

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

LPA No.608 of 2014

Decided on : 08.09.2015

Harbans Lal Malhotra

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN**

Present : Mr.Avinash Chander Jain, Advocate
for the appellant.
Mrs.Tanisha Peshawarria, DAG, Haryana

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

Mahavir S. Chauhan , J.

This intra-court appeal under Clause X of the Letters Patent is directed against order dated 28.01.2014, whereby learned Single Judge has dismissed Civil Writ Petition No.1026 of 2014 which was brought by the appellant with a prayer to quash order dated 02.12.2013 (Annexure P/8) passed by the Engineer-in-Chief, Irrigation & Water Resources Department, Haryana, Panchkula (respondent No.2) in compliance with the directions of this Court issued vide order dated July 26, 2013 in CWP No.11825 of 2013.

Stated in brief, facts and circumstances culminating into the instant intra court appeal indicate that the appellant had joined the Department of Public Works, Dadri, as a Junior Engineer, in the

year 1957. He absented from duty from 16.06.1976 to 29.01.1992. He was allowed to join his duty on January 30, 1992. However, a charge-sheet was served upon him on March 01, 1993 on the allegation of having remained un-authorisedly absent from duty for the afore-stated period. An enquiry was held wherein the allegation levelled against the appellant was established, and the punishing authority agreeing with the finding of the Inquiring Authority, passed order dated January 29, 2002 (Annexure P/4) thereby ordering that period of absence from duty from 16.06.1976 to 29.01.1992 would be treated as interruption in service in terms of Rule 3.17-A of Punjab Civil Services Rules Vol.II.

For the reasons best known to the appellant, order dated January 29, 2002 was not challenged by way of an appeal or other proceedings. Instead, he filed CWP No.11825 of 2013 seeking a direction to release his retiral benefits. In that writ petition, vide order dated July 26, 2013, respondents were directed to consider the case of the appellant and pass a speaking order.

Engineer-in-Chief, Irrigation & Water Resources Department, Haryana (Panchkula), in compliance of the directions of this Court, passed order dated December 02, 2013 (Annexure P/8) to the following effect:-

“That after careful consideration of all the facts and circumstances of the case the competent authority i.e. Engineer-in-Chief, Irrigation Department Haryana, Chandigarh vide order No.404-09/6 DC dated 29.01.2002 decided to treat the period of absence of the JE w.e.f. 16.06.1976 to 29.01.1992 as interruption in service in terms of Rule 3.17-A of

Punjab C.S.R Vol.II. The order dated 29.01.2002 has already attained finality as same was never challenged by the petitioner.

7. That Rule 3.17-A(2) is reproduced as under:

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

(2) An interruption in the service of a Government employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.”

That since vide order dated 29.01.2002 the benefit of past service of the petitioner was forfeited, thus his service period was only of 2 years approximately i.e. 30.01.1992 to 28.02.1994. Thus in view of the above facts and circumstances of the case, Sh. Harbans Lal Malhotra JE (retired on 28.02.1994) is not entitled for any retiral benefits. I order accordingly.”

To assail correctness of order dated December 02, 2013, the appellant preferred CWP No.1026 of 2014 which has been dismissed by the learned Single Judge vide order dated 28.01.2014.

We have heard learned counsel for the appellant.

It is contended on behalf of the appellant that the respondents having permitted him to join his duty w.e.f. January 30,1992, the period of his absence has to be taken into account for commutation of his retiral benefits.

The contention in our considered opinion, is fallacious and is liable to be rejected.

The learned Single Judge has dismissed the claim of the appellant by observing as under:-

“It is the submission of the counsel for the petitioner that the impugned order is not sustainable in the light of the fact that the petitioner had all through been representing to the respondents for the grant of retiral benefits which till date have not been released to him. She contends that after the joining of the petitioner with effect from 30.01.1992, the

Commissioner and Secretary to Government of Haryana had communicated to the Chief Engineer that the period of his absence should be treated as a leave without pay. The said aspect was not communicated by the Engineer-in-Chief to the Superintending Engineer, Loharu Water Services Circle, Bhiwani vide letter dated 01.03.1993. The Superintending Engineer who was a subordinate officer has wrongly entered in the service book of the petitioner that the period of absence of the petitioner be treated as willful absence and interruption in service. Reference has been made by her to the inter-departmental communication which related to the case of the petitioner for grant of retiral benefits to contend that although the respondents have been considered the claim of the petitioner for grant of retiral benefits but never finalized it. Faced with these situations, petitioner had filed CWP No.11825 of 2013 which was disposed of by this Court vide order dated 26.07.2013 (Annexure P-7) directing the Engineer-in-Chief, Irrigation Department, Haryana to take the final decision on the claim of the petitioner for retiral benefits by passing speaking order. She, on this basis, contends that the impugned order dated 02.12.2013 (Annexure P-8) cannot sustain and deserves to be set aside. However, she has very fairly stated that the order dated 29.01.2002 (Annexure P-4) passed by the Engineer-in-Chief, Haryana Irrigation Department, has not been challenged by the petitioner either by way of appeal or through any judicial proceedings.

I have considered the submissions made by the counsel for the petitioner and with her able assistance have gone through the records of the case.

The basic reason as to why the prayer of the petitioner in the petition cannot be accepted is the order dated 29.01.2002 passed by the Engineer-in-Chief, Irrigation Department, Haryana which imposed punishment of forfeiture of past service by invoking Rule 3.17-A. The said order has attained finality as the same was never challenged by the petitioner. If the past service had been forfeited, the period of service to the credit of the petitioner comes to a little more than two years i.e. 30.01.1992 to 28.02.1994 which would not be enough for the grant of any retiral benefit.

In any case, there is an unexplained and

unjustified absence on the part of the petitioner for a prolonged period of about 16 years from duty i.e. 16.06.1976 to 29.01.1992 and during this period the petitioner had neither represented nor sought for extension of leave once the initial application for leave extension of the petitioner was rejected by the competent authority. The conduct of the petitioner itself disentitles him to the equitable relief which he is claiming under the extra-ordinary writ jurisdiction of this Court.

Impugned order dated 02.12.2013 (Annexure P-8) passed by Engineer-in-Chief, Irrigation Water Services Department, Haryana, respondent No.2 being in accordance with law does not call for any interference by this Court.”

As aforesaid, vide order dated January 29, 2002, the period of absence of the appellant w.e.f. June 16, 1976 to January 29, 1992 was treated as interruption in service and according to Rule 3.17-A *ibid*, this amounted to forfeiture of the past service rendered by the appellant.

In this view of the situation, the appellant was left with only 02 years of service to his credit after he was allowed to join the duty on January 30, 1992, and, thus, did not have requisite qualifying service entitling him to retiral benefits.

In view of the above, no fault can be found with the well reasoned order passed by the learned Single Judge, and consequently, appeal fails and is dismissed.

No costs.

[Satish Kumar Mittal]
Judge

[Mahavir S. Chauhan]
Judge

08.09.2015

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