

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7585 of 2009

DATE OF DECISION: AUGUST 26, 2015

UNION OF INDIA

...PETITIONER

VERSUS

JAGVIR SINGH & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes/No

PRESENT: MR.PUNEET GUPTA, ADVOCATE FOR THE PETITIONER.
NONE FOR RESPONDENT NO.1.

MR.SUNDER SINGH, ADVOCATE FOR RESPONDENTS NO.2 & 3.

M. JEYAPPAUL, J.

1. This writ petition has been preferred by Union of India aggrieved by the quashment of Annexure A-1 dated 9.8.2006 and Annexure A-14 dated 10.8.2006 and the direction issued to the writ petitioner to count the service rendered by respondent No.1 with the writ petitioner and release the pensionary benefits as and when respondent No.1 retires from service after confirmation of service.

2. Respondent No.1 joined as an Assistant in the Department of Telecommunication under the writ petitioner on 1.10.2002. Later on, an advertisement was issued by respondent No.2 herein for filling up the post of Scientist Grade-IV. Respondent No.1 applied for the same through proper channel, but he was informed by the writ petitioners that his application could not be forwarded due to a ban on forwarding such application. He, therefore, applied directly and was selected and offered

appointment as a Scientist Grade-IV vide order dated 3.4.2004. He submitted his “technical resignation” which was accepted by the writ petitioner herein on 2.4.2004 vide order Annexure A-5. It was, *inter alia*, stated therein that the applicant would be entitled to the benefits under Rule 26(2) of CCS Pension Rules, 1972.

3. It was contended by the writ petitioner that respondent No.1 was not entitled to get his past service counted as he had not got forwarded his application through proper channel. Admittedly, the application of 1st respondent for appointment as Scientist Grade-IV was not forwarded by the writ petitioner. Therefore, respondent No.1 cannot seek relief to count the past service for pensionary benefits, it is further submitted.

4. Learned counsel appearing for respondent No.1 contended that respondent No.1 approached the writ petitioner to forward his application through proper channel, but his request was declined. But his application for technical resignation submitted on 22.3.2004 after his selection was accepted by the writ petitioner on 2.4.2004 with a clear observation that respondent No.1 was entitled to the benefit under Rule 26(2) of the CCS (Pension) Rules, 1972. Therefore, respondent No.1 is entitled to get the past service counted for pensionary and retiral benefits.

5. It is found that respondent No.1 was appointed as an Assistant in Telecommunication Department on 1.10.2002. He submitted an application on 28.11.2002 for the post of Scientist Grade IV to the writ petitioner with a request to forward his application, but they rejected the plea for forwarding the application through proper channel.

6. The fact remains that respondent No.1 had put the writ

petitioner on notice that he had proposed to apply for the post of Scientist Grade-IV. After selection for the said post, he submitted his “technical resignation” on 22.3.2004 under Annexure A-4. The “technical resignation” so submitted by respondent No.1 was accepted as per Annexure A-5 on 2.4.2004. The writ petitioner has specifically observed thereunder that respondent No.1 was entitled to the benefit under Rule 26(2) of the CCS (Pension) Rules, 1972. For the query raised by respondent No.3 under Annexure A-9 as regards counting of past service respondent No.1 had put in with the writ petitioner, the writ petitioner reiterated their stand under Annexure A-10 dated 11.8.2004 that respondent No.1 was entitled to pension for the service he had put in with the writ petitioner under CCS (Pension) Rules, 1972 w.e.f. 1.10.2002, the date when respondent No.1 joined service as an Assistant with the writ petitioner. Even after the writ petitioner was informed by respondent No.3 under Annexure A-11 that certain conditions will have to be complied with by respondent No.1 to get the previous service counted, the writ petitioner under Annexure A-12 reiterated the stand taken earlier that respondent No.1 was entitled to all the benefits under CCS (Pension) Rules, 1972. Respondent No.3 shot-off a communication to the writ petitioner under Annexure A-13 dated 24.2.2006 seeking clarification regarding sharing of the liability flowed under the aforesaid Rules. Thereafter, the writ petitioner behind the back of respondent No.1 sent a communication dated 10.8.2006 (Annexure P-14) to respondent No.3, clarifying thereby that the “technical resignation” of respondent No.1 was not accepted and that, therefore, he was not entitled to the benefits under the CCS (Pension) Rules, 1972.

7. The fact remains that under the very nose of the writ petitioner, respondent No.2 had applied for the post of Scientist Office Grade-IV. Of course, the writ petitioner had not chosen to forward the application of respondent No.1. But the very fact that the writ petitioner had chosen to accept the “technical resignation” submitted by respondent No.1 with all benefits accrued to him under CCS (Pension) Rules, 1972 demonstrates the implied post facto approval accorded for submission of application to the respondent No.2 for the post of Scientist Grade IV. The writ petitioner cannot now turn around and say that respondent No.1 was not entitled to the benefits under CCS (Pension) Rules, 1972.

8. It is to be kept in mind that respondent No.1 might not have thought of joining the post of Scientist Grade-IV, had his “technical resignation” not been accepted by the writ petitioner. The writ petitioner having not clearly informed respondent No.1 at the time of his resignation that his “technical resignation” was not accepted and therefore, he was not entitled to the benefits under CCS (Pension) Rules, 1972 cannot arbitrarily modify the original order passed accepting the “technical resignation” submitted by respondent No.1 to suit their own convenience at a later point of time.

9. In our view, the Tribunal has rightly granted the relief sought for by respondent No.1. There is no merit in the writ petition. Therefore, the writ petition fails and it stands dismissed.

(M. JEYAPPAUL)
JUDGE

August 26, 2015
Gulati

(DARSHAN SINGH)
JUDGE