

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

**Civil Writ Petition No. 350 of 1996 (O&M)
Date of Decision: 09.11.2016**

Dr. V.V. Gopi Chand Patnaik

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mrs. Sudeepti Sharma, Deputy Advocate General, Punjab
for the respondent/State assisted by Mr. Dhiraj, Sr. Assistant,
Department of Medical Education & Research, Punjab.

JASWANT SINGH, J. (ORAL)

Petitioner-Dr. V.V. Gopi Chand Patnaik was selected and appointed as Lecturer in Anatomy in September 1981 in the Health Department, Punjab. He was promoted as Assistant Professor and while working in Medical College, Faridkot, he was sent on deputation for one year to Medical College, Chandigarh in August 1991. On completion of deputation period, the petitioner requested for his repatriation, which was not acceded to, resultantly the petitioner submitted his resignation in October 1992 to his parent Department i.e. Department of Medical Education and Research, Government of Punjab. On 31.12.1992, the petitioner was relieved by the Government Medical College, Chandigarh. Before any decision on the resignation of the petitioner, he was taken by his parent Department, the petitioner vide application dated 01.02.1993 withdrew his resignation letter. The parent Department accepted the

aforesaid request vide order dated 02.09.1993, and while permitting the withdrawal of the resignation, directed him to report for duty at Government Medical College, Amritsar on 08.09.1993. The petitioner, however, was not permitted to join duty at Amritsar since there was no post available, as is apparent from the communication dated 24.09.1993 (**Annexure P-2**).

In response to the memo dated 24.09.1993 (**P-2**), the Government passed a fresh order dated 07.04.1994 (**Annexure P-3**) posting the petitioner as Assistant Professor (Anatomy) at Guru Gobind Singh Medical College, Faridkot. The petitioner, accordingly, was permitted to join duty on 24.04.1994 at Faridkot.

In the present petition, the prayer is for quashing the order dated 08.03.1996 (**Annexure P-9**) whereby for the period of interruption i.e. from 01.01.1993 to 24.04.1994, salary of the petitioner has been denied, as also the prayer for regularization of that interruption period.

During the course of hearing on previous dates, realizing that the period of interruption cannot be counted as qualifying service of pension in the light of provisions of Rule 7.5(6) of the Punjab Civil Services Rules Vol-I, Part-I as re-produced in the impugned order (**P-9**), the petitioner had given up his claim for counting that period as qualifying service for pension, however, restricted his prayer for grant of salary for the period from 03.09.1993 to 24.09.1994 i.e. from the order of his posting at Government Medical College, Amritsar till the date he was permitted to join at Faridkot.

Learned counsel for the petitioner submits that keeping in view the scheme of the Rule 7.5, the petitioner cannot, at least, be denied salary for the period for which he was available to join, although not permitted to join in compliance of the posting order.

In response to the restricted claim, an additional affidavit dated 09.09.2016 has been filed, whereby even the claim for the salary for the limited period from 03.09.1993 to 24.04.1994 is contested in the light of the provisions of Rule 7.5 (4) which reads as under:-

“7.5 (4) The appointing authority may permit a person to withdraw his resignation in public interest on the following conditions, namely:-

X X X X X
(v) that the post, which was vacated by the Government employee on the acceptance of his resignation or any other comparable post is available.”

Learned counsel for the parties heard.

A perusal of the aforesaid Rule 7.5 (4) of the Punjab Civil Services Rules clearly reveals that it was incumbent upon the appointing authority to permit the withdrawal of resignation of the petitioner subject to the post of Assistant Professor (Anatomy) available or any other comparable post being available for adjustment. Therefore, when the resignation of the petitioner was permitted to be withdrawn vide order dated 02.09.1993 and ordered him to be posted at Medical College, Amritsar against a vacant post, the requirement and compliance of the Rule stood completed. Therefore, the petitioner could not legally have been denied the salary with effect from the date he submitted his joining report on 08.09.1993. It is not the fault of the petitioner that there was no vacant post available for his adjustment, as it was the responsibility of the Government before permitting withdrawal of resignation to ensure availability of a vacant post for the posting of petitioner. There is no other Rule shown, which would deny payment of salary atleast for the period commencing from 08.09.1993 to 24.04.1994

when petitioner was actually permitted to join his duties. Accordingly, the claim of the petitioner limited to the aforesaid extent is liable to be accepted.

In view of the above, the present petition is partly allowed and order dated 08.03.1996 (**P-9**) is set aside. The petitioner is entitled to release of his salary for the period from 08.09.1993 till 24.04.1994 with all consequential benefits like counting towards qualifying service, increments and benefit towards subsequent revision etc. as the interruption in service is to be held only for the period form 01.01.1993 till 07.09.1993. The monetary/necessary relief shall be released to the petitioner within four months from today i.e. on or before **09.03.2017**, failing which he shall be entitled to interest @ 12% per annum on the amounts due to be paid by the guilty official(s) concerned. The petitioner is also entitled to costs of Rs. 20,000/- to be paid by **9th March, 2017**.

November 09, 2016

'dk kamra'

**(JASWANT SINGH)
JUDGE**

Whether Speaking/reasoned	Yes
Whether Reportable	No