

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.2147 of 2014 (O&M)

Date of Decision: 04.08.2016

Dr. Raj Kumar Sharma

... Appellant

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. *Whether speaking / reasoned?*

Yes / No

2. *Whether reportable?*

Yes / No

3. *Whether Reporters of local papers may be allowed to see the judgment?*

Yes / No

4. *To be referred to the Reporters or not?*

Yes / No

5. *Whether the judgment should be reported in the Digest?*

Yes / No

Present: Mr. IPS Doabia, Advocate for the appellant

Mr. Rajesh Bhardwaj, Addl. AG Punjab

SURYA KANT, J. (Oral)

(1) This order shall dispose of intra-Court appeals bearing LPA Nos.2147 of 2014; 121 & 185 of 2015 as the point in issue in all the cases is similar and the writ petitions were also dismissed by learned Single Judge by way of a common order dated 10.07.2014.

(2) The issue that arose for consideration of learned Single Judge was whether the appellant(s) were entitled to be paid full salary for the entire duration of three years while they were pursuing MD/MS Degree Courses as in-service candidate(s) being serving members of Punjab Civil Medical Service?

(3) Learned Single Judge dismissed the writ petitions observing that in view of instructions dated 19.06.1991 they were granted conditional 'No Objection Certificates' whereunder payment of salary to them was restricted to two years instead of three years.

(4) Learned Single Judge has further observed that “*no other policy instructions/statutory rules or any other judicial precedent was pointed out by learned counsel for the petitioners, which may even remotely suggest that the petitioners are entitled for full salary for the third year as well*”.

(5) Unfortunately, it could not be brought to the notice of learned Single Judge that the instructions dated 19.06.1991 were subject matter of consideration before this Court including before a Division Bench in CWP No.6321 of 1996 and in all such cases this Court annulled the condition of restricting payment of salary for two years to the in-service candidates instead for the full tenure of three years.

(6) A brief reference to these decisions has been made in a later Division Bench judgment of this Court dated 21.07.1997 passed in **CWP No.6321 of 1996 (Dr.Pushpinder Kaur vs. State of Punjab & Anr.)**, the operative part of which reads as under:-

“It will be evident from the averments made by the petitioner in paragraphs 13 and 14 above that the precise question raised in the writ petition, referred to in paragraphs 13 and 14, was identical to that raised by the petitioner in this writ petition. Those writ petitions were allowed and it was held that the in-service candidates would be entitled to the pay for the entire duration of the two courses i.e. diploma and degree combined, meaning thereby that if an in-service candidate undergoes one year’s diploma course and two years’ degree course, he would be entitled to pay for the entire three years. Since these averments stand admitted, we need not to go any further in the matter.

Consequently, we allow the writ petition and direct the respondents to release the pay of the petitioner for the third year as well during which she underwent the

Post Graduate Degree Course in Ophthalmology and thereafter fix her pay accordingly and also pay all the arrears of pay by refixing the pay within a period of three months of the receipt of a copy of this order either from this Court or a certified copy thereof from the petitioner.”

(7) The Special Leave Petition preferred by the State of Punjab against the above-cited decision was dismissed by the Hon’ble Supreme Court on 23.02.1998.

(8) In this view of the matter when the benefit of payment of salary for the full tenure of three years has been granted to all the similarly-placed Doctors through various orders of this Court passed in the writ petitions filed before or after the appellants came to this Court in the year 1993-94, we hold that the appellants too are entitled to seek parity and consequential salary for another one year. Ordered accordingly.

(9) For the reasons afore-stated and following the decision in **Dr. Pushpinder Kaur’s** case (supra), the appeal is allowed; the orders passed by learned Single Judge are set aside and the writ petitions filed by the appellants are allowed. They are held entitled to payment of salary for full three years. Resultantly, the balance amount excluding the salary, if already paid, shall be released to the appellants within three months from the date of receipt of a certified copy of this order.

(Surya Kant)
Judge

04.08.2016
vishal shonkar

(Sudip Ahluwalia)
Judge