

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.325-2017 (O&M)
Date of decision: 12.01.2017

Karnail Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Onkar Singh, Advocate for the petitioner

- 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. (Oral)

Petitioner joined as Pharmacist on 29.10.1971 and resigned from service on 6.4.1978. Thereafter, he applied for withdrawal of the resignation on 13.12.1978, which was rejected on 9.1.1979.

It comes out that the petitioner was appointed afresh on 19.6.1979 as Pharmacist and joined as such in Civil Hospital Phagwara on 18.7.1979. Petitioner moved an application that he should be given the benefit of the previous service from 29.10.1971 to 16.6.1978. However, the same was rejected vide letter dated 24.6.1981 (Annexure P4). Thereafter, the petitioner claimed that one Dr.Sanjeev Bakshi was allowed to withdraw his resignation. However, it further comes out that during his service as

Pharmacist, the petitioner joined five years MBBS course on 29.12.1992 and remained on leave from 26.1.1993 to 29.7.1998. Petitioner successfully completed the MBBS course. Vide order dated 17.3.1994/26.5.1994 the said period during which he undertook the MBBS course was treated as leave of the kind due, leave with half pay and leave without pay for the period mentioned in the petition. The petitioner did not challenge these orders. Later on, he was offered the post of Medical Officer and was selected as such on 23.2.1999. He continued to work there. His request to count the period as extra ordinary leave during which he was undergoing MBBS course was declined. As the petitioner was not satisfied with his service conditions, he sought voluntary retirement and the same was accepted vide order dated 20.7.2004 effective from 10.4.2006. Thereafter, it comes out that the petitioner made a representation dated 3.12.2007 for treating the study period for MBBS course from 25.1.1993 to 29.7.1998 towards pensionary benefits. However, the same was declined vide order dated 7.2.2008 (Annexure P13). Thereafter, he made applications Annexure P14 and P17 for counting the study period for MBBS from 25.1.1993 to 29.7.1998 towards pensionary benefits. The matter rested there. Therefore, it comes out that the petitioner filed Civil suit for declaration on 12.4.2014 before Civil Judge (Senior Division), Chandigarh for counting the ad hoc service for the period from 18.7.1979 to 21.8.1980 and the period during which he undertook the MBBS course for the purpose of pensionary benefits. The same was withdrawn on 22.11.2016 as the counsel has stated that he wants to avail equally efficacious remedy as per law, like writ petition etc. It also comes out that petitioner had also filed another civil suit on 12.4.2014 before Civil Judge (Junior Division), Chandigarh, wherein he

requested for counting his past service from 29.10.1971 to 16.6.1978 as qualifying service and fix his pay and pensionary benefits accordingly. The said suit was also withdrawn on 23.11.2016 as the petitioner wants to file writ petition before this Court.

Learned counsel for the petitioner does not press the relief regarding treating the previous service from 29.10.1971 to 16.6.1978 as qualifying for pension, therefore, prayer regarding said period is dismissed as withdrawn. Now only two reliefs are pressed before this Court. One is for treating the ad hoc service as Pharmacist from 18.7.1979 to 28.8.1980 towards pensionary benefits and second is treating the study period of the petitioner from 25.1.1993 to 29.7.1998 for the grant of pensionary benefits.

I am of the view that regarding the study period, the prayer of the petitioner treating the said period as extra ordinary leave was declined vide order dated 26.5.1994 and the period from 26.01.1993 to 4.6.1993 treated as leave of kind due, from 5.6.1993 to 9.2.1994 was treated leave with half pay, period from 10.2.1994 to 13.12.1996 was treated leave without pay and the period from 1.1.1997 to 29.7.1998 was treated as without pay. Said orders were not challenged and has to be treated as such for computing the service benefits under the civil service rules. The writ petition in this regard filed in the year 2016 is badly barred by delay and laches.

So far as computing of period of ad hoc service as Pharmacist from 18.7.1979 to 28.8.1980 is concerned, petitioner had already availed the alternative remedy of civil suit before the Court of Civil Judge, Chandigarh. The said suit was withdrawn as the petitioner wanted to file writ petition before this Court. As equally efficacious remedy was already availed,

therefore, the writ petition cannot be entertained on the same ground and the petitioner is relegated to avail remedy of Civil suit regarding the said ad hoc service to be computed for the purpose of grant of pensionary benefits.

The present writ petition is disposed of accordingly.

12.01.2017

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No