

103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-1765-2019

DECIDED ON: 25th MAY, 2022

JYOTI

.....APPELLANT

VERSUS

DISTRICT & SESSIONS JUDGE, RUPNAGAR RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R. Kartikeya, Advocate
 for the appellant.

SANDEEP MOUDGIL, J.

The instant Letters Patent Appeal has been preferred against the order passed by the learned Single Judge, dated 16.05.2019, whereby CWP-5788-2018, challenging the orders dated 03.09.2015 (Annexure P-6) and 24.01.2017 (Annexure P-10) passed by respondent-District & Sessions Judge, Rupnagar, has been dismissed.

It would be appetite to have a glance to the background of facts leading to filing of present intra-Court appeal. The appellant was appointed as Stenographer Grade-III in the pay scale of Rs.5910-20,200/- (Grade Pay Rs.2800/-) in the office of District & Sessions Judge, Rupnagar vide order dated 12.08.2013 and as such, the appellant joined the Sessions Division, Rupnagar on 16.08.2013.

The appellant through proper channel applied for the post of Senior Scale Stenographer as advertised by this Court and got selected as a Senior Scale Stenographer on the establishment of this Court. Accordingly,

the appellant requested the respondent to relieve her from her duties so as to enable her to join new assignment, but instead of relieving her, respondent vide impugned letter dated 03.09.2015 asked her to first resign from the post of Stenographer Grade-III and then to deposit a sum of Rs. 28,904/- in lieu of one month's notice period before joining in this Court. Since the appellant had to join this Court within a predetermined time frame, so, she deposited the afore-mentioned sum in lieu of one month's notice under protest. Thereafter, she was relieved from her duties on 07.09.2015.

Thereafter, the appellant had filed a representation for the refund of the afore-said amount, which was rejected by the respondent vide letter dated 24.01.2017.

Mr. R. Kartikey, learned counsel for the appellant has vehemently argued that the learned Single Judge has failed to appreciate the fact that the appellant had applied for the post of Senior Scale Stenographer on the establishment of this Court, through proper channel and the appellant was initially employed with the respondent, which is also under the control and administrative subordination of this Court.

It is asserted that the resignation given by the appellant was to be treated as a technical resignation and the said assertion was erroneously rejected by learned Single Judge on the ground that the employer of the appellant had changed.

Learned counsel for the appellant has placed reliance upon the circular dated 09.03.1993 issued by the then Chief Secretary, Government of Punjab wherein, it is stated that no employee can be asked to deposit one month's salary in lieu of notice period in case the application has been

forwarded through proper channel.

The assertion is that all the benefits of past service had been extended to the appellant and, therefore, the demand raised for deposit of the amount in lieu of notice is completely unwarranted. Learned Single Judge has ignored to consider the fact that the appointment of the appellant with the respondent was against a regular sanctioned post and all the conditions of a regular employee had been imposed, meaning thereby, the appellant was not a temporary employee and was not required to pay the amount in lieu of notice period.

Heard learned counsel for the appellant and perused the record with his assistance.

The request of the appellant was rightly rejected by learned District & Sessions Judge, Rupnagar, as she was granted permission to apply for the post in question in view of instructions/policy framed by this Court duly conveyed vide letter No. 287 Spl.E.II/L.80 (a) Hry dated 30.05.2003, as proviso to Article 309 of the Constitution of India provides Hon'ble the Chief Justice and Judges of this Court to frame the rules regulating the recruitment, general conditions of service of persons appointed to class III services. The relevant extract of the afore-said policy dated 30.05.2003, is reproduced as under:-

“The applications for the appointment by transfer to other departments by way of advertisement or circulation of the employees working in the Subordinate Courts, may be forwarded with the express condition that in case, their selection is made, no lien will be retained and if they, intend to go, they are to submit resignation from their posts.”

As such, the policy framed by this Court qua employees of Subordinate Courts is binding upon them. Since the appellant had deposited one month's salary in lieu of one month's advance notice in view of the afore-said policy, therefore, she is not entitled for refund of the same. Inasmuch as the application of the appellant was forwarded to this Court vide letter dated 01.12.2014 and it was also made clear that as per the afore-said policy dated 30.05.2003, she was to submit her resignation, if selected. It would be interesting to note here that there is a specific condition in the appointment letter dated 12.08.2013 issued by learned District & Sessions Judge, Rupnagar that she was required to submit her resignation from service and she would have to give one month's notice or in the alternative to deposit one month's salary in lieu thereof.

This Court, in the light of the discussion made hereinabove and on examination of the record before us, does not find any infirmity and perversity in the order dated 16.05.2019, passed by the learned Single Judge, and, therefore, the same is upheld.

Accordingly, the present appeal fails being devoid of any merits and is dismissed. No order as to costs.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

25th MAY, 2022

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Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No