

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

**CWP No.22518 of 2014 (O&M)
Date of decision : October 21, 2016**

Harbhajan Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. H.P.S. Rahi, Advocate for the petitioner.

Mr. Rajat Bansal, AAG, Punjab.

Mr. Parveen Chauhan, Advocate for
Mr. R.G.S. Saini, Advocate for respondent Nos.5 and 6.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Heard.

Petitioner Harbhajan Kaur was appointed as J.B.T. Teacher on 20.02.1990 in Khalsa Senior Secondary School, Kharar (Mohali)-respondent No.5. She was suspended on 06.04.1998.

It comes out that the Management of the School wanted to dismiss her from service. Since, the prior approval of the Director Public Instruction(s) {in short 'the DPI(s)}', Punjab was required under Rule 4(1) of the Punjab Privately Managed Recognized Schools Employees (Security of Service of Employees), Act, 1979. Therefore, the management moved an application on 19.05.1999 before the DPI(s), Punjab for according the

approval for dismissing the petitioner from service. The DPI(s) vide order dated 14.10.2000 (Annexure P-2) declined the said permission to the Management.

It comes out from the file that after the declining of the said permission, the Management passed the order dated 03.11.2000 (Annexure R-1/1), whereby the petitioner was dismissed from service w.e.f. 04.04.1998. At the same time, the School-respondent No.5 filed an appeal on 10.12.2000 before the Punjab State School Tribunal, Chandigarh, against the order dated 14.10.2000 passed by the DPI(s), Punjab, wherein the permission sought by the Management for dismissing the petitioner from service was declined. The said appeal was also dismissed by the Punjab State School Tribunal, Chandigarh on 23.01.2002 (Annexure P-3).

The Management preferred a writ petition bearing CWP No.15859 of 2002 before this Court, which is still pending. It comes out that on the verbal orders of this Court, the petitioner was allowed to join the services on the initial scale, vide order dated 01.10.2002 (Annexure R-1/2). Thereafter, the petitioner vide letter dated 29.05.2008 (Annexure R-1/3) tendered her resignation on the ground of her ill health. At the same time, she prayed that in case, she is found eligible for pension or other Government benefits from the Government on the basis of service, the same shall be granted to her. She also claimed GPF. Her resignation was accepted by the Management, vide letter dated 04.07.2008 (Annexure P-4).

It also comes out that the petitioner has also filed CWP No.4802 of 2005 before this Court, claiming the arrears of pay, disputing the grant of initial pay scale granted to her. The said writ is lying admitted.

By way of filing the present writ petition the petitioner seeks benefits of pension, which is admissible to her under Rule 8 of the Punjab Aided School (Security of Service Act, 1974) as amended up to 15.02.2000 and the Punjab Privately Managed Recognized Aided Schools Retirement Benefit Scheme, 1992.

The factual position is not disputed. It comes out that in the present case, the prior permission of DPI(s), Punjab was required to dismiss the petitioner from service and the same was declined. However, when the permission was declined, the Management passed the order on 03.11.2000 (Annexure R-1/1), dismissing the petitioner from service. The said order is patently illegal and is liable to be ignored.

After passing the said dismissal order, the Management approached the Punjab State School Tribunal, Chandigarh, against the order dated 14.10.2000 (Annexure P-2) of the DPI(s), Punjab, which maintained the order of DPI(s), Punjab and the writ against the said order of Punjab State School Tribunal, Chandigarh, is still pending before this Court. The order of declining the permission to dismiss the petitioner has not been set aside so far. Now, the fact remains that thereafter, the petitioner was allowed to join the service and she continued to work till 04.07.2008 when her resignation on the health ground was accepted. In the resignation letter dated 29.05.2008 (R-1/3), the petitioner requested for pension, if she is found eligible for the same.

Learned counsel for the petitioner has relied upon the Rule 8 of the Rules *ibid*, wherein an employee is entitled to pension under the scheme after completion of 10 years (20 half years) qualifying service.

Learned counsel for respondent Nos.5 and 6 has argued that since the petitioner resigned from service, therefore, she is not entitled for pension.

I am of the view that the petitioner resigned from service on account of continuous confrontation with the Management. Therefore, it is deemed to be voluntarily retirement. It is to be noticed that in the resignation letter itself, the petitioner has requested for grant of pension, if admissible to her.

It being so, the petitioner is held entitled to the pension, as per her service.

Learned counsel for the State has placed reliance upon Rule 17 of Chapter-1 of the Notification dated 10.02.1992 (Anenxure R-1/4), under which the Management has power to retire the employee, who has completed less than 25 years of qualifying service.

However, it does not mean that an employee, who has completed 10 years or more service, is barred under the said Rule. Even through, under Rule 17 of the said Notification, the resignation was not mentioned but in the present circumstances, the resignation is in fact requested for voluntarily retirement and is treated to be as such.

In these circumstances, the present petition is allowed. The respondents are ordered to compute the service of the petitioner tentatively and process her case for grant of pension in accordance with rule. Regarding the suspension period, tentatively, it shall be treated as leave of kind due, subject to the out come of the writ petitions, which are pending before this Court. Regarding the period during which the petitioner remained out of

service on account of wrongful dismissal by the illegal order dated 03.11.2000 (Annexure R-1/1), the same shall be treated as duty period. The needful be done within three months from the date of receipt of certified copy of this order.

(KULDIP SINGH)
JUDGE

October 21, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes