

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

**CWP NO. 14060 OF 2015
DATE OF DECISION : 05.07.2019**

Raj Rani

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. M. S. Sarao, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Ms. Neha Jain, Advocate,
for respondent No.3.

ARUN MONGA, J. (ORAL)

Grievance of the petitioner is that on transfer of all the staff of School of Nursing from Guru Gobind Singh Medical College, Faridkot to Baba Farid University of Health Sciences, Faridkot, vide notification/order dated 19.12.2003 (Annexure P-10), no options were given to the then serving employees in the School of Nursing to opt for service Rules under their new employer i.e Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as "the University").

2. Brief facts as stated in the petition are that after joining the service of Punjab Government as Staff Nurse with effect from 07.04.1977, the petitioner had been working as such

till 31.12.2003 i.e for more than 26 years in different hospitals/ Government Nursing Schools including Government School of Nursing, Faridkot. On 01.01.2004, the petitioner joined service of Baba Farid University of Health Sciences, Faridkot upon handing of the Government School of Nursing to the University by the State Government. The petitioner on the eve of that change, was relieved by the State Government on 31.12.2003. Thereafter, the petitioner was appointed as Associate Professor in the University vide a separate appointment letter dated 24.12.2003 (Annexure P-11). On 14.02.2013, the petitioner served three months' voluntary retirement notice to the University which was treated as her resignation and pursuant thereto, she was relieved on 16.05.2013 (Annexure P-1), but the retiral benefits were denied to her. The ostensible reason of denial thereof is that she is not eligible for voluntary retirement as she had rendered only 09 years of service in the University. On the other hand, uninterrupted service of 26 years rendered by the petitioner in the State Government was not considered while deciding her request for voluntary retirement.

3. Being aggrieved by the office order dated 16.05.2013 (Annexure P-1), petitioner again requested on 30.05.2013 for amendment in letter dated 16.05.2013 (Annexure P-1) and prayed that she may be treated to have been voluntarily retired and further prayed for the consequential retiral benefits for the entire period of service of 26 years to her. Moreover, petitioner

caused a legal notices dated 23.08.2013 and 14.05.2015 (Annexures P-7 and P-8 respectively) upon the respondents to amend the order dated 16.05.2013 (Annexure P-1) and withdraw letter dated 23.04.2015 (Annexure P-9) wherein it was stated that the petitioner has rendered only nine years four months service in University, thus, was not entitled to pension as she was relieved accepting her resignation in lieu of premature retirement.

4. In the return filed on behalf of respondent-University, a preliminary objection has been taken that the petitioner has not given the correct facts and the same have been stated out of context. Vide preliminary objection No.1, it has been stated thus:

" That the University published an advertisement: vide No.1 of 2003 to fill the vacant posts of Professor/ Associate Professor/Lecturer/Demonstrator etc in the University College of Nursing, Faridkot annexed as Annexure R-3/1. Pursuant to that, she was appointed as Associate Professor (Nursing) through direct recruitment entry vide an appointment letter No. BFUHS/03-Estt/34521 dated 24.12.2003 annexed as Annexure R-3/2. Resultantly, she joined the service of the University on 01.01.2004. It is pertinent to mention here in that prior to her joining the University which is an autonomous body created by an Act of legislature namely Baba Farid University of Health Science Act, 1998, worked under the Punjab Government from 07.04.1977 to 31.12.2003. The petitioner submitted her three months premature retirement notice dated 14.12.2013 to the University which is annexed as Annexure P-2 in the main

petition. The University forwarded the notice to Punjab Government vide letter No.08-BFUHS/Estt.1/13/3584 dated 01.03.2013 annexed as Annexure R-3/3, since she worked under Punjab Government for more than 26 years of service and copy was also endorsed to the petitioner vide No.5587-87 dated 01.03.2013. It is also added that the petitioner was also informed vide letter No.08-BFUHS/Estt.1/2013/10557 dated 02.05.2013 annexed as Annexure R-3/4 and that under Clause 3 (2) Punjab Civil Services Rules, 1975 (premature retirement), she is not entitled to get premature retirement along with the benefits since she has rendered nine years of service in this University. Hence the request for premature retirement i.e three month notice voluntarily retirement notice period will be considered as resignation. In response to letter dated 02.05.2013, she again requested vide letter dated 06.05.2013 annexed as Annexure R-3/5 for consideration of voluntary retirement and admissible retiral benefit be released but her request was not admissible and she was informed vide letter No. 08-BFUHS/Estt.1/13/8907 dated 10.05.2013 annexed as Annexure R-3/6. The petitioner was relieved from the University service on 16.05.2013 vide Office Order No.08-BFUHS/Estt.1/13/8925 dated 16.05.2013 accepting her resignation in lieu of premature retirement being annexed as Annexure R-3/7. Earlier, the petitioner filed a CWP No. 2736 of 2013 in Hon'ble Court dated 17.07.2013, the Punjab Government issued an order No.13/65/13-4HH3/915 dated 07.02.2014 annexed as Annexure R-3/8. That she served under Punjab Government from 07.04.1977 to 31.12.2003 and is entitled for pensionary benefit upto 31.12.2003 for

the service under Punjab Government and Punjab Government has released the pensionary benefits accordingly.

However, the petitioner served under the University from 01.01.2004 to 16.05.2013 (9 years 4 months) and the petitioner was not entitled for pensionary and other benefits under Punjab Government Rules 6.16 except General Provident Fund (GPF) and which was informed to her vide letter No.08-BFUHS/Estt.1/15/8556 dated 23.04.2015 is annexed as Annexure R-3/9. The final payment of General Provident Fund (GPF) amounting to Rs.5,07,908/- has been released to the petitioner vide multi-city cheque No. 399467 dated 06.05.2015 is annexed as Annexure R-3/10."

5. No replication has been preferred by the petitioner.
6. Having heard learned counsel for the parties and after going through the rival pleadings, I am of the view that the writ petition is devoid of any merit and deserves to be dismissed for the reasons stated herein after.
7. It is the case of respondent No.3 that the petitioner was appointed pursuant to an advertisement bearing No.1 of 2003 (Annexure R-3/1) and not pursuant to the notification, as relied upon by her counsel. It is also asserted that pursuant to the said advertisement, the petitioner had applied for the post of Associate Professor and after having successfully competed with other applicants, the Selection Committee recommended her appointment as Associate Professor vide appointment letter

dated 24.12.2003 (Annexure R-3/2). It is further contended by learned counsel for the respondent No.3 that the terms and conditions of the appointment letter shall prevail in the present case and not those incorporated in the notification.

8. I am not inclined to accept the argument put forth by learned counsel for the petitioner that service Rules and Regulations as applicable to other employees of the University are not applicable to the petitioner as she did not ever opt for the same. It is not the case of petitioner that she was forced to continue on the post on which she was working in the School of Nursing or on an alternative or equivalent post in the University pursuant to the notification (Annexure P-10). The petitioner having herself abandoned her claim, applied afresh pursuant to the advertisement (Annexure R-3/1) and accepted the new terms of appointment as per Rules and Regulations applicable to the University and therefore, she shall be governed by Baba Farid University Punjab Act No.18 of 1998.

9. The writ petition stands dismissed in above said terms. No order as to costs.

(ARUN MONGA)
JUDGE

JULY 05, 2019
shalini

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No