

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

**Regular Second Appeal No.160 of 2015 (O&M)
Date of decision:13.03.2015**

Smt. Tripat Kaur

.....Appellant

Versus

State of Haryana and others

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gurvinder Singh, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment/order dated 12.09.2014 passed by the District Judge, Ambala, whereby appeal filed by her against the judgment and decree dated 11.01.2005 passed by the Civil Judge (Junior Division), Ambala, has been dismissed on the ground of limitation.

Case of the plaintiff-appellant was that she had been serving in different Civil Hospitals, Primary Health Centres w.e.f. 1966. She was suffering from several diseases, therefore, she had to accompany her husband, who was working in the Army. On 31.03.1995, she received a letter from the department to join her duties. She filed reply to the said notice stating that she was ready to join her duties. But, she was not allowed to join on one pretext or the other. Thereafter, she served a legal notice dated 01.08.2002 upon the defendant-department, but of no use. Ultimately, she filed the present suit seeking entire arrears of salary and other benefits of service, including G.P. Fund and gratuity etc.

Upon notice, the defendants-respondents filed written statement

and controverted the allegations levelled by the plaintiff. It was submitted that the plaintiff-appellant was posted at PHC, Kalanaur, under CHC Mustafabad (Yamuna Nagar). She joined her duty on 12.08.1987. However, she remained absent from duty time and again w.e.f. 13.11.1987 to 02.07.1991. She was charge-sheeted on 30.12.1988 under Rule 7 of Punishment and Appeal Rules, 1987. Thereafter, vide order dated 03.11.1992 passed by the Director General, Health Services, Haryana (conveyed to the plaintiff vide letter dated 08.12.1992), punishment of stoppage of two increments with cumulative effect had been imposed upon her. She again remained absent from duty w.e.f. 09.07.1992 to 13.07.1992, 15.09.1992 to 20.11.1992, 21.11.1992 to 12.08.1993 & 12.10.1993 to 11.11.1993. She sent an application for grant of leave w.e.f. 12.12.1993 to 09.02.1994, which was rejected by the then S.M.O., PHC, Mustafabad and she was directed to join her duty after getting permission from the competent authority, but she did not comply with the same. Despite many communications sent to her by the Director General, Health Services, Haryana directing her to join duty and despite permissions being granted to her, she did not join her duty. Thereafter, the plaintiff-appellant made an application dated 16.08.1993 for voluntary retirement. Vide letter dated 02.12.1993, she was informed that she had only 16 years qualifying service to her credit and if, she did not want to serve, she may resign from service. As per Government instructions dated 24.10.1972, since the plaintiff-appellant remained absent from duty for more than five years, it amount to automatic resignation from the service. It was further submitted that vide memo dated 28.02.2003, the plaintiff was served charge-sheet under Rule 7 of Punishment and Appeal Rules, 1987. The plaintiff-appellant never joined her duty after 1995, therefore, there was no question to permit her to join the

same.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to decree for declaration on the ground taken in the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable in the present for? OPD
3. Whether the suit of the plaintiff is pre-mature at this stage? OPD
4. Whether the plaintiff has got no locus standi to file the present suit? OPD
5. Whether the plaintiff has not come to the court with clean hand? OPD
6. Whether the plaintiff has no cause of action to file the present suit? OPD
7. Relief.

Before the trial Court, the defendant-department had examined Dr. Sukh Dev Singh (DW-1), who tendered his affidavit as Ex.DW1/A. In his cross-examination, he admitted that the plaintiff was not given the G.P.F. amount. They received a legal notice dated 27.08.2002 from the plaintiff, whereby she (plaintiff-appellant) had only demanded the G.P.F. amount. In view of the fact that the plaintiff-appellant had remained absent for more than five years and as per the Government instructions dated 24.10.1972, it amounted to automatic resignation from service, the suit was decreed by giving a direction to the defendant-department to release the G.P.F. amount deposited in account of the plaintiff along with interest up to date as per

dismissed on the ground of limitation as there was delay of 3381 days in filing the same.

After going through the impugned judgment/Order(s) passed by both the Courts below, it transpires that after joining service in the year 1987, the plaintiff-appellant was charge-sheeted on 30.12.1988 and punishment of stoppage of two increments with cumulative effect had been imposed upon her vide order dated 03.11.1992. Her specific case was that she remained ill and therefore, she had accompanied her husband, who was working in the Army. Finally, she gave a legal notice dated 27.08.2002 to the department to release her G.P.F. amount. Since the plaintiff remained absent for more than five years, no order with regard to payment of any arrears of salary etc. is required to be passed. Moreover, pursuant to the judgment passed by the trial Court, the G.P.F. amount has since been released to her.

Having examined the impugned judgment/order(s), no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

13.03.2015
ajp

(RITU BAHRI)
JUDGE