

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.694 of 2016 (O&M)

Date of Decision: 12.07.2016

Niranjani Devi

... Appellant

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE DARSHAN SINGH

Present: Mr. RD Bawa, Advocate for the appellant

SURYA KANT, J. (Oral)

(1) The order dated 29.02.2016 of the learned Single Judge vide which the appellant's writ petition challenging the order of her removal from service has been dismissed, is under challenge in this Intra-Court Appeal.

(2) In view of the chronological narration of event by learned Single Judge and apt appreciation of the settled legal principles, it is not necessary for us to burden this order with full facts as having heard learned counsel for the appellant at a considerable length, we are satisfied that no interference with the order of learned Single Judge is called for.

(3) Suffice it to mention that the appellant joined the Education Department as a Science Mistress on *ad hoc* basis on 11.09.1974. Her services were regularized on 02.12.1976. She availed all types of leave for a period of 5-years 6-months 16-days till 30.04.1988.

(4) Having exhausted all possible leaves, the appellant proceeded on leave without pay from 01.05.1986 till 30.06.1998 i.e. more than 12 years.

(5) When there was no scope left to remain on leave without pay also, the appellant started absenting from duty and admittedly she remained

duty, the Department took disciplinary action and removed her from service vide order dated 16.09.2002. Her departmental appeal and review were also turned down.

(6) The appellant then challenged those orders in a Suit for Declaration and the Civil Court vide judgment and decree dated 30.04.2007 decreed her suit on the premise that the *ex parte* enquiry held against her was violative of principles of natural justice. The authorities were “*directed to re-conduct enquiry of plaintiff and to give her opportunity of being heard...*”. It was further directed that “*if the enquiry goes in (favour of the) plaintiff then she is entitled to be reinstated and she is also entitled for service benefits from due date. If enquiry goes against plaintiff then she is not entitled to any benefits claimed by the plaintiff...*”.

(7) The Civil Court decree was upheld by the First Appellate Court also, necessitating the authorities to hold a fresh enquiry against the appellant.

(8) In the fresh enquiry also, the charge of willful absence from duty was obviously proved. It came on record that repeated written communications were sent to the appellant to join duty but she never responded to it. The enquiry report was forwarded to her. The appellant was also given opportunity of personal hearing on 30.12.2013.

(9) Her defence throughout has been that her mother-in-law was not well who later on died and that her husband was also a TB and diabetes patient who lost his mental balance also. The authorities found no convincing material in support of the prolonged willful absence from duty. Consequently, the previous order of removal from service dated 16.09.2002 was affirmed. The appeal and review etc. were also dismissed. These orders

came to be challenged before the learned Single Judge who, on a critical analysis and objective dissection of the factual and legal issues, has turned down the appellant's claim.

(10) The facts speak for themselves. It's not a case of absence from duty for days and months. The appellant has hardly served as Teacher in a long spell of career running into almost three decades. She wanted to hold the post; enjoy perks without working even for a day. The absence from duty in the manner as has been found in the instant case is surely the grossest misconduct which warrants no interference or equitable consideration by any Court.

(11) The plea that no Subsistence Allowance was paid to her is absolutely farce and an afterthought. No such plea has been proved in the civil suit or before the learned Single Judge. No prejudice has been shown to have been caused due to alleged non-payment of Subsistence Allowance.

(12) Dismissed.

(Surya Kant)
Judge

12.07.2016
vishal shonkar

(Darshan Singh)
Judge