

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 213

Regular Second Appeal No.283 of 2013 (O & M)
Date of Decision: *August 11, 2017*

State of Haryana & others

..... APPELLANTS

VERSUS

Bharpai Devi

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. C.S. Bakshi, Additional Advocate General, Haryana.

Mr. Ramender Chauhan, Advocate, for the respondent.

. . .

Jaspal Singh, J

1. The defendants – appellants have preferred the instant regular second appeal against judgment & decree dated October 20, 2012 passed by the Additional District Judge - (I), Bhiwani, whereby judgment & decree dated August 11, 2010 passed by the Civil Judge (Junior Division), Charkhi Dadri has been set aside; suit filed by the plaintiff – respondent has been decreed and the competent authority was directed to re-calculate the pension of respondent – plaintiff within a period of three months from the date of judgment after giving her the benefits of service rendered by her as ANM from January 09, 1969 to November 26, 1973 at Civil Hospital, Charkhi Dadri.

2. Brief facts of the case giving rise to the instant lis are that plaintiff – respondent filed a suit for declaration to the effect that she is entitled to receive benefits of qualifying service on the post of Auxiliary Nurse Midwife (for short, ‘ANM’), Charkhi Dadri, under Health Department, Government of Haryana and refixation of her basic pay on reinstatement/appointment w.e.f. July 08, 1978 as ANM, Sub Centre, Jahajgarh under SPM Department, Government Medical College, Rohtak as well as addition of service period w.e.f. January 09, 1969 to July 07, 1978. She also claimed consequential relief for issuing direction to the defendants – appellants to disburse the amount of arrears of salary, increment, pension, gratuity and other retiral benefits on account of refixation of basic pay, pension and addition of qualifying service rendered under the Health Department. Plaintiff alleged that she was appointed on the post of ANM in Health Department, Government of Haryana on January 09, 1969. Her services were terminated on November 26, 1973. She was reinstated w.e.f. July 08, 1978. She retired on December 31, 2002. While calculating her pension, respondent did not add the service rendered by her w.e.f. January 09, 1969 to July 07, 1978.

3. Defendants – appellants contested the suit by filing joint written statement. They alleged that she was not reinstated. She was given fresh appointment at Sub Centre, Jahajgarh on July 08, 1978. Accordingly, previous service rendered by her could not be added for the purposes of pension.

4. From the pleadings of parties, issues were framed. Parties led their evidence in order to support their case. After appraising the evidence on record and hearing the parties, suit of plaintiff – respondent was

5. Dis-satisfied by the aforesaid judgment & decree rendered by the trial court, plaintiff approached the lower appellate court by filing an appeal which was accepted vide impugned judgment & decree dated October 20, 2012 passed by the Additional District Judge (I), Bhiwani, giving direction to the defendants – appellants to recalculate the pension of plaintiff after giving her the benefits of service rendered by her as ANM from January 09, 1969 to November 26, 1973 at Civil Hospital, Charkhi Dadri. Consequently, the suit filed by the plaintiff was decreed.

6. Aggrieved by the impugned judgment & decree passed by the lower appellate court, defendants – State of Haryana & others have approached this Court by way of instant regular second appeal.

7. While assailing the impugned judgment & decree, learned counsel for the appellants – State has vehemently argued that the same is not sustainable in the eyes of law. The lower appellate court has not appreciated the evidence on record in proper perspective which has resulted into miscarriage of justice. The trial court had rightly non-suited the respondent – plaintiff by holding that she was not entitled to benefit of past service as she was given fresh appointment at Maharishi Dayanand University, Rohtak. As such, suit of plaintiff is liable to be dismissed by way of accepting the instant appeal and setting aside the judgment & decree passed by the lower appellate court.

8. Per contra, learned counsel for the respondent – plaintiff has supported the judgment & decree passed by the lower appellate court by submitting that each and every aspect of the case has been rightly gone through by the appellate court. The impugned judgment does not suffer from any error and is absolutely in consonance with the settled canons of law.

9. This court has given an anxious thought to the rival contentions made by learned counsel for the parties and gone through the record available but does not find any substance in the submissions of learned counsel for the appellants – State.

10. Admittedly, plaintiff served as ANM w.e.f. January 09, 1969 to November 26, 1973 at Civil Hospital, Charkhi Dadri. She again joined as ANM under the Government of Haryana w.e.f. July 08, 1978 and was posted at Sub-Centre, Jahajgarh, Government Medical College, Rohtak and retired as such on December 31, 2002. It is also an admitted fact that on her joining at Maharishi Dayanand University, Rohtak, her pay was protected as per appointment letter (Ex.P5). Accordingly, as per Rule 3.17-A (a) applicable to her services, she was entitled to receive the benefit of past service for the purpose of pension. Moreover, it is not the case of the defendants – appellants that plaintiff was dismissed from her services for any misconduct. The lower appellate court has rightly placed reliance on judgment rendered by this Court in the case of **Vijay Laxmi & others vs. State of Punjab & others, 1994 (2) RSJ 502**, the relevant part of which reads thus:-

“The benefit of their past service towards pay was duly protected. Once the past service has been recognized for the purpose of pay, there appears to be no justification for denying them the same benefit towards pension etc. The admitted position is that the petitioners had served the Board which is virtually an instrumentality of the State for long period ranging from 10 to 16 years before their absorption in Govt. Service. The denial of the benefit claimed by the petitioners would cause them a heavy recurring loss. It would be unfair. It would be arbitrary.”

11. This Court does not find any infirmity or illegality in the judgment & decree rendered by the lower appellate court so as to warrant any interference by this Court. As an upshot of the aforesaid discussion, there is no merit in the instant regular second appeal and the judgment &

decree rendered by the lower appellate court is affirmed. Consequently,
instant appeal is dismissed with no order as to costs.

August 11, 2017
avin

(Jaspal Singh)
Judge

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>