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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-5134-2015 (O&M)
Date of Decision : 11.01.2018**

Komal Preet

..... Appellant

Versus

Municipal Corporation, Chandigarh and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. S.K. Sharma, Advocate
for the appellant.

AJAY TEWARI, J.

This appeal has been filed against the concurrent judgments of the courts below dismissing the suit filed by the appellant.

The appellant joined as Steno-typist on 05.04.1991. She applied for extraordinary leave from 01.02.2005 to 31.10.2007 to the respondent No.2-Chief Engineer, Municipal Corporation, Chandigarh. At that time the appellant submitted her leave application and address was specifically stated as 160-A, Street No.3, Dashmesh Nagar, Patiala. The stand of the appellant was that neither any order of rejecting her leave application was communicated to her nor any charge-sheet or any proceeding of enquiry was ever communicated to her. Further the stand of

respondent No.2. Therefore, the charge-sheet dated 29.05.2006, appointment of enquiry officer and subsequent enquiry and the penal action on the basis of that enquiry and the act of not deciding the request for retirement dated 28.12.2006 are illegal, ultravires, null and void since no order for deciding the request for retirement was conveyed to her. The stand of the respondents was that the appellant had made herself liable for punishment under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short '*Rules, 1970*') since she had violated the provisions of Rule 3 of the Employee's Conduct Rules, 1966 as applicable to the employees of Municipal Corporation by going on leave without getting it sanctioned. Further their stand was that the communication with regard to non-sanctioning of leave was sent to the appellant on the aforementioned address which was given by her and even the notice for appearing in the office on 11.09.2006 was got published in newspapers but despite that she did not appear. Further her request for retirement also proves that she was well aware about the inquiry proceedings against her as well as the inquiry report in which she was found guilty of misconduct for wilfully remaining absent from the duty. The courts below held that the instant suit was filed by the appellant at the time when such departmental proceedings against her had not been completed and instead of approaching the court she could have joined such proceedings and, as such, the suit was pre-mature. Further the courts below held that as per Rule 3(2) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (for short '*Rules, 1975*'), relied upon by the appellant, her case could not have been covered by any stretch of imagination since for invoking that rule she must have completed at least 20 years of qualifying service.

In my opinion, the conclusion drawn by the courts below does not suffer from any infirmity. In *State of Gujarat v. Umedbhai M. Patel* reported as **2001 (3) SCC 314** the Supreme Court held that the order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

Counsel for the appellant has vehemently argued that as per Rule 6.16 of the Punjab Civil Services Rules at least the appellant is entitled for gratuity. Rule 6.16 of the Punjab Civil Services is as under:-

“6.16. A Government employee retiring in accordance with the provisions of these rules before completing the qualifying service of ten years shall not be entitled to any pension but he shall be entitled to a service gratuity calculated at the uniform rate of half month’s emoluments for every completed six monthly period of service.”

In my opinion, the Rule 6.16 is also not applicable to the facts of the present case. The courts below have held that the suit was not maintainable since the inquiry proceedings were pending. There is no averment that the gratuity has been declined to the appellant and in the absence thereof this argument cannot be accepted.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

January 11, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No