

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Sr. No.207

LPA-1959-2013

Decided on : 22.09.2015

Kula Nand

.... Appellant

VERSUS

State of Punjab and others

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE REKHA MITTAL

Present: **Mr.Rohit Ahuja, Advocate, for the appellant.**

Mr.S.K.Bansal, AAG, Punjab.

RAJIVE BHALLA, J.

The appellant challenges order dated 04.09.2013, dismissing his writ petition.

Counsel for the appellant submits that service of the appellant was terminated but as the termination order was set aside, he would be deemed to be in service from the date of his original appointment with the District Consumer Forum, Jalandhar. The new contributory pension scheme, therefore, cannot be made applicable to the appellant. Counsel for the appellant further submits that the appellant is also entitled to other reliefs flowing from his original appointment with the District Consumer Forum, Jalandhar. The writ petition has, however, been dismissed by holding that as the termination order was not set aside, the appellant is not entitled to any relief.

Counsel for the State of Punjab submits that the termination order was not set aside but the appellant was adjusted against a vacant post on compassionate grounds. The appellant was offered and accepted a fresh appointment and, therefore, cannot claim benefit of past service for any purpose whatsoever.

We have heard counsel for the parties and perused the impugned order.

The services of the appellant were terminated on 03.09.2009 by the President, District Consumer Disputes Redressal Forum, Jalandhar. The appellant filed CWP-14239-2003, challenging the order of termination. A perusal of the order passed in CWP-14239-2003 reveals that the appellant was ordered to be “adjusted” against a vacant post at Hoshiarpur by apparently taking a compassionate view of the matter but without setting aside the order granting back-wages or benefit of past service. The appellant was adjusted on the post of Sweeper-cum-Chowkidar w.e.f. 11.11.2004, as a fresh appointment. The appellant filed a writ petition impugning the correctness of memo dated 29.01.2013, making the new contributory pension scheme applicable to him and also prayed for regularisation of the period of service from 03.09.2003 (the date of his original termination) to 11.11.2004 (the date he was adjusted) and salary to be paid for this period.

The appellant's contentions have been duly considered and rejected by holding as follows: -

“Admittedly, the New Contributory Pension Scheme is to apply for entrants after 1.1.2004. The petitioner, who was initially appointed in the year 1998, his service were terminated in the year 2003. Such termination order dated 3.9.2003 was a subject matter of specific challenge in CWP No. 14239 of 2003. In that writ petition, the petitioner accepted an offer to be adjusted against a vacant post. Such offer having been accepted, it cannot be construed that the order of termination dated 3.9.2003 has been held to be bad in law. For all intents and purposes the petitioner shall be taken as a fresh entrant w.e.f. 11.11.2004 upon his adjustment against a vacant post at Hoshiarpur. Resultantly, even the claim of the petitioner as regards his new services w.e.f. 3.9.2003 to 11.11.2004 to be regularized, is without merit.”

A perusal of the facts reveals that the order of termination was not set aside. The appellant was ordered to be adjusted against a vacant post, apparently by taking a compassionate view of the matter. The appellant was offered and accepted a fresh appointment w.e.f. 11.11.2004 pursuant to his adjustment against a vacant post at Hoshiarpur. The order directing his adjustment does not grant back-wages or continuity of service. The appellant, therefore, cannot claim the benefit of his previous service to avoid the applicability of the new contributory pension scheme or claim back-wages etc.

Consequently, finding no merit in the appeal, the same is dismissed.

[RAJIVE BHALLA]
JUDGE

22.09.2015
shamsher

[REKHA MITTAL]
JUDGE