is the Municipal Council not the State Government.

I have heard the learned counsels for the parties.

The facts of the present case are very clear. The petitioner was charge sheeted in the year 2002 and the punishment order was passed in the same year, i.e. 2002 for stoppage of annual increment for one year only. The effect of the said order had extinguished in the year 2004 itself. The petitioner had deposited an amount of Rs.5767/- which was the alleged amount. The effect of the punishment order is already over. The petitioner retired on 31.08.2015. Now the gratuity of the petitioner has been withheld only on the ground that the State Government has not granted the approval and rather has asked the Executive Officer, Municipal Council to file a criminal complaint against the petitioner pertaining to the same cause of action which was pertaining to the year 2002. During the course of arguments, learned counsel for the petitioner submitted that even the police had already in the year 2002

investigated the matter and found that it is not a case where an FIR is to be registered since the petitioner had already deposited the alleged amount.

This Court is of the view that withholding of the gratuity by the Municipal Council is without the authority of law and there is no justification in this regard as to why after the retirement of the petitioner, his gratuity was withheld because the punishment order was passed in the year 2002 and the effect of the punishment order is over by now. So far as the impugned letter Annexure P-11 is concerned, the Department of Local Bodies, Punjab after a gap of 16 years did not have any authority to write to the Executive Officer in the year 2018 to file a criminal complaint against the petitioner before a Magistrate for an action pertaining to the year 2002 regarding which punishment order arising out of disciplinary proceedings have already been passed by the competent authority and more so for an amount of Rs.5767/- only.

In view of the aforesaid position, the present petition is allowed and the impugned letter (Annexure P-11) is hereby set aside. No such action can be taken against the petitioner after the elapse of about 21 years regarding registration of an FIR against him. So far as the other prayer of the petitioner for the grant of gratuity is concerned, the same is also justified since withholding of the gratuity is totally without the authority of law. In view of the same, the respondent Municipal Council is directed to pay the gratuity to the petitioner which accrued to him alongwith the interest @6% per annum within a period of four months from today. In case the aforesaid amount is not paid to the petitioner within the aforesaid period of four months from today,

then the petitioner shall be entitled for future interest @9% per annum instead of 6% per annum.

The facts and circumstances of the present case would also entitle the petitioner for the payment of costs which are quantified at Rs.10,000/-. The Municipal Council, Nabha shall also pay costs of Rs.10,000/- to the petitioner alongwith the aforesaid gratuity amount within the aforesaid period of four months from today.

(JASGURPREET SINGH PURI)
JUDGE

February 27, 2023

dinesh	Whether speaking	:	Yes/No
	Whether reportable	:	Yes/No