

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-4472 of 2023 (O&M)  
Date of decision: 03.03.2023

Satnam Kaur

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bikramjit Singh Patwalia, Advocate  
for the petitioner.

Mr. Vikas Arora, AAG, Punjab

ANIL KSHETARPAL, J(Oral)

1. The petitioner has filed the present writ petition with the following substantive prayers:-

- i. *to issue an appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to fix and grant pension to the petitioner alongwith all other admissible pensionary benefits including gratuity, leave encashment and other admissible benefits with a further prayer to grant arrears of pension as admissible to the petitioner w.e.f. from her date of initial joining Le. 11.05.1985 which have been withheld in a completely illegal and arbitrary manner along with interest @10% per annum for delayed payment of pensionary benefits in view of the settled principle of law in A.S.Randhawa Vs. State of Punjab reported as 1997(3) SCT 468 and Darshan Singh Vs. State of Punjab and others report as 2018 (2) SLR 584.*
- ii. *to issue an appropriate writ, order or direction including a writ in the nature of Certiorari quashing the order dated 29.11.2017 (Annexure P-16) vide which the case of the petitioner for absence has been considered and she has been she has been wrongly treated as deemed resigned w.e.f. 15.2.2014 specially keeping in view that there is no power with the respondents under the Punjab Civil Service Rules to pass such order.*
- iii. *to issue an appropriate writ, order or direction including a writ in the nature of Certiorari quashing the intimated dated 19.7.2019 (Annexure P-21) alongwith the letter dated 24.9.2019 (Annexure P-22) and letter dated 18.12.2019 (Annexure P-23) vide which by wrongly invoking Rule 7.5 of the Punjab Civil Services Rules, Vol-1, Part-1, the case of the petitioner for grant of pensionary benefits has been rejected.*

- iv. *to issue an appropriate writ order or direction including a writ in the nature of Mandamus directing the respondents to grant the salary to the petitioner as per Rules which she is entitled for during the period of the sanctioned Ex-India Leave wef. 19.08.2013 to 14.02.2014 along with interest.*
- v. *to issue any appropriate writ order or direction as it deems fits and proper in the peculiar facts and circumstances of the present case.”*

2. This Bench has heard the learned counsel representing the petitioner at length and with his able assistance perused the paper book.

3. Initially, the petitioner was recruited on temporary basis on the post of Warder at the Mental Hospital, Amritsar. Subsequently, her services were regularised on 25.07.1990. On her request, she was shifted to another office. Ultimately, she was absorbed in the office of the Civil Surgeon, Amritsar on 12.07.2013. Her request for Ex-India leave was sanctioned on 13.08.2013 for a period only from 19.08.2013 to 14.02.2014. However, the petitioner did not join her service after the expiry of the said period. Though, she sent a request for extending her Ex-India leave, however, the same was rejected. The petitioner was treated as absent from 15.02.2014. Subsequently, on account of her continued absence from duty, a charge sheet was issued to the petitioner by the Competent Authority. However, on 29.11.2017, the Competent Authority passed the order treating her absence as resignation.

4. She came back to India in November, 2018. She never challenged the correctness of the order dated 29.11.2017 prior to the filing of the writ petition. Now, her request for grant of pension has been rejected.

5. The learned counsel representing the petitioner contends that the order is punitive in nature and the same cannot be passed without a departmental inquiry. He further submits that there is no concept of deemed resignation and hence, the authorities have erred in removing the petitioner

from service and also, in forfeiting her entire service.

6. First of all, the writ petition suffers from unexplained delay and laches. The impugned order was passed on 29.11.2017. Admittedly, she returned to India in November, 2018. Even thereafter, she remained silent for more than 4 years. If the petitioner was required to file a civil suit, the same would, probably, have been dismissed for being barred by time.

7. Further, it is well known that a substantial number of employees, after getting Ex-India leave, start residing in the foreign countries and come back only to get the retiral benefits. In these circumstances, the government has issued instructions providing for deemed resignation in case the employee does not return from the foreign country for a substantial period of time. Though, there is no such provision in the service rules, however, instructions in this regard have been issued by the State. It is well known that under Article 162 of the Constitution of India, the State government in the exercise of its executive powers can make rules, instructions etc., which supplement the rules though they cannot supplant the same. The government, after taking a note of the prevailing situation, while exercising its executive powers, has adopted the procedure to remove such employees, who have practically abandoned their jobs. In such circumstances, the instructions issued to deal with this issue cannot be said to be arbitrary.

8. As regards the argument of the learned counsel representing the petitioner that the order is punitive and hence, a regular inquiry is required, it may be noticed that on a careful reading of the order dated 29.11.2017, it is evident that the government has passed the order on the basis of the instructions dated 12.05.2017 and thus, the order, being in accordance with

such instructions, is not punitive in nature.

9. As regards the argument of the learned counsel representing the petitioner that there is no provision in the rules with respect to deemed resignation, it may be noticed that in order to tide over the prevailing situation, the government has taken a conscious decision to issue the said instructions. Such instructions are not in violation of the rules. In fact, the same are issued in public interest and for bonafide application of public money.

10. Keeping in view the aforesaid facts and discussion, no ground to issue the writ as prayed for is made out.

11. Dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

March 03, 2023  
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(ANIL KSHETARPAL)  
JUDGE

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