

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

LPA No.856 of 2013

Date of decision: July 09, 2015

Dr.Daizy Sood

----Appellant

Versus

State of Punjab and another

----Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr.V.K.Shukla, Advocate
for the appellant.

Mr.B.S.Chahal, DAG, Punjab.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 27.2.2013, whereby, the petition (CWP No.7233 of 2008) filed by the petitioner seeking directions to the respondents to count the previous service rendered by her as Medical Officer in the State of Haryana and accordingly refix her pay, has been dismissed.

The appellant was appointed as Medical Officer in the State of Haryana, Department of Health and Family Welfare on regular basis vide order dated 07.11.1984. While working in General Hospital, Kaithal, she came on deputation to the State of Punjab for a period of one year vide order dated 8.12.1998 (Annexure P-1). This deputation period was further extended on 30.1.2000 and 12.2.2001

(Annexures P-2 and P-3). During the period of her deputation, she was given the benefit of higher pay scale permitted to a Medical Officer on completion of 5/9/14 years of service. While on deputation, vide letter dated 26.12.2001 (Annexure P-4), she was offered appointment as Medical Officer in Punjab Civil Medical Services-I by the Punjab Government by way of transfer from Haryana Government. It was stated in the letter that the appointment will be initially temporary and the same would be subject to verification of her conduct and antecedents. The appointment was stated to be under Punjab Civil Medical Services Rules, 1982 (for short 'the 1982 Rules'). The appellant accepted the offer and joined at Primary Health Centre Daroli Bhai, Moga on 03.1.2002.

Sometime thereafter, the appellant submitted a representation claiming that she be granted the benefit of service rendered by her in the State of Haryana and that her pay be also protected. When no positive response was received, she filed the writ petition praying for directions to the respondents to count the previous service rendered by her in the State of Haryana for the purpose of protection of pay as well as grant of higher pay scale etc. For claiming this benefit, reliance was placed on letter dated 15.11.2000 (Annexure P-5) of the Government of Punjab, Department of Finance on the subject of protection/fixation of pay of Government employees appointed by transfer/open selection from one service to another.

The claim of the petitioner was disputed by the

respondents. In the written statement, while relying on her appointment letter dated 26.12.2001, it was stated that since the offer of appointment to the appellant was by way of fresh appointment and the basic pay was specified therein and the initial start as well, hence she was not entitled to protection of her pay drawn previously in the State of Haryana. Regarding the instructions dated 15.11.2000, it was stated that the said instructions are applicable to only such Government employees, who had rendered their service within the State of Punjab.

Learned Single Judge rejected the claim of the appellant and dismissed the writ petition. It was held that the instructions dated 15.11.2000 did not apply to the appellant.

The relevant part of the instructions dated 15.11.2000 on which reliance was placed by the appellant reads as under:

“5. In view of the above, it has been decided that:-

(i) An employee who has previously held substantively or officiated in the same post, or a permanent post on the same time scale or a post having identical three/four times pay scales or in which time bound placement/grant of higher pay are provided as in the new post, in a Government department or a body incorporated or not which is wholly or substantially owned by the Government, shall in addition to the protection of pay actually drawn in the corresponding scale as per provisions of Rule 4.4(b) of Punjab Civil Services Rules, Vol-I, Part-I count his previous service for the purpose of time bound promotion/grant of higher scale to the new post/service. This protection will be as a measure personal to him. He shall not be entitled to benefit of this time bound promotion towards seniority and shall be placed lower to those already higher up in the seniority list.

(ii) Where an employee is already getting senior/higher pay scale or earns a senior/higher pay scale in the previous service where a percentage

after he has joined the new post/service; pay as fixed in the senior/higher scale in the old service shall also be protected as a measure personal to him in the initial scale of the new post and he shall be placed in the senior scale when his turn comes for the same in the normal course.

Any employee shall not be entitled to take benefit of this protection towards seniority nor any official senior to him shall have any claim for re-fixation of pay on the basis of protection is allowed as above.

(iii) These instructions shall not apply in case of employees of various Public Sector Undertakings who are offered employment in the Government on compassionate grounds on being declared surplus or otherwise. They should be deemed to be joining service under the Government for the first time as at present.

(iv) These instructions will come into effect immediately. The cases decided on or after 15.12.1998 may be reviewed in consultation with the Finance Department in order to ensure uniformity."

Ld. Single Judge held that these instructions are an explanation to Rule 4.4(i) proviso below Rule 4.4(b) of the Punjab Civil Service Rules. Neither Rule 4.4 nor the instructions dated 15.11.2000 define the term 'Government'. Hence, reliance was placed on the definition of the term 'Government' as given in Chapter II of the Punjab Civil Services Rules. As per Rule 2.24, the term 'Government' means the Punjab Government in the Administrative Department. Thereby, the Ld. Single Judge concluded that in the light of the definition given in the Punjab Civil Service Rules, Government employees and Government service would mean an employee of the Government of Punjab and service of the Government of Punjab respectively. Rule 4.4 of the Punjab Civil Service Rules is applicable to Punjab Government employees only. The instructions dated 15.11.2000 expand the applicability of the

Rule not only to the Punjab Government employee but also those employees, who were or are employees of a body whether incorporated or not, which is wholly or substantially owned by the Government as is clear from para 5(i) of the instructions. This letter cannot be extended to an employee, who was earlier an employee of the State of Haryana. Merely because, the appellant was appointed under Statutory Rules by way of transfer would not entitle her to pay protection and service benefits of the service rendered in the State of Haryana. Moreover, the offer of appointment clearly indicated it to be a fresh appointment, which having been accepted by the appellant, she could not turn around and claim the benefit of her previous service in the State of Haryana.

Learned counsel for the appellant has not been able to demonstrate as to how the benefit of letter dated 15.11.2000 could be availed of by the appellant qua her earlier service in the State of Haryana.

We are in full agreement with the reasoning of the Learned Single Judge that the benefit of past service as per the letter dated 15.11.2000 cannot be availed of by the appellant, who was earlier serving in the State of Haryana.

Accordingly, there is no merit in the appeal and the same is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 09, 2015

gian