

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No. 25213 of 2015 (O&M)

Date of Decision: 27th August, 2018

Meena Bhandari

.....Petitioner

versus

Central Administrative Tribunal, Chandigarh Bench and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Subhash Ahuja, Advocate, for the petitioner.
Mr. Vikas Bali, Advocate, for respondent Nos.2 and 3.
Mr. Barjesh Mittal, Advocate, for respondent No.4.

KRISHNA MURARI, CHIEF JUSTICE

We have heard learned counsel for the petitioner, Shri Vikas Bali, learned counsel for respondent Nos.2 and 3 and Shri Barjesh Mittal, learned counsel for respondent No.4.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioner has laid challenge to the judgment and order dated 05.02.2015 passed by Chandigarh Bench of the Central Administrative Tribunal rejecting the Original Application filed by the petitioner. Petitioner had approached the Central Administrative Tribunal (for short 'the Tribunal') by making an application under section 19 of the Administrative Tribunal Act claiming (i) release of gratuity, pension and arrears of pension alongwith interest 18% per annum, (ii) release of her GPF amount of ₹ 86100/- along with interest @ 18% per annum w.e.f. 28.07.2009, (iii) interest on delayed payments of retiral dues like gratuity, GIS, leave encashment from the date the amount became due till actual date

of payment and (iv) to grant pensionary benefits after counting the service rendered in Punjab Engineering College.

Factual matrix of the case:-

3. The petitioner joined the service as Clerk on regular basis on 25.02.1983 in the Chandigarh Administration. Prior thereto she also worked on adhoc basis w.e.f. 11.03.1980 to 24.02.1983 in Punjab Engineering College, Chandigarh. Admittedly, she retired as Senior Assistant on 30.11.2012 on attaining the age of superannuation. She was given an extension and was finally relieved from service on 31.05.2013.

4. In response to a legal notice issued by the petitioner, she was informed by respondent No.2 vide letter dated 14.08.2013 setting out the reasons for whatever delay in making payments, which are as under:-

1. Payment of General Provident Funds:-

Regarding final payment of GPS it is stated that after retirement on 31.05.2012 she was verbally asked to submit the last balance statement alongwith an affidavit which was mandatory required to process the case to the Accountant General (A&E), U.T. Chandigarh but she has not do the same. However the case was taken up with Accountant General (A&E) UT, Chandigarh vide this office memo No.1219-20 dated 18.06.2013, No.1334-35 dated 03.07.2013 to supply the balance statement of GPF of Smt. Meena Bhandari and the same has been personally collected by the dealing Assistant of this office from Accountant General (A&E), UT Chandigarh. The Form-B and PF-10 along with balance statement in original duly filled up in all respect was sent to Smt. Meena Bhandari vide this office Memo No. 1554 dated 24.07.2013 for want of her signatures to process case and subsequent reminder for the same has also been issued vide this office Memo No. 1614-15 dated 01.08.2013 but the same has not been resubmitted by her till date. From such type of her attitude it presumed that she was not cooperating with the department.

II. Payment of Pension, Gratuity and Leave Encashment:-

The retiree was worked with Municipal Corporation, Chandigarh w.e.f. 01.06.1996 to 30.06.2005 and the above said benefits of the said period was required to be paid by the respective office of Municipal

Corporation to Chandigarh Administration. The same has been got cleared and received in this office on 26.07.2013. Now the cases of dues are under preparation but to complete the process positive attitude from the retiree is required. Smt. Meena Bhandari, Sr. Assistant (Retd.) was already requested well in time vide this office Memo No. 1637 dated 11.12.2012 to submit documents/particulars required from her side so as enable this office to proceed further but the same has yet not been furnished by her till date.

It is further submitted that case for payment of Leave Encashment has been prepared and sent to the Accounts Functionary for vetting the same vide this office Memo No.7087 dated 08.08.2013 payment will be made shortly.

III. Medical Reimbursement Claim:-

The Medical reimbursement claim was submitted by the retiree on dated 13.03.2013 in this office and the same was sent to the Health Department vide this office Memo No.557 dated 20.03.2013 for verification. After that the same has been received in this office duly verified on 03.05.2013. Due to request of Smt. Meena Bhandari claim was again resubmitted on 31.05.2013 to Health Department for re-verification and received back on 03.07.2013 and further submitted to higher authority of Chandigarh Administration for approval. The payment will be made shortly after approval from competent authority.

5. It is an admitted position by the petitioner in her pleadings that all the payments due were made to her during the pendency of the proceedings before the Tribunal and in such circumstances the Tribunal only proceeded to consider her claim of interest on delayed payment of retiral dues and counting her adhoc service rendered in the Punjab Engineering College towards pensionary benefits.

6. The Tribunal rejected the claim of interest on the ground that there was no delay on the part of the authorities in releasing the payment to the petitioner, as such she was not entitled for payment of any interest. Similarly her claim for counting the service rendered in Punjab Engineering College towards pensionary benefits was also rejected on the ground that the resignation submitted by her from Punjab Engineering College was not a

technical resignation and thus she is not entitled to any benefit of the service rendered prior to her new employment for purpose of calculating the pension.

7. In the back drop of the above facts and the impugned judgment rendered by the Tribunal, the following issues arise for our consideration:-

- i) Whether the petitioner is entitled for interest on the delayed payment of post retiral dues and the judgment of the Tribunal in rejecting the claim is erroneous in law?
- ii) Whether the service rendered by the petitioner in Punjab Engineering College is liable to be counted towards the service period rendered by her with Chandigarh Administration for calculating the pensionary benefits and the denial of the said relief by the Tribunal is vitiated in law?

8. In so far as issue No.(i) is concerned, from a bare perusal of the facts mentioned hereinabove, reproduced from the reply submitted by respondent No.2 to the legal notice of the petitioner, it is clear that there has been no intentional or willful delay on the part of the respondents in releasing various payments towards post retiral benefits and whatever delay has occurred is on account of the own act and conduct of the petitioner by not completing the formalities within the stipulated time.

9. The Tribunal placing reliance on the aforesaid facts returned a finding that since the petitioner herself did not complete the formalities required for release of payments and the delay is because of the act and conduct of the petitioner in not completing the formalities, her claim for payment of interest is not liable to be allowed.

10. The facts relied upon by the learned Tribunal in coming to the aforesaid conclusion have not been challenged by the petitioner in the writ

petition being incorrect nor during the course of arguments it could be demonstrated by learned counsel for the petitioner that the finding recorded by the Tribunal is either vitiated on account of misreading of the facts placed before it or suffer from any infirmity on account of non-consideration of any vital fact.

11. It goes without saying that in case the post retiral benefits are withheld by the employer without any justifiable cause, the employer is under an obligation to compensate the employee by paying interest on the delayed payment. However, if delay in release of payment can be attributed to any act and conduct of an employee, then definitely he or she cannot be held to be entitled for payment of any interest.

12. In the case in hand, there appears to be no ground to hold that there was any fault on the part of the authorities in delaying release of the post retiral benefits to the petitioner and whatever delay the same is attributable to the petitioner herself, as such, she is not entitled for payment of any interest and the finding recorded by the Tribunal on this issue cannot be faulted with.

13. In so far as issue No.(ii) is concerned, admittedly, the petitioner after selection as Clerk in Chandigarh Administration, alleges to have submitted her resignation from service in Punjab Engineering College, Chandigarh, where she was working.

14. The Tribunal after analyzing the factual aspect of the matter has returned a finding that the resignation submitted by her does not appear to be a technical resignation, as such the period of service rendered by her in Punjab Engineering College prior to joining the present service was not liable to be counted for calculating the pensionary benefits. In this connection it may be relevant to refer to the provisions of Punjab Civil

Services Rules contained in Chapter 3 Vol.II which had been adopted and made applicable to employees of Chandigarh administration. Rule 3.17-A(v) under Chapter 3 Vol.II relevant for the purpose of this case reads as under:-

“3.17-A(5) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up with proper permission, another appointed whether temporary or permanent under the Government where service qualified for pension.”

Admittedly, in the case in hand, the petitioner before joining the post of Clerk on regular basis has worked on adhoc basis for almost three years in Punjab Engineering College.

15. Learned counsel for the petitioner contends that the Tribunal failed to take into consideration the fact that the petitioner made an application after seeking permission and on being selected, submitted her resignation for taking up the new appointment on another post which was allowed and thus her case is squarely covered under Rule Clause (V) of Rule 3.17(A)(1).

16. On the other hand, learned counsel for the respondents have submitted that since the petitioner applied for the post of Clerk without any information or permission and tendered her resignation, she would not be entitled to the benefit claimed and the same has rightly been rejected by the Tribunal.

17. We have considered the rival submissions and perused the record.

18. To support the contention, learned counsel for the petitioner has drawn our attention to Annexures P-12 and P-13. Annexure P-12 is a

that she is working on the post of Clerk in the college and has been permitted to register her name with the Employment Exchange to seek a regular appointment. Annexure P-13 is her letter dated 24.02.1988 which records that she got her name registered with the Employment Exchange after getting no objection and has been selected/appointed as Clerk on regular basis in the office of Superintendent Engineer construction circle, Chandigarh and hence be relieved from the present assignment to join the new post. The aforesaid two documents are reproduced hereunder:-

“Annexure P-12

“NO OBJECTION CERTIFICATE FOR REGISTRATION OF TEMPORARY GOVERNMENT SERVANT OF CHANDIGARH ADMINISTRATION WITH THE EMPLOYMENT EXCHANGE FOR SEEKING REGULAR APPOINTMENT.

PF/CLERK/4522
Dated Chandigarh the 3.3.1992

TO WHOM IT CONCERN

It is certified that Mrs. Meena Bhandari has been working as Clerk against a temporary vacant in the pay scale of Rs.400-100-450/15-525/15-600 at this College. She was appointed through Employment Exchange Chandigarh vide their letter No.233/20/35052 dated 19.02.1980. She is permitted to register his name with the Employment Exchange to seek the regular appointment.

She is working against the temporary post of Clerk at this College. In case she is appointed against regular post, she will be relieved of her duty in accordance with the terms of her appointment.

Her work and conduct is satisfactory.

Sd/-Principal,
Punjab Engineering College,
Chandigarh.”

“Annexure P-13

To

The Principal,
Punjab Engineering College,
Chandigarh.

Sub: Relieving from the post of Clerk.

Sir,

I have since been selected/appointed as Clerk on regular basis in office of the Superintending Engineer, Construction Circle, U.T. Secretariat Building, Sector 9-D, Chandigarh, through the Employment Exchange, U.T. Chandigarh.

I have been working in this college as Clerk on and adhoc basis and I got my name registered with Employment Exchange after getting "No Objection Certificate" from the office.

It is, therefore, requested that I may kindly be relieved w.e.f. 25.02.1983 F.N. to enable me to join the said office.

Thanking you,

Dated: 24.02.1983

Yours faithfully,
Sd/-Meena."

19. From a perusal of the aforesaid two documents, it is clear that the petitioner got her name registered with Employment Exchange for another job with due permission and no objection for the same and after being selected/appointed made an application for being relieved to join on the newly appointed post, which was duly accepted.

20. It is, thus clear that the claim of the petitioner is fully covered under Rule 3.17-A(5) in light of the undisputed fact that the petitioner got herself registered with Employment Exchange for a new assignment after no objection certificate from her erstwhile employer and after being selected/appointed she sought her relieving for joining on the new post which was duly permitted. Thus the mandate of the Rule stood fully complied and the petitioner could not have been denied the benefit of counting the earlier service rendered with Punjab Engineering College for grant of pensionary benefits.

21. The Tribunal failed to take into account the aforesaid two documents in right perspective and misreading the same arrived at an incorrect conclusion that it was not a technical resignation and she resigned to take up a new job, hence would not be entitled to benefit of service rendered by her in the Punjab Engineering College. The Tribunal totally lost sight of the fact that the petitioner by means of application dated 24.02.1983 sought her relieving from the assignment at Engineering College to join on the newly selected post which was allowed.

22. Thus, the impugned judgment of the Tribunal suffers from patent error apparent on the face of record and stands vitiated in law and is thus not liable to be sustained.

23. As a consequence, the writ petition stands allowed in part. The impugned judgment dated 05.02.2015 in so far as it holds that the period of service rendered by the petitioner in the Engineering College is not liable to be counted towards pensionary benefits is hereby quashed. A further direction is issued to the respondents to recalculate the pension of the petitioner after adding the period of service rendered by her in the Punjab Engineering College. The arrears, if any, on the recounting of service period shall be disbursed to her within a period of three months from the date of receipt of certified copy of this judgment.

No order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

27.08.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No