

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

LPA No. 1151 of 2015 (O&M)

DATE OF DECISION : 05.08.2015

Union of India and another

.... APPELLANTS

Versus

Monica Ravash

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Jagjot Singh Lalli, Advocate,
for the appellants.

* * *

SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 09.01.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 3605 of 2013) filed by Monica Ravash (respondent herein) has been allowed and appellant No.2 has been directed to consider the respondent for granting Short Service Commission in the Military Nursing Service (hereinafter referred to as 'MNS') within a period of two months from the date of receipt of a certified copy of the order. It has also been ordered that the respondent shall be entitled for her due seniority as per her merit in the merit list prepared by the selection making authority.

There is delay of 172 days in filing the instant appeal, and the

appellants have filed an application (CM No. 2429-LPA of 2015) for condoning the said delay. Though we do not find any sufficient ground to condone the said delay, yet in the interest of justice, we have heard learned counsel for the appellants on merits and have gone through the impugned order passed by the learned Single Judge.

In this case, on an earlier occasion in the year 2006, the respondent was selected to the post of Short Service Commissioned Officer in MNS. She joined the service on 29.12.2006. After joining the service, the respondent got married. After some time, keeping in view the deteriorating health condition of her parents-in-law, coupled with other compelling domestic circumstances, the respondent submitted her resignation from the said post, which was duly accepted by the appellants without any protest. She was relieved from service on 31.12.2007.

After a gap of more than two years, in February, 2010, the appellants advertised 400 vacancies for grant of Short Service Commission in the MNS as Nursing Officers. Since with the passage of time, the family condition of the respondent improved, she again applied for the advertised post. Her application was accepted. She disclosed all the facts, including the fact of her previous service. She was called to participate in the selection process. She appeared in the written examination, interview as well as for medical examination. Ultimately, she was selected for the post. However, the appellants did not issue her appointment letter. Nothing was disclosed to

her. When the respondent through her Advocate got served a legal notice dated 30.04.2011 (Annexure P-4) upon the appellants, her Advocate was informed vide letter dated 10.05.2011 (Annexure P-5) that after completing the process of selection, when her case was submitted to the competent authority for deciding as to whether she should be given a commission or not, the competent authority did not approve her case, therefore, no appointment letter was issued to her.

The respondent challenged the said letter/action of the appellants by filing the writ petition.

In the written statement, the appellants took a stand that keeping in view the earlier resignation submitted by the respondent and further keeping in view the fact that she would not be able to adjust herself in the service of the appellants, she cannot be given appointment.

The learned Single Judge, after considering the submissions made by learned counsel for the parties, allowed the writ petition after coming to the conclusion that merely because earlier the respondent had resigned from service of the appellants, she cannot be denied the appointment. It was held that neither any Service Rule was quoted nor any answer was given to the question as to how because of her earlier resignation, the respondent has become ineligible for appointment to the post.

Learned counsel for the appellants could not dispute the fact

that as far as the present selection process is concerned, on the basis of written examination and interview, the respondent appeared in the merit list prepared by the selection making authority. It is also not disputed that in her application, the respondent did not conceal any fact, including the fact with regard to her previous service. It is also undisputed position that application of the respondent was duly considered and after finding her eligible for the advertised post, she was called for written examination, and thereafter for interview. After her selection, the respondent was even called for her medical examination. In these facts, now the question arises for consideration is as to whether the appellants can deny the appointment to the respondent, for which she has been duly selected on merit, merely on the ground that on previous occasion, she had resigned from service of the appellants. It is also undisputed position that the previous resignation of the respondent was accepted by the appellants without any protest. To a specific question as to whether in the Service Rules, there is any such ineligibility on the part of a candidate, learned counsel for the appellants has answered in negative. However, he has referred to Para 5 of the A.I. 17/96, a rule for Short Service Commission, which provides that if candidate who has previously served as Short Service Commissioned Officer applies for the grant of a fresh commission, his case will be recommended for the grant of Short Service Commission on the basis of his previous service record. In our opinion, this rule neither improves the case of the appellants nor

empowers them to deny appointment to the respondent on the said ground. While interviewing a candidate, this fact may be taken into consideration, but after the interview, if a candidate has been selected on the basis of merit, then merely on the ground that earlier he/she resigned from the service of the appellants, appointment cannot be denied. In the instant case, as far as the past service of the respondent is concerned, there is no adverse entry with regard to performance of her duty. The only thing is that under the compelling family circumstances, she submitted her resignation, which was duly accepted by the appellants without any protest or adverse remark. There may be hundred of circumstances in the life of a person, due to which he/she takes decision. With the passage of time, those circumstances may improve. The respondent, in the instant case, cannot be denied the right of appointment on this ground, particularly when she participated in the selection process and got merit position in the merit list. Therefore, in our view, the appellants in a most illegal and arbitrary manner denied the appointment to the respondent. They even did not disclose the reason of denial to her. Further, when she got served a legal notice to know the reason of denial for appointment, vague reply was given. The learned Single Judge, after considering all these aspects, held the action of the appellants as illegal and arbitrary.

If a mistake is committed, that can be corrected and it is not a prestige point. The Union of India (appellants) while taking into

consideration the litigation policy should not have filed appeal against a well reasoned order. In our opinion, there is no illegality in the impugned order passed by the learned Single Judge, and we do not find any ground to interfere with the same.

Dismissed with costs of ₹ 25,000/- to be deposited by the appellants with the Haryana State Legal Services Authority.

(SATISH KUMAR MITTAL)
JUDGE

August 05, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE