

Ghulam Jeelani Mir Vs Srinagar Municipal Corporation And Ors

Court: Jammu And Kashmir High Court (Srinagar Bench)

Date of Decision: March 16, 2020

Hon'ble Judges: Ali Mohammad Magrey, J

Bench: Single Bench

Advocate: J. A. Kawoosa, Moomin Khan, Sajad Ashraf Mir

Final Decision: Disposed Off

Judgement

1. In the instant petition, the petitioner has prayed for the grant of following relief(s) in his favour:

1. ISSUE an appropriate Writ, direction or order, quashing the communication dated 03.06.2017 and 08.06.2017, whereby the Gratuity

of the Petitioner has been fixed as Rs.4,68,402/- instead of Rs.6,60,083/- and Pension at Rs.6,167/- instead of Rs.8,890/-.

b) ISSUE an appropriate Writ, direction or order, directing the respondents to pay whole amount of Rs.6,60,083/- as Gratuity and Pension

of Rs.8,890/- as calculated and recommended by the Respondent Corporation in favour of the Petitioner from the date of his retirement and

subsequently pay all the arrears alongwith 18% interest in favour of the Petitioner;

c) ISSUE a Writ, direction or order, directing the respondents to grant service benefits for the intervening period in favour of the Petitioner

as has been held by this Hon'ble Court in its Judgment dated 16.10.2000 passed in SWP No. 1088/1998.

d) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the attendant facts and circumstances of the

case may be issued in favour of the Petitioner and against the respondents.

2. The case of the petitioner is that he was, initially, appointed as Syee in the Srinagar Municipality and assigned the duties and functions of Birth and

Death Reporter. It is stated that the petitioner was placed under suspension in the year 1978, but the order of suspension was never ever served upon

the petitioner, despite his repeated requests. No enquiry was initiated in the matter nor was the petitioner associated with any enquiry by the

respondents. His period of suspension was also not settled and during suspension, he was not paid the subsistence allowance too. The petitioner was

apprehensive that the respondents will hold an enquiry and that the case of his suspension will be decided. He waited for long years, but no enquiry

came to be conducted. The petitioner filed representations for the said purpose before the respondents, but to no avail constraining the petitioner to

approach this Court through the medium of SWP No. 1088/1998, which petition, vide judgment dated 16th of October, 2000, was disposed of directing

the respondents to take the petitioner back in service with a further direction that he shall be entitled only to the service benefits for the intervening

period and not to any monetary benefits. In compliance of the said judgment, as sated, the respondents issued order No. 1259 of 2001 dated 31st of

January, 2001, by virtue of which the petitioner was reinstated back in service and was held entitled to service benefits for the intervening period and

not to any monetary benefits. Subsequently, the petitioner reached the age of superannuation on 31st of March, 2017 and his case was forwarded by

the respondent No.2 to the respondent No.4 vide communication dated April, 2017, whereby the gratuity paid to the petitioner was calculated as

Rs.6,60,083/- and pension for 42 years of service was calculated as Rs.8,890/-. The respondent No.4 has, as stated, forwarded the case of the

petitioner to the Treasury Officer, Additional Treasury Tankipora, whereby the pension of the petitioner has been fixed at Rs.6,167/- and the petitioner

has been held entitled to an amount of Rs.4,68,402/- as Gratuity. On enquiry, the petitioner was told that his intervening period has not been counted

towards his service, as such, his Gratuity as well as pension has been reduced. Feeling aggrieved thereby, the petitioner has knocked at the portals of

this Court for the above stated relief.

3. On notice having been issued, the respondents have filed objections resisting and controverting the averments made by the petitioner in his petition.

It is stated that the fixation for the intervening period, i.e., from the date of suspension/ termination of the petitioner to the date when he is taken back

into service as per the directions of the Court have, however, been notional only and, therefore, the services of the petitioner for the period can neither

be verified nor counted in calculating the qualifying service for pensionary benefits in accordance with rules governing the field. It is also stated that

the pension sanctioning authority has to sanction pension and other retirement benefits in favour of any retiring officer/ official and that the amounts

actually admissible are, however, authorized by the Audit office to whom the pension cases are referred for such purpose.

4. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

5. The only question that arises for consideration herein this case is that whether the period for which the petitioner remained under suspension/

termination can be considered in calculating the pensionary benefits of the petitioner upon his reaching the age of superannuation.

6. The answer to the above framed question lies in the judgment dated 16th of October, 2000 itself passed by this Court in the earlier writ petition filed

by the petitioner bearing SWP No.1088/1998, wherein this Court, while disposing of the same, observed as under:

“... .

For the aforesaid reasons, writ petition is allowed and the order of termination sought to be quashed is quashed. The respondents are

directed to take the petitioner back in service. The petitioner shall be entitled only to the service benefits for the intervening period and not

to any monetary benefits.”

A bare perusal of the aforesaid directions passed by this Court makes it axiomatic that this Court had held the petitioner entitled to the service benefits

for the intervening period, but without any monetary benefits meaning thereby that the petitioner is entitled to all the service benefits for the period he

remained under suspension/ termination, including the post retiral benefits, like pension, gratuity, etc. In compliance of the directions passed by this

Court, the respondents issued order dated 31st of January, 2001, whereby the petitioner was taken back in service and was, accordingly, held entitled

to all service benefits for the intervening period, but without any monetary benefits. This order was issued in strict accordance with the directions

passed by this Court in SWP No.11088/1998.

7. On the basis of the aforesaid reinstatement order issued by the respondents, the respondent Corporation, on the superannuation of the petitioner

from service, keeping in view the mandate of the judgment passed by this Court in the earlier petition filed by the petitioner, appear to have calculated

the post retiral benefits of the petitioner, accordingly, including the gratuity at Rs.6,60,083/- and pension as Rs.8,890/- per month but, the respondent

No.4/ Deputy Director, Local Fund Audit & Pension, Srinagar, has reduced the said amounts to Rs.4,68,402/- (gratuity) and Rs.6,167/- (pension) in

terms of communications dated 3rd of June, 2017 and 8th of June, 2017 by not counting the intervening period towards his service. This action on the

part of the respondent No.4 is not countenanced by law, moreso, in view of the judgment dated 16th of October, 2000 passed by this Court, earlier in

point of time. Admittedly, the said judgment is still in vogue and has not been modified/ set aside by any higher forum and, thus, there is no scope left

for the respondent No.4 to take a view other than the one taken in the said judgment.

8. In view of the preceding analysis, the petition of the petitioner is allowed and the impugned communications dated 3rd of June, 2017 and 8th of June,

2017 are quashed. The respondent No.4 is directed to grant pension in favour of the petitioner in accordance with the calculations made by the

respondent Corporation vide communication dated April, 2017 (attached as Annexure-Ã¢â¬ÏEÃ¢â¬Ï, to the petition), as well as having regard to the judgment

dated 16 th of October, 2000 passed by this Court in the earlier petition filed by the petitioner by counting the intervening period towards his service for

post retiral benefits and, accordingly, forthwith issue fresh pension payment order in favour of the petitioner. Let the needful be done expeditiously,

preferably within two months from today.

9. Writ petition disposed of as above, alongwith all connected CMs.