

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 101

Regular Second Appeal No.3543 of 2015 (O & M)
Date of Decision: *September 12, 2017*

Ram Devi

..... APPELLANT

VERSUS

State of Haryana & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Narender Kaajla, Advocate, for the appellant.

. . .

Jaspal Singh, J

CM No.8618-C of 2015

Delay in refiling the appeal is condoned.

Application is allowed.

RSA No.3543 of 2015

1. Plaintiff – appellant has preferred the instant regular second appeal against judgment & decree dated October 07, 2014 whereby judgment & decree dated November 29, 2010 passed by the Additional Civil Judge (Senior Division), Hisar, has been set aside by way of accepting the appeal filed by the defendants – respondents.

2. Brief facts of the case are that plaintiff – Ram Devi joined Health Department, Government of Haryana, as Auxiliary Nurse Midwife (for short, ‘ANM’) on July 18, 1968, on six months basis vide appointment

letter issued by respondent No.5 – Civil Surgeon, Hisar vide office order No.FP3/13936-37. Her services were extended upto May 11, 1972. Due to her family circumstances, plaintiff was allowed to proceed on extra-ordinary leave from May 12, 1972. During the period of extra-ordinary leave, she was again appointed on the post of ANM on adhoc basis vide order dated July 14, 1974 issued by respondent No.3 – Director General, Health Services, Haryana and joined as ANM on September 10, 1975 (FN) in the office of Chief Medical Officer (FP) on the instructions of CMO, Hisar vide letter dated September 10, 1975. However, her past service w.e.f. July 18, 1968 to May 11, 1972 was ignored as her service book was misplaced and her fresh service book mentioning therein fresh appointment from September 10, 1975 was constructed. Her Services were regularised w.e.f. November 22, 1978 on approval of Haryana Subordinate Services Selection Board, Chandigarh. She was placed at the initial scale of ₹ 130-200 but benefit of past increments earned during the period from July 18, 1968 to May 11, 1972 on the post of ANM was denied for want of previous service book, in contravention of Government Instructions No.2179-IFR-74/20589 dated June 11, 1974. Plaintiff retired on attaining the age of superannuation on October 31, 2005. She was granted pension for the service rendered from May 10, 1975 to October 31, 2005 while benefit of period of service from July 18, 1968 to May 11, 1972 was ignored. Plaintiff was allotted GPF No.HR/MED/3408 and as per GPF statement issued on May 1972, total amount of ₹ 1,562.55/- was shown at credit while she was only paid ₹ 588/- and remaining amount has been forfeited by defendant No.4 without assigning any reason. Similarly, plaintiff was sanctioned DCRG amount of ₹ 1,82,955/- but an amount of ₹1,64,660/- was paid and 10% of DCRG amounting to ₹ 18,295/- was withheld by defendant No.4.

2. Plaintiff filed a suit seeking declaration to the effect that services rendered by her from July 18, 1968 to May 11, 1972 be counted towards pension and other retiral benefits with consequential relief of injunction that defendants be directed to make the payment of difference of pension and other retiral benefits after counting the aforesaid past service alongwith interest @ 12% per annum. Defendants contested the suit by filing written statement. From the pleadings of parties, issues were framed by the trial court.

3. After hearing learned counsel for the parties and appreciating the evidence on record, suit filed by the plaintiff was decreed by the trial court vide judgment & decree dated November 29, 2010, against which, defendants preferred an appeal which was allowed vide judgment & decree dated October 07, 2014 passed by the lower appellate court and judgment & decree passed in civil suit was set aside.

4. Aggrieved by the aforesaid decision rendered by the lower appellate court, plaintiff – appellant has approached this Court.

5. Learned counsel for the appellant, while challenging the impugned judgment & decree passed by the lower appellate court, submitted that the same is not sustainable in the eyes of law. Misappreciation of evidence has resulted into miscarriage of justice. Plaintiff succeeded to establish on the basis of evidence that she is entitled for benefit of past service.

6. Per contra, learned counsel for the respondents – State contended that plaintiff is not entitled for benefit of past service in view of Rule 3.17(A) of Punjab Civil Services Rules (for short, 'Rules') as she herself resigned and she even failed to prove that she was allowed to proceed

on extra-ordinary leave from May 12, 1972 on family grounds. Accordingly, instant appeal deserves to be dismissed.

7. This Court has given anxious thought to the rival submissions made by learned counsel for the parties and gone through the record available but does not find any legal weight in the submissions of learned counsel for the appellant.

8. For deciding this second appeal, Rule 3.17(A) of the Rules is relevant which is reproduced as under:-

“(a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service, the period of break shall be omitted while working out aggregate service.

(b) Extra-ordinary leave counted towards increments under Rule 4.9(b)(ii) of Punjab Civil Services Rules, Vol.I, Part-I, will be accounted towards service qualifying for pension.

(c) Periods of suspension, dismissal, removal, compulsory retirement followed by re-instatement will count for pension to the extent permissible under Rule under Rule 4.17 of Punjab Civil Services Rules, Volume-II read with Rule 7.3 of the Punjab Civil Services Rules, Volume I Part – I.

(d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of Rule 4.19(a) of Punjab Service Rules Vol.-II.”

9. The only question for determination in the instant appeal is whether service rendered by the appellant as ANM w.e.f. July 18, 1968 to May 11, 1972 is liable to be counted towards pensionary benefits. Plaintiff – appellant averred that she proceeded on extra-ordinary leave w.e.f. May 12, 1972 on family circumstances. She was relieved on May 11, 1972 (AN) by Haryana Urban Family Planning Unit, Hisar but plaintiff – appellant failed

perusal of the record, copy of form of application for final payment of balance in GPF as well as Column No.3 of proforma 'For use of Head by Offices' depicts that plaintiff – appellant had resigned from service which was accepted w.e.f. May 11, 1972 (AN). This fact falsifies the stand of plaintiff – appellant that she proceeded on extra-ordinary leave due to family circumstances whereas she had resigned from her services at that time. In this backdrop of circumstances as well as in view of Rule 3.17(A) reproduced above, it is clear that plaintiff – appellant herself retired from service and resignation from public service will entail forfeiture of past service. Moreover, it is a settled law that resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of Rule 4.19(a) of Punjab Civil Services Rules, Vol.II.

10. In the light of what has been discussed above, this Court does not find any illegality or infirmity in the judgment & decree dated October 07, 2014 passed by the lower appellate court which is hereby affirmed. Consequently, instant appeal stands dismissed with no order as to costs.

September 12, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No