

2023:PHHC:166623

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23468-2017

DECIDED ON: 31.10.2023

RAJINDER KAUR

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms.Sangita Dhanda, Advocate and
Mr.Harjot Singh, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr.K.K.Gupta, Advocate
for respondents No.2 & 3

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the impugned order dated 16.12.2016 (Annexure P-9) as well as letter dated 17.06.2009 (Annexure P-10) with further prayer for issuance of a writ in the nature of *Mandamus* directing the respondents to grant the benefits as have been granted to Raj Kumar plaintiff in Civil Suit No. 448-CS-2005, decided on 07.06.2006 (Annexure P-4) and to the petitioner in CWP-12339-2005 (Annexure P-5).

2. Learned counsel for the petitioner has contended that the petitioner was the employee of the respondent No.2 & 3 working under the Family Planning Welfare programme on the post of 'Lady Health Visitor', appointed on 26.09.1979, worked with the department with utmost sincerity from the year 1979 to 2016. The petitioner throughout her service career had been getting pay & other benefits as per Haryana Government rules from time to time as the respondents have adopted the

Haryana Government rules & regulations by passing a resolution No.5 i.e. Annexure P-1. The petitioner was retired from the department on 02.02.2016 but her retiral dues i.e. leave encashment & gratuity was withheld by the respondents. However the claim of CPF was released.

3. He further submits that similarly situated co-employee Dr.Swaran Sharma filed CWP No.12339 of 2005 against the respondent in which a decision was rendered by this hon'le High Court vide order dated 29.08.2007 (Annexure P-5), wherein the said employee was granted benefits like pay scales and pay revision as claimed in the present petition and another similarly situated co-employee namely Raj Kumari, who was working under the family welfare project as of petitioner was granted benefit of Leave Encashment & Gratuity by the respondents which was disclosed by the respondents in reply to the application under Right To Information Act. But the respondents without any rhyme & reason withheld the said benefits of the petitioner.

5. Ms. Sangita Dhanda, learned Advocate appearing for the petitioner vehemently contends that the petitioner made various written representations to the respondents one of which was Annexure P-7 dated 09.03.2016. However, the respondents dismissed the said representation of the petitioner vide order dated 16.12.2023 (Annexure P-9) on the ground that 'promotion or other benefits cannot be given to the employees working under the project' on the basis of letter dated 17.06.2009 issued by Government of India. Hence the present writ petition has been filed.

6. Upon notice, the respondents filed their written statement taking objections that the petitioner was working under the "Family Planning Welfare

Project” and therefore the above said benefits were not extended to him and prayed dismissal of the petition.

7. Heard, learned counsel for the respective parties.

8. After hearing learned counsel for the parties as well as perused the record, it is evident that the petitioner is aggrieved against the impugned order dated 16.12.2016 (Annexure P-9), wherein the representation dated 09.03.2016 (Annexure P-7) of the petitioner was dismissed on account that she is not entitled to the alleged claim. However, the similarly situated persons namely Raj Kumari and Dr. Swarn Sharma, who were working under the Family Welfare Project alongwith the petitioner, have been granted the said benefit vide judgment dated 07.06.2006 (Annexure P-4) and 29.08.2007 (Annexure P-5) respectively, the respondents without any rhyme and reason withheld the said benefits of the petitioner.

9. In addition, the counsel for the respondents has failed to explain as to how the petitioner is not entitled for leave encashment & gratuity and also do not controvert regarding releasing of leave encashment & gratuity to co-employee Raj Kumari, who was working under the family welfare project. Moreover, the respondents also do not controvert about the passing of the judgment in ***CWP No.12339 of 2005, decided on 29.08.2007 titled as Dr. Swaran Sharma Vs State of Haryana*** wherein the post retiral benefits as claimed in the present petition was given to the said petitioner and has only referred to the letter dated 17.06.2009 of Government of India vide which it was intimated that promotion of any kind cannot be given to staff working in urban family welfare centre.

10. Another arguments raised by the counsel for the respondents is also not tenable in the eyes of law as the said letter admittedly comes in the year 2009 and the petitioner was in service since 1979. Therefore the right to claim the relief as

mentioned in the writ petition accrues much before the issuance of the said letter. It is well settled law that any notification/rules/change in law or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Since the notification/letter issued by the government of India does not contain any clause indicating retrospectively effect, it will have only prospective effect as has been held in various dictums of the Apex Court passed in *A.A.Calton Vs The Director of Education &Anr- 1983 AIR (SC) 1143*, *P.Mahendran Vs State of Karnataka- 1990 AIR (SC) 405*, *Y.V.Rangaiah&Ors Vs J.Sreenivasa Rao &Ors- 1983 AIR (SC) 852*, *Sonia Vs Oriental Insurance Co. Ltd &Ors- 2007 AIR (SC) 2932& State of Punjab &Ors Vs Bhajan Kaur &Ors- 2008 AIR (SC) 2276*.

11. In the light of above, this court is of opinion that the judgment dated 29.08.2007 (Annexure P-5) passed in CWP N.12339 of 2005 by this Court, is also applicable to this case. Therefore, considering the fact that the respondents have also given benefits of Leave encashment & gratuity to the co-employees, the petitioner is also entitled to leave encashment & gratuity as prayed in the petition with interest @ 6 % p.a from the date when the same became due. Consequently the impugned order dated 16.12.2016 (Annexure P-9) as well as letter dated 17.06.2009 (Annexure P-10) are set aside. The respondents are directed to release the Leave Encashment & Gratuity to the petitioner within a period of four weeks from the date of receipt of certified copy of this order.

10. The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

31.10.2023
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No