

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

CWP-7584-2018

Date of Decision :20.07.2022

Tarsem Kumari

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aman Arora, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed for quashing of order dated 16.02.2018 (Annexure P/6), by which, the claim of the petitioner for reconsideration of the punishment imposed upon her by the respondents has been declined and the order of dismissal from service has been upheld.

As per the facts mentioned in the writ petition, the petitioner joined the respondent-department as Laboratory Technician at Madhuban, Karnal in the year 1972. While the petitioner was working on the said post, on 03.05.1989, the petitioner applied for two days leave from 03.05.1989 to 04.05.1989 but unfortunately the petitioner met with an accident and had applied for extension of her leave from 05.05.1989 to 31.05.1989. Due to the accident suffered by the petitioner, she had become handicapped and had sent a certificate to the authorities concerned for the grant of leave on the ground that she has been advised for bed rest. Thereafter, the petitioner

went to join the service but she was not allowed to join on the ground that she had availed the leave without there being any sanction of the authority concerned and ultimately the petitioner was served a charge sheet in the year 1993 on the allegation of remaining absent from service. After holding an enquiry, the petitioner was removed from service vide order dated 10.09.1996 (Annexure P/1) and the period of absence of the petitioner from 03.05.1989 onwards was treated as Dies-Non.

The said order dated 10.09.1996 of removing the petitioner from service was challenged by the petitioner by filing a civil suit, which suit was dismissed by the learned Civil Judge, Karnal vide order dated 18.12.2000, after which, the petitioner preferred an appeal before the Appellate Court, which appeal was allowed by the learned District Judge, Karnal vide order dated 17.08.2002. Thereafter, the State preferred a Regular Second Appeal before this Court, which came to be decided on 25.10.2017 wherein, no infirmity was found in holding the enquiry against the petitioner but the case was remanded back on the ground that on the date, when the petitioner was removed from service, she had rendered almost 18 years of service and has become entitled for the grant of pension which fact was not taken into consideration while passing order dated 10.09.1996.

Keeping in view the order passed by this Court in RSA No.4814-2002, the respondents reconsidered the case of the petitioner and passed a speaking order dated 16.02.2018 (Annexure P/6), wherein, the respondents found that willful absence from duty amounts to misconduct and the punishment of removing the petitioner from service is proportionate

to the misconduct proved against the petitioner hence, order removing the petitioner was maintained, which order is under challenge in the present petition.

After notice of motion, the respondents have filed reply, wherein, they have maintained their stand that as the petitioner willfully remained absent from duty starting from 05.05.1989 onwards, no leniency can be shown to her as the said misconduct i.e. willful absence from duty amounts to gross misconduct, for which, appropriate punishment was imposed upon the petitioner i.e. removal from service.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Though, holding of an enquiry and proving all the charges against the petitioner has already been upheld by this Court while passing order dated 25.10.2017 in RSA No.4814-2002 but, only question left is whether the punishment, which has been imposed upon the petitioner is commensurate to the allegations alleged against her.

A same question of law with similar facts came up for consideration before the Hon'ble Supreme Court of India in **Civil Appeal No.4059-2015** titled as **Union of India and another vs. R.K. Sharma** decided on 30.06.2022, wherein, the Apex Court after examining the law on the said aspect held that where an employee was absent but had rendered enough years of service to be eligible for the grant of pension, the department should take into consideration the same while imposing punishment. The case before the Hon'ble Supreme Court of India also related to the absence from duty and therein also, an employee had

completed qualifying service prior to the misconduct for the grant of pension and other retiral benefits and the Hon'ble Supreme Court of India held that where an employee remained absent from duty and the question whether the absence from duty was willful or not, is in dispute, the appropriate punishment should be imposed in such a manner that employee does not suffer such kind of prejudice so as to lose pensionary benefits as well. Relevant paragraph of the judgment is as under:-

“As regards to the period for which the respondent was absent from duty, we are satisfied that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charge proved against the respondent. We are, therefore, of the view that the ends of justice would have been adequately met by imposing some lesser but major penalty upon the respondent.”

In the present case, it is not in dispute that the petitioner went on leave after duly getting the same sanctioned but, during the leave period, the petitioner met with an accident and became handicapped, for which, the petitioner was advised for bed rest. The petitioner had requested the respondents to extend her leave, which leave never came to be allowed by the respondent-department. Hence, in the present case also, question whether the petitioner remained willfully absent from duty or not is doubtful, especially, when in the civil suit filed by the petitioner, she had produced the documents regarding her illness and had also got examined the doctor to show that the petitioner remained under treatment from July, 1989 onwards. That being so, taking away the benefit of the qualifying service, which the petitioner already rendered prior to the said misconduct so as to deny the pension and other service benefits will be too harsh punishment to be imposed upon the petitioner in the facts and circumstances of the present

case.

Learned counsel for the petitioner further submitted that in case the petitioner is granted the pensionary benefits, for the service, which she had already rendered, she will not claim the arrears of pension upto today.

Once, the petitioner has also given up the arrears of pension upto today in case she is granted pensionary benefits, the punishment of compulsorily retirement would suffice the purpose, keeping in view the misconduct alleged and proved against the petitioner.

Ordered accordingly.

Let respondents calculate the pensionary benefits of the petitioner for the services, which she had rendered starting from the date of her appointment till 04.05.1989 as qualifying service for computing her pensionary benefits. However, the pension will start from the date of the termination i.e. 10.09.1996. Arrears of pension from 1996 till today have already been given up by the petitioner herself, hence, she will not be granted any arrears of pension upto today

Let respondents calculate the pensionary benefits, for which, the petitioner becomes entitled under this order within a period of two months from the date of receipt of copy of this order and the same be released to her within a period of four weeks thereafter.

Petition stands allowed in above terms.

July 20, 2022
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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