

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.9799 of 2015 and
CWP No.19532 of 2014
Date of decision: 14.12.2015**

Dr. Narinder Kaur

.....Petitioner(s)

Versus

Central Administrative Tribunal & Ors.

.....Respondent(s)

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

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. R.K. Arora, Advocate, counsel for the petitioner.

**Mr. Sanjeev Sharma, Sr. Standing counsel with
Mr.Vikram Vir Sharda, Additional Standing counsel
for respondents No.2 and 3.**

DARSHAN SINGH, J.

- 1. The present civil writ petition has been preferred under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari/mandamus quashing the impugned orders dated 18.3.2014 passed in Original Application No.59/CH/2013 and 13.5.2014 passed in R.A. No.060/59/2014 by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the Tribunal'). A writ in the nature of mandamus has also been**

prayed for directing the respondents to grant the petitioner the benefit of her previous service rendered in the State of Punjab towards her qualifying service for pensionary benefits and not to treat her new entrant for the service and to grant her the benefit of old Pension/GPF scheme with all the consequential benefits.

2. The petitioner was initially appointed as a Medical Officer and then as PCMS-I on 28.09.1999 in the Government of Punjab, Department of Health and Family Welfare on regular basis. The services of the petitioner were governed under the Punjab Civil Services Rules and her post was pensionable. She was the member of General Provident Fund (GPF) account. The regular deductions were being made from her salary towards the GPF. She also served on deputation with the Government Medical College and Hospital, Sector-32 Chandigarh (for short 'GMCH') from 9.5.2000 to 8.5.2003 as Senior Resident. She applied for the post of Senior Lecturer (Radio Diagnosis) at GMCH Sector-32, Chandigarh through proper channel in response to advertisement issued by the Union Public Service Commission (in short 'the UPSC'). The petitioner was selected and upon her selection, she resigned from her previous department under the Punjab Government on 8.9.2006 and joined at GMCH, Chandigarh on 9.9.2006 under the control and supervision of respondent No.3. She was not allowed the benefit of her previous service towards the qualifying service of pension and she was also not allowed the benefit of GPF scheme. She was put in the New Restructured Defined Contributory Pension Scheme which was meant for the new entrants in Govt. service w.e.f. 1.1.2004. She

moved various representations to the answering respondents. Ultimately, in reply to the legal notice dated 18.6.2012, the claim of the petitioner was declined. She preferred Original Application No.59/CH/2013. The same was dismissed by the learned Tribunal vide impugned order dated 18.3.2014. The review application was also dismissed vide order dated 13.5.2014. Hence, this petition.

3. The present writ petition has been contested by the answering respondents, inter alia, on the grounds that the petitioner has directly applied to the UPSC for the post of Senior Lecturer (Radio Diagnosis) on the basis of advertisement. She did not apply through proper channel. She has also not submitted the technical resignation to take up the new appointment with the respondents, rather she has submitted voluntary resignation. Thus, she forfeits her claim to count her previous service. It was further pleaded that she joined with the answering respondents as Senior Lecturer in the Department of Radio Diagnosis on 9.9.2006 on regular basis. The Government has introduced the New Pension Scheme w.e.f. 1.1.2004. It is further pleaded that the Chandigarh Administration, Finance Department, Chandigarh vide letter dated 3.3.2010 issued the instructions as under:

“As per instructions issued by the Chandigarh Administration, Finance Department, Chandigarh vide letter no.65/1/42/FII(12)/2009/1633 dated 03-03-2010 “Employees entered Central Government service/State Government Service on or before 31-12-2003

and were governed by the old pension rules, will be eligible for pensionary benefits as admissible under the rules applicable to the employees of Chandigarh Administration prior to 01-01-2004, in the situation where such employees submit technical resignation on or after 01-01-2004 to take up new appointment in Chandigarh Administration.”

4. It was pleaded that since the petitioner has neither applied through proper channel nor submitted the technical resignation to take up new appointment at GMCH, Sector-32 Chandigarh, she had forfeited her claim to count her previous service. With these pleas, it has been pleaded that her Original Application as well as Review Application have been rightly dismissed by the learned Tribunal and the present writ petition is liable to be dismissed with costs.

5. We have heard Mr. R.K. Arora, Advocate, learned counsel for the petitioner, Mr. Sanjeev Sharma, learned Sr. Standing counsel with Mr. Vikram Vir Sharda, learned Additional Standing counsel for respondents No.2 and 3 and have meticulously examined the paper-book.

6. Initiating the arguments, learned counsel for the petitioner contended that this fact is not disputed that the petitioner has previously rendered the regular service with the State of Punjab. The post held by her was pensionable. She was also having the GPF

Account Number and regular deduction was being made from her

salary. He contended that the petitioner has applied through proper channel. She had immediately intimated the department that she has applied for the post of Senior Lecturer (Radio Diagnosis) at GMCH, Sector-32, Chandigarh in response to the advertisement issued by the UPSC. The State of Punjab has not raised any objection. She also submitted the resignation which was accepted to take up the new assignment. Thus, he contended that the petitioner is entitled for counting her previous service rendered with the Punjab Government in view of Rules 3.12 and 3.17 of the Punjab Civil Services Rules Vol.II. He contended that the Tribunal has erred in concluding that the petitioner has voluntarily resigned from service rather her resignation was only to take up the new assignment. She was also relieved by the State of Punjab to join the new service. Thus, he pleaded that the petitioner is entitled to count her previous service with the State of Punjab towards the qualifying service and will be entitled to avail the benefit of the old Pension Scheme/GPF Scheme.

7. On the other hand, Mr. Sanjeev Sharma, learned Senior Advocate, with Mr. Vikram Vir Sharda, Advocate, learned counsel for respondents No.2 & 3 contended that the petitioner cannot take the benefit of Rule 3.17 of the Punjab Civil Services Rules as she has not applied through proper channel. He has placed on file the photocopy of the application form of the petitioner which bears the date as 11.3.2005 and has been received by the UPSC on 15.3.2005 and she has intimated the Punjab Government only on 16.3.2005. Thus, it cannot be stated that she has routed her

application through proper channel.

8. He further contended that she has also not tendered any technical resignation to take up the new assignment rather she has submitted the voluntary resignation due to the family circumstances. Thus, he contended that the previous service rendered by the petitioner cannot be counted and stands forfeited.

9. We have duly considered the aforesaid contentions.

10. The material facts in this case are not disputed. It is not controverted that initially the petitioner was appointed as a Medical Officer and then PCMS-I on 28.9.1999 in the Government of Punjab, Department of Health and Family Welfare, on regular basis. Her services were governed under the Punjab Civil Services Rules. She was also the member of General Provident Fund account and regular deductions were being made from her salary towards her GPF account. It is also not disputed that the petitioner continued her services with the Government of Punjab till the date of her resignation which was accepted on 8.9.2006 and on the next day i.e. on 9.9.2006, on account of her selection by the UPSC, she joined the services of respondents No.2 and 3 as Senior Lecturer (Radio Diagnosis) at GMCH, Sector-32, Chandigarh. So, there was no break in service of the petitioner.

11. The claim of the petitioner is being contested by the answering respondents on two grounds; firstly that she has not applied for her new appointment through proper channel and secondly, she has not tendered any technical resignation to take up the new assignment after her selection. The learned Tribunal has

also held in the impugned order that the instructions issued under Rule 3.17-A of the Punjab Civil Services Rules would not help the petitioner as the same do not cover the case where a person has submitted voluntary resignation but on appraisal of the material available on record and the legal position, we are unable to agree with the conclusion arrived at by the learned Tribunal.

12. As per the photocopy of the application form placed on record by the learned counsel for the contesting respondents, the application form bears the date as 11.3.2005. As per the stamp of the UPSC, it was received on 15.3.2005. Annexure RA-2 is the copy of the application/letter sent by the petitioner to the Health Secretary, Department of Health & Family Welfare, Punjab on 16.3.2005 wherein she has informed that she is applying for the post of Senior Lecturer (Radio Diagnosis) through UPSC at Government Medical College and Hospital at Chandigarh in response to the advertisement No.4, published in the Tribune dated 26.2.2005. She has further mentioned that in case of her selection for the said post and in case she joins the post, she will resign from the present post with the Government of Punjab. No doubt this letter/application has been sent by the petitioner to the Secretary Health, Government of Punjab on 16.3.2005 but vide this letter, she has duly informed that she is applying for the post of Senior Lecturer (Radio Diagnosis) at GMCH, Chandigarh through the UPSC. There is no material on record that while acting upon this letter, any restraint was put by the State of Punjab upon the petitioner. Meaning thereby the State of Punjab has impliedly consented to the move of the petitioner to apply for the

post in response to the advertisement issued by the UPSC. So, it cannot be stated that the petitioner has directly applied for the new post without any intimation to the Government of Punjab. It will be deemed that the petitioner has applied for the new post with due intimation to the State of Punjab and no objection thereof was raised by the State of Punjab at any point of time.

13. It also cannot be stated that the petitioner has voluntarily resigned from her services with the Government of Punjab. Annexure A-7 is the copy of her application/notice for resignation. In the beginning of this letter/notice, the petitioner has categorically mentioned that she has been selected for the post of Senior Lecturer in Department of Radio Diagnosis in the GMCH, Chandigarh through UPSC. Again in para No.3 of the letter/notice, she has mentioned that due to some unavoidable circumstances of her family she wants to join the above said post. Hence, she is resigning from the present post of Assistant Professor in the Department of Radio Diagnosis at Govt. Medical College, Patiala. On the basis of this notice for resignation, the Government of Punjab passed the following order Annexure A-8 which reads as under:

“Doctor Narinder Kaur, Senior Lecturer (Post name Assistant Professor) Radio Diagnosis, Govt. Medical College, Patiala on the recommendations of Punjab Public Service Comm, Patiala and in compliance of Govt. order No.1/147/05-2SS3/699-03 date 17.02.2006, made presence on 28.02.2006, who made request for resignation by serving three months notice on 08.06.2006 after getting selected by the UPSC. Hence, the request for resignation made by the Doctor Narinder Kaur, Senior Lecturer has been accepted from

08.09.2006 on this conditions that if any due of the Deptt. is pending then she will made payment of the same.

2. This order will be affected immediately.

*Date, Chandigarh
8.09.2006*

*Sd/-J.R.Kaundal,
Principal Secretary, Pb.Govt.
Medical Education and Research Deptt.”*

14. In the aforesaid order, it has been categorically mentioned that the petitioner has submitted her resignation after getting selected by the UPSC. After the conjoint reading of the notice for resignation and order Annexure A-8, there remains no scope of doubt that the petitioner has resigned from her services with the State of Punjab on account of her selection for the post of Senior Lecturer, Radio Diagnosis at GMCH, Sector-32, Chandigarh through UPSC in order to take up her new appointment. Thus, her resignation for all intents and purposes shall be considered to be the technical resignation in order to take up the new appointment with the permission of the State of Punjab.

15. The relevant portion of Rule 3.12 and 3.17-A of the Punjab Civil Services Rules Volume-II reads as under:

“3.12. The service of a Government employee does not qualify for pension unless it conforms to the following three conditions:-

First – The service must be under Government.

Second- The employment must be substantive and permanent.

Third – The service must be paid by Government.”

“3.17-A.(1) Subject to the provisions of rule 4.23 and

other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i to iv) x x x x x

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointed whether temporary or permanent under the Government where service qualifies for pension.”

16. As already mentioned, the material facts in this case are not disputed. It has not been disputed by the contesting respondents that the petitioner was previously serving under the Government of Punjab, so, her employment was regular and substantive. She was drawing the salary from the Government of Punjab. So, she fulfills the conditions provided under Rule 3.12 of the Punjab Civil Services Rules.

17. Rule 3.17-A(1)(v) provides that where resignation has been submitted to take up another appointment, whether temporary or permanent, under the Government, where service qualifies for pension with the proper permission, the previous service shall be counted towards the qualifying service. The petitioner has duly intimated the Government of Punjab for applying to the post of Senior Lecturer (Radio Diagnosis) at GMCH, Sector-32, Chandigarh. In the notice of resignation, she has categorically mentioned that she has been selected for that post and due to her family circumstances, she wants to join the said post and thereby she was resigning from her

present post. The resignation so tendered by the petitioner was accepted by the Punjab Government unconditionally which is the implied permission of the Punjab Government for the petitioner to take up her new appointment. Thus, the provisions of Rule 3.17-A (1) (v) stands duly complied with and the petitioner shall be entitled for counting her previous service rendered with the Government of Punjab towards her qualifying service for pensionary benefits under the old Pension/GPF Scheme. To support this conclusion, reference can be made to the Division Bench judgment of this Court **State of Punjab versus Hem Raj Mittal 1992 (2) SCT 116.**

18. Thus, keeping in view our aforesaid discussion, the present writ petition is hereby allowed. The impugned orders dated 18.3.2014 passed in Original Application No.59/CH/2013 and 13.5.2014 passed in R.A. No.060/59/2014 by the learned Tribunal are hereby set aside. A writ in the nature of mandamus is hereby issued directing the respondents to grant the petitioner the benefit of her previous service rendered with the State of Punjab towards her qualifying service for pensionary benefits under the old Pension/GPF Scheme with all consequential benefits.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

December 14, 2015
ps

**CM No.9799 of 2015 in
CWP No.19532 of 2014**

Dr. Narinder Kaur Versus Central Administrative Tribunal & Ors.

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Present: Mr. R.K. Arora, Advocate, counsel for the petitioner.

Mr. Sanjeev Sharma, Sr. Standing counsel with
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for respondents No.2 and 3.

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Since the main writ petition has itself been allowed, the
instant application has been rendered infructuous.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

**December 14, 2015
ps**