

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-2127-2014 (O&M)

Date of Decision: March 08, 2017

Ruth Naru

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.A.S.Gill, Advocate
for the appellant.

Mr.Rajesh Bhardwaj, Addl.AG, Punjab.

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SURYA KANT, J.

CM-4460-LPA-2014

For the reasons mentioned in the application, the same is
allowed and delay of 10 days in refiling the appeal is condoned.

CM stands disposed of.

LPA-2127-2014

This Letters Patent Appeal assails the order dated 29.09.2014
vide which the learned Single Judge has turned down the appellant's
challenge to the order dated 07.03.2002 passed by the Principal Secretary,
Department of Health-cum-Appellate Authority whereby the order of
dismissing the appellant from service was set aside with a direction that she
be allowed to join the service as a fresh entrant without any benefit of

previous service.

[2] The facts are like this:-

[3] The appellant joined the Health Department, Punjab, as a Staff Nurse on 18.04.1979. She remained willfully absent from duty from 05.09.1991 to 06.03.1995 as a result of which disciplinary action was taken and the allegation of unauthorised absence from duty having been proved, the appellant was dismissed from service. She filed departmental appeal before the State Government which was allowed in part vide order dated 07.03.2002 and taking a lenient view it was directed that she may be given fresh appointment subject to the condition that she will not be entitled to any benefit of previous service.

[4] The appellant accepted the said condition and joined as a Staff Nurse on April 15, 2002. She retired on attaining the age of superannuation on March 31, 2012. When she was near the age of retirement, the appellant started representing seeking benefit of her previous service towards qualifying service but finding no favour from the authorities she approached this Court by way of a writ petition in the year 2014. Her writ petition has been dismissed by learned Single Judge vide order under appeal.

[5] As regard to the challenge of the appellant to the order dated 07.03.2002 passed by the Appellate Authority whereby she was taken back in service as a fresh appointee, we find no ground to interfere with that order at this stage. The appellant accepted that order and joined the duty as a fresh appointee without any protest. She has rightly not been permitted by the learned Single Judge to assail such order after more than 10-12 years. Otherwise also, keeping in view the appellant's long absence from duty,

punitive action taken against her was fully justified.

[6] Faced with this, learned counsel for the appellant submits that appellant is entitled to pension at least on the basis of service rendered by her after joining as a fresh appointee in April 2002 till she retired on attaining the age of superannuation on 31.03.2012. He submits that since the appellant has served more than nine years and six months, she is entitled to seek pension on the assumption that she is deemed to have completed qualifying service of ten years under Rule 6.1 of the Punjab Civil Services Rules (Vol.-II). The said Rule provides as follows:-

“The amount of pension that may be granted is determined by length of service as set forth by the succeeding sections of this chapter. [Fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service for describing the amount of pension]”

[7] It may be seen that fraction of the year equal to three months and above is to be treated as a completed one half year and reckoned as 'qualifying service' for describing the amount of pension. The appellant has served in total 9 years and 11 months and in this manner the service of 11 months or more rendered by her in the last year is to be treated as complete one year for the purpose of grant of pension. Reference can also be made to the Punjab Government Instructions dated December 31, 1997 which have been relied upon by a Coordinate Bench in CWP No.19101 of 2006 (**Salwinder Singh vs State of Punjab and others**) decided on 29.07.2008, where also the employee had rendered 9 years 11 months and 21 days of service and he was held entitled to pension on the premise that he shall be deemed to have rendered 10 years qualifying service. The instructions dated

December 31, 1997 are to the following effect:-

“I am directed to say that in accordance with the existing provisions of Rule 6.1 of Punjab Civil Service Rules, Volume II, fraction of a year equal to six months and above is treated as a completed six, monthly period for the purpose of calculating of pension of Government employee. The Governor of Punjab is now pleased to decide that in calculating the length of qualifying service for the purpose of pension, a fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service for determining the amount of pension.”[emphasis applied]

[8] In the light of the above discussion, it is held that the appellant shall be deemed to have served for more than ten years in the second phase of her service and thus, she having completed minimum 'qualifying service' of ten years, is entitled to pension for such service without adding benefit of the previous service. The appeal is accordingly allowed in part. The order passed by learned Single Judge is set aside and the writ petition is allowed in part. The respondents are directed to settle and release the appellant's pension alongwith arrears within a period of four months from the date of receipt of a certified copy of this order, failing which the appellant shall be entitled to interest @ 7% per annum from the date of release of arrears of pension.

(SURYA KANT)
JUDGE

March 08, 2017
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(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No