

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP- 6943-2005 (O&M)
Date of decision: 12.05.2017

Rajinder Pal Kaur

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vijay K. Jindal, Advocate for the petitioner
Mr.R.S.Pathania, DAG Punjab

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Heard.

It comes out that the petitioner, whose date of birth is 01.02.1949 was due for retirement from service on 31.01.2007. She was appointed and joined as S.S. Mistress on temporary basis on 14.09.1973 by the District Education Officer, Ludhiana. On 05.05.1976, she was appointed on regular basis. On 17.10.1979, she suffered severe attack of Paraplegia due to Transverse Myelitis due to which the lower part of her body became paralyzed. She was unable to walk. She first got the treatment from Bathinda, then from Rajindra Hospital, Patiala. She suffered 100% disability. For this, she is stated to have procured the first medical certificate from Civil Surgeon, Bathinda and submitted the same on 08.06.1982, vide letter dated 01.07.2003 (Annexure P-7) written by the Principal, Govt. Secondary School, Jassi Pau Wali- respondent No.4. Thereafter, she got

medical certificate from the Medical Board dated 31.03.2003 (Annexure P-5). She was granted medical leave up to 17.03.1981. Thereafter, as per the stand of the respondents, the petitioner was granted leave upto 12.5.1983 and was declared absent from duty w.e.f. 13.5.1983. It also comes out that the petitioner kept on making representations for the grant of benefits, including job for her daughter and release of the benefits, invalid pension etc. but the matter kept on shuttling between different offices and no decision was taken either to grant leave or retire the petitioner from service on medical grounds or grant of invalid pension or any other order. Vide order dated 1.3.2005 (Annexure P14), the District Education Officer (SE) Bathinda, declined claim of the petitioner for invalid pension, which has been impugned in the present writ petition.

This writ petition was filed in the year 2005. During pendency of the present writ petition, some further development took place. The petitioner attained the age of superannuation on 31.1.2007. Till that date, no charge sheet or inquiry was pending against her nor any punishment order was ever passed. The stand of the respondents in the written statement is that she was declared absent from duty w.e.f. 13.5.1983. Initially, in the written statement, it is stated that after 25 years, the case of the petitioner cannot be considered for benefit of Persons with disability Act 1996. Later on, in the additional affidavit dated 20.2.2017, the State took the stand that now during the pendency of the writ petition, charge sheet dated 25.1.2011 (Annexure R1) was served upon the petitioner regarding absence from duty w.e.f. 13.5.1983. Since, the petitioner did not join the inquiry, therefore, vide order dated 11.11.2013 (Annexure R2), she has been dismissed from service. Still, on another direction of this Court dated

20.2.2017, as to how an employee who has already attained the age of superannuation, could be dismissed from service, another affidavit dated 5.4.2017 was filed by Lalit Kishore Ghai, Assistant Director (S.A.-2), office of Director of Public Instructions (S.E.), Punjab, SAS Nagar on behalf of respondent nos.1 to 4. In the said affidavit, it was stated that the petitioner was declared absent from duty w.e.f. 13.5.1983. She was declared 100% physically handicapped w.e.f. 20.12.1998 by the Medical Board. Regarding earlier CWP No.11300 of 2004, it is stated that the same was disposed of on 29.7.2004 to treat the legal notice as representation and take a decision within 4 months. The petitioner was found not eligible for invalid pension. However, now, the matter has been reviewed. Therefore, the order dated 1.3.2015, declining invalid pension as well as order dated 11.11.2013 passed by the Director, Public Instructions (SE), Punjab dismissing the petitioner from service due to long absence, has been withdrawn. Now, another order dated 30.3.2017 has been passed, wherein, the petitioner has been held entitled to invalid pension w.e.f. 1.7.2003 as her application for invalid pension was received in the school vide No.47 dated 25.6.2003.

Now, the question would arise as to whether in the given circumstances, the invalid pension could be granted and what is the effect of Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Disability Act'), which came into effect w.e.f. 1.1.1996?

Section 47 of the said Act provides as under:-

47. Non-discrimination in government employment-

(1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employee, after acquiring disability is not

suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits. Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

In this case, after 13.5.1983, neither the petitioner was granted any medical leave nor any departmental action was taken. Even after coming into force of the Section 47 of the Disability Act, no order was passed. The result is that the petitioner attained the age of superannuation on 31.1.2007. The respondents have granted invalid pension under Rule 5.11 of Punjab Civil Services Rules, Volume-II, which is reproduced as under:-

*5.11. **Invalid Pension** An invalid pension is awarded, on his retirement from the Public Service, to a Government employee, who by bodily or mental infirmity is permanently incapacitated for the public service, or for the particular branch of it to which he belongs. Note.—The amount of invalid pension shall not be less than the amount of normal family pension admissible under the Family Pension Scheme, 1964.*

A perusal of the aforesaid Rule 5.11 of Punjab Civil Services Rules, Volume-II shows that it pertains to cases of retirement of a government employee, who by bodily or mental infirmity is permanently incapacitated. Here, the petitioner did not retire on account of bodily or mental infirmity or medically incapacitated but on attaining the age of

superannuation. The provisions of Section 5.11 would have been applicable had the petitioner been retired before attaining the age of superannuation on medical grounds. Therefore, Rule 5.11 of Punjab Civil Services Rules, Volume-II is not attracted in the present case. Hence, order dated 1.3.2005 (Annexure P14) granting invalid pension to the petitioner is illegal and hereby quashed.

Now, the question would arise as to what benefits are to be released to the petitioner?

Since, the petitioner retired on attaining the age of superannuation, she is entitled to all the retiral benefits, which are to be released to her.

Now, further question would arise as to what will be the qualifying service for pension?

Petitioner was not granted any leave after 12.5.1983 and was declared absent from 13.5.1983 till she superannuated on 31.1.2007. Petitioner could not join her duty only for the reason that she was 100% disable. Sub-rule 5 of Rule 4.2 of Punjab Civil Services Rules, Volume-II for the purpose of service qualifying for superannuation pension provides as under:-

4.2 (5) A Government employee, who becomes blind, deaf, dumb or otherwise orthopaedically handicapped during the service and is retired from service as a result thereof, shall also be eligible to add to his service qualifying for superannuation pension, a period of five years.

In the present case, admittedly, the petitioner became 100% physically handicapped during service but she was not retired. Therefore, she will not be entitled to benefits of said period of 5 years service for

computing qualifying service for pension. Her entire service, including temporary service from 14.9.1973 to 12.5.1983 shall be counted as qualifying service for pension. Regarding the period from 13.5.1983 to 31.1.2007, the same shall be treated as leave of the kind due. However, the said period shall also qualify for pension. In this way, the respondents shall now compute the qualifying period for pension in the above noted manner and the pension case of the petitioner shall be processed. For this purpose, the petitioner shall submit all the necessary documents. Her case shall be processed expeditiously within three months and the pension shall be released. Other pensionary benefits like leave encashment, gratuity, GPF and whatever is found due, shall also be released to the petitioner within three months from the date the necessary formalities are completed by the petitioner.

The petition is allowed in above noted terms.

12.05.2017

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes