

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-2390-2016 (O&M)

Date of Decision: 11.12.2018

Naresh Kumari

...Appellant.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Padam Kant Dwivedi, Advocate for the appellant.

Mr. P.S. Bajwa, Additional Advocate General, Punjab.

Mr. Naresh Kumar, Advocate for respondent No.2.

Mr. Brijeshwar Singh Kanwar, Advocate for respondent No.4.

AJAY KUMAR MITTAL, J.

1. Delay of 68 days' in filing the appeal is condoned.
2. This order shall dispose of two appeals bearing LPA Nos. 2390 and 2417 of 2016 as according to learned counsel for the parties, identical facts are involved therein. For brevity, the facts are being extracted from LPA-2390-2016.
3. In LPA-2390-2016, challenge is made to the order dated 28.7.2016 passed by the learned Single Judge whereby CWP-11211-2014 filed by the appellant was dismissed.
4. The facts, in short, necessary for adjudication of the instant

Craft Teacher vide appointment letter dated 22.11.1976. She retired on 31.12.2008 after attaining the age of superannuation from the office of respondent No.4. She was not released 33% of salary for the period from September, 2005 to October, 2006 and from November, 2006 till December, 2008, the appellant was not paid 100% of her salary. She was also not paid her retiral dues including the gratuity, leave encashment etc. Accordingly, the appellant filed CWP-12579-2010 on 15.10.2010. This Court vide order dated 9.8.2011 directed the respondents to release the retiral dues of the appellant along with interest at the rates prescribed by the State Government. Vide order dated 16.11.2011, the said writ petition was disposed of with liberty to the appellant to take appropriate remedy to claim the payment of balance amount. The appellant moved a representation dated 31.1.2012 to respondent No.2 for release of her arrears of revised salary, retiral benefits etc. along with interest, but to no effect. The appellant again filed CWP-5398-2012 and this Court vide order dated 23.3.2012 disposed of the said writ petition with a direction to the respondents to consider and dispose of the claim of the appellant as contained in the representation dated 31.1.2012 and if found entitled, be released along with interest @ 7% per annum, otherwise to pass a speaking order within four months. When no action was taken thereon, the appellant filed COCP-2675-2012. However, one Sneha Lata, similarly situated to the appellant received a reply dated 9.10.2012 to the legal notice served by her to the effect that the benefit of 5th Pay Commission could not be extended to the employees of Border Area Projects and her claim was rejected. The said contempt was dismissed as withdrawn by this Court vide order dated 9.11.2012. Respondent No.4 issued instructions directing the respondents

to revise the pay scales of the Border Area Project Employees who were merged with Integrated Child Development Scheme (ICDS). Respondent No.2 vide letter dated 7.12.2011 instructed the Child Development Officers of various ICDS Blocks to fix the pay scales of such employees upon revision w.e.f. 01.01.2006. Similarly situated employees have been receiving salary as per the revised pay scales and salary of several employees working as Supervisors in the office of Child Development Project Officer, ICDS Block Dhariwal/Gurdaspur had been ordered to be revised as per the recommendations of 5th Pay Commission and arrears have been ordered to be paid to them vide letter dated 9.3.2012. Accordingly, the appellant filed CWP-11211-2014. The learned Single Judge vide order dated 28.7.2016 rejected the claim of the appellant and dismissed the said writ petition. Hence, the present Letters Patent Appeals.

5. Learned counsel for the appellant submitted that the learned Single Judge has erroneously rejected the claim of the appellants in both the appeals that they retired in the year 2008 before the passing of the said order dated 21.8.2009, i.e. the date when 65 employees of the Border Area Project were taken on permanent deputation to ICDS.

6. Learned counsel for the respondents submitted that the appellants were not entitled to the revised pay scales w.e.f. 01.01.2006 and the learned Single Judge has rightly rejected their claim. A prayer for dismissal of the appeals was made.

7. We have heard learned counsel for the parties and perused the paper book.

8. The appellant was initially appointed under the Border Area Project Scheme in the border District which was being run for the welfare of

woman and children since 1975. The expenditure of those projects was shared by the Central Social Welfare Board, New Delhi and the State Government in the ratio of 2:1. Later on, sixty five employees of Border Area Project were taken on permanent deputation in ICDS of respondent No.2 – Social Welfare Advisory Board sanctioned by the State Government vide order dated 21.8.2009 on their existing un-revised pay scale. The appellants in both the appeals retired in the year 2008, i.e. before the passing of the said order of taking 65 employees of the Border Area Project on permanent deputation to ICDS. The learned Single Judge has held that once the employees were absorbed by respondent No.2, they were entitled to all the pay scales and other benefits in the Department in which they had been absorbed and should be placed on the same footing at which the other employees were placed. Further, it was observed that since the appellants in both the appeals had retired in the year 2008, before the passing of the order dated 21.8.2009 of taking 65 employees of Border Area Project on permanent deputation to ICDS, they were not to the benefit of revised pay scales and other perks. The operative part of the order reads thus:-

“However, it comes out that three of the petitioners, namely, Naresh Kumari W/o Late Shri Prem Nath Sharma, posted at Jalalabad as Craft Teacher, Raj Kumar W/o Sh. Ashok Kumar Kukkar, posted at Jalalabad as Craft Teacher and Reshma Rani W/o Late Sh. Harnam Singh, posted at Fazilka as Trained Dai retired in the year 2008, i.e. before the passing of the said order dated 21.08.2009 of taking 65 employees of the aforesaid project on permanent deputation to ICDS. They were

taken in ICDS on their existing unrevised pay scale.”

9. No illegality or perversity could be pointed out in the aforesaid findings recorded by the learned Single Judge which may warrant interference. Accordingly, finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

December 11, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No