

LPA-442-2023 (O&M)

2025:PHHC:034738-DB



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

**CM-1207-LPA-2023 in/and
LPA-442-2023 (O&M)
Date of Decision: March 12, 2025**

Malkeet Singh

.....Appellant

Versus

State of Punjab and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. G.S. Bal, Senior Advocate with
Ms. Gurneet Kaur, Advocate and
Ms. Lovepreet Kaur, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

LISA GILL, J.

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1. Heard.
2. For the reasons mentioned in the application as well as arguments addressed, delay of 51 days in filing the appeal is condoned.
3. Application is, accordingly, disposed of.

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1. Prayer in this appeal is for setting aside order dated 10.01.2023, passed by learned Single Bench, whereby CWP-4216-2015 filed by appellant (writ petitioner) has been dismissed. Appellant also seeks setting aside of

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order dated 23.02.2023 passed in RA-CW-20-2023 after hearing arguments again and order dated 22.03.2023 in CM-4864-CWP-2023 in RA-CW-20-2023 dismissing the application.

2. Brief facts necessary for adjudication of the matter are that appellant/writ petitioner was appointed as Mathematics Master on 06.08.1997. He joined as such at Government High School, Assarpur, District Patiala on 02.09.1997. He was confirmed as Maths master on 17.07.2001. Appellant submitted application dated 21.06.2001 to the Headmistress, Government High School, Assarpur, District Patiala, seeking Ex-India leave for one year w.e.f. 02.07.2011 to 30.09.2011. His application for leave was forwarded to DEO (SE), Patiala, with application being further forwarded to Director Education (SE), Punjab. Application dated 21.06.2011 was sent back to DEO with objections. In the meanwhile, appellant submitted fresh application for leave on 01.07.2011, before the Headmistress, seeking Ex-India leave for a period of three months w.e.f. 02.07.2011 to 30.09.2011. Self-declaration by way of an affidavit/undertaking was submitted by appellant to the effect that on expiry of sanctioned leave he would come present on duty and in case he did not join, it would be treated as his resignation from Government job on expiry of his leave. It is further declared in the affidavit that he would not raise any further claims in this regard or take any legal assistance. Leave application dated 01.07.2011 was sanctioned by Headmistress of the school, despite the fact that she was not competent to sanction the same. She was charge sheeted vide order dated 07.07.2014. It is the case of the appellant that he was made to execute said undertaking in the shape of an affidavit as a pre-condition for grant of leave. During the period he was on leave, appellant is stated to have fallen seriously ill and was diagnosed to be suffering from

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severe renal failure with both his kidneys being damaged. He submitted application dated 29.09.2011 for extension of leave due to ill-health which was received as reflected at Diary No. 7 dated 17.10.2011 in the school register. Appellant also had to undergo bypass surgery. Public notice dated 06.05.2013 was issued in various newspapers to the effect that employees as named, which included present appellant, have absented from duty since long and despite an opportunity to show cause as to why action should not be taken against them for having abandoned their jobs, they had not responded and that in case response was still not received, it would be presumed that they have nothing to say and further action as deemed fit would be taken. Appellant is stated to have submitted representation dated 27.02.2013 earlier as well as subsequent representation dated 16.05.2013 after issuance of public notice detailing the factum of having undergone bypass surgery and undergoing dialysis regularly. Despite said representation being submitted, order dated 04.06.2013 (Annexure P10) was passed while noting that in the self-declaration submitted by appellant on 03.06.2011, it is stated that on completion of leave if he does not attend the institution, it should be considered that he has tendered his resignation, therefore, appellant's resignation was accepted w.e.f. 01.10.2011. Thereafter, appellant returned to India and filed CWP-21362-2013 challenging termination order dated 04.06.2013. This writ petition was disposed of with a direction that in case, comprehensive detailed representation is filed by appellant, competent authority would consider the same and take final decision thereupon by passing a speaking order within a period of four months. Representation dated 05.05.2014 was submitted.

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3. Upon considering the facts and circumstances, speaking order dated 07.07.2014 was passed, rejecting the claim of appellant. Aggrieved therefrom, CWP-4216-2015 was filed, which at the first instance was dismissed on 10.01.2023 with the observation that appellant being appointed as Maths teacher on 06.08.1997, his family members were residing in Canada and he did not return to India after expiry of three months of Ex-India leave, therefore, in terms of his undertaking that such act should be considered to be his resignation, same was correctly accepted.

4. Application seeking review thereof was filed on the premise that senior counsel representing appellant who had to assist the Court was busy before some other Bench on 10.01.2023. It is noted in order dated 23.02.2023 that arguments were again heard at length. Learned Single Bench vide detailed order dated 23.02.2023 concluded that no case was made out for interference. Appellant had submitted his affidavit dated 03.06.2011. No representation or application was found to have been submitted in September or October 2011. Documents relating to his medical condition were not in respect of any problem faced by him in June 2012 to prove that he was undergoing dialysis on detection of alleged disease. Another application was filed for review of order dated 23.02.2023, same was dismissed on 23.03.2023 with correction in para 11 of decision dated 23.02.2023 to the extent of date of superannuation of appellant. Aggrieved therefrom, present appeal has been filed.

5. Learned senior counsel for appellant vehemently argued that there is sufficient medical documentation on record to indicate that appellant indeed suffered from severe renal failure, therefore, he cannot be held bound by affidavit dated 03.06.2011 submitted by him at the time of seeking Ex-India leave for a period of three months. It is submitted that appellant also

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underwent cardiac surgery and it is not the case where appellant had simply gone abroad and not returned to India for no rhyme or reason. In fact, kidney transplant was subsequently carried out in October, 2015. He had been put on kidney transplant waiting list in 2011. Moreover, it is a matter of record that appellant had submitted his application dated 29.09.2011 for extension of his leave from October 2011 to 31.03.2013, which was received in school on 17.10.2011, therefore, it is apparent that he had sent his application seeking extension a day prior to expiry of sanctioned leave period. E-mail dated 24.08.2012 in this respect was also sent to Headmistress in this regard. It is submitted that appellant had sought leave in June 2011 as he wanted to seek proper treatment in Canada where his family was settled. When he was getting ready to return to India in September 2011, his renal problem aggravated and he had to be hospitalised. Medical record submitted by appellant should have been verified before taking action of accepting his resignation in terms of affidavit/undertaking dated 03.06.2011. It is contended that request of appellant seeking voluntary retirement should at least have been accepted. It is, thus, prayed that this appeal be allowed and impugned orders dated 10.01.2023, 23.02.2023 and 22.03.2023 be set aside and writ petition be allowed as prayed for.

6. Learned counsel for State has refuted arguments as raised on behalf of appellant. It is submitted that appellant sent application dated 29.09.2011 i.e. a day before period of leave sanctioned was to expire. Said application was received on 17.10.2011 at the school, however, no medical record was attached alongwith. Furthermore, first application dated 21.06.2011 seeking leave for a period of one year was still pending before authorities when appellant filed application dated 01.07.2011 and managed to

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get it sanctioned from the Headmistress, who was not competent to do so. She was charge sheeted for the same. Medical record attached with writ petition is for the period 2012 to 2013 and not w.e.f. the date prior to 30.09.2011. It was further submitted that appellant only had 13 years of service to his credit i.e. from 06.08.1997 to 01.10.2011, which is less than 20 years, therefore, in any case he is not eligible for any pensionary benefit. It is, thus, prayed that this appeal be dismissed.

7. We heard learned counsel for parties and have carefully gone through the file.

8. It is a matter of record that appellant sought Ex-India leave on 21.06.2011 for a period of one year w.e.f. 02.07.2011 to 30.06.2012 on the ground that he wished to spent time with his wife, who was a permanent resident of Canada and to settle his child in Canada. Leave was not sanctioned and this application was still pending when he submitted another application dated 01.07.2011 on the same ground. It is, thus, apparent that he did not seek Ex-India leave on the ground of getting treatment for his renal problem at Canada. We take note of the fact that during the course of argument, learned counsel for appellant had submitted that in effect, reason for seeking leave was for treatment, though it is not so mentioned in the application. Reference is sought to be made to RFT report (Blood test) wherein his Creatinine levels are reflected to be 3, therefore, indicative of renal problem. We do not find any merit in this argument inasmuch as it is not open to the appellant at this stage to submit that actual reason for seeking leave was for taking treatment. Apart from the fact that this indicates a falsehood at the instance of appellant with the authorities for no rhyme or reason, there is nothing on record to substantiate such a stand. It is conceded that wife of appellant is a permanent

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resident of Canada and his family is settled there. There is indeed nothing on record to indicate that appellant was suffering from severe renal problem either at the time he left for Canada or in September 2011 which prevented him from travelling to India on the expiry of leave period.

9. It is relevant to note that much stress was placed upon application dated 29.09.2011 submitted by appellant for extension of leave period. As per application dated 29.09.2011, he sought extension of leave from October 2011 to 31.03.2013. Though it is mentioned in the application that medical certificate issued by concerned Doctor is enclosed, no such document has been pointed out on record. Learned counsel State had made categorical assertion that it is only application dated 29.09.2011 without any attending documents, as received on 17.10.2011, which is available on record. It is pertinent to note that after dispatch of this casual application dated 29.09.2011, appellant is stated to have leisurely submitted application dated 06.06.2012 and e-mail dated 24.08.2012. Reference by learned counsel for appellant to document dated 06.06.2012 attached as Annexure P13, statedly issued by one Dr. A.S. Bassi, MD to the effect that appellant is advised rest from work for one year due to severe renal failure, undergoing dialysis treatment, is of no avail to the appellant in view of the fact that first and foremost there is no indication as to whether appellant had been undergoing any treatment since September 2011 or was in such a medical condition at that time that he could not travel to India. Moreover, perusal of document dated 06.06.2012 reveals that even parentage or address of appellant is not mentioned therein. Furthermore, reference by learned counsel for appellant to certificate dated 05.03.2019 again statedly issued by Dr. Amrik Bassi, MD of Martindale Medical Clinic, Calgary, is of no use in the absence of any specific treatment record or even

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prescriptions of period in question. Appellant is stated to have travelled back to India in the year 2013 i.e. prior to kidney transplant in the year 2015. There is no indication as to how he was fit to travel in 2013.

10. In the given facts, circumstances and in our considered opinion, learned Single Bench has correctly concluded that action of respondent – authorities does not suffer from the vice of arbitrariness, perversity or illegality.

11. Learned counsel for appellant was unable to point out any infirmity or illegality in impugned decisions of learned Single Bench, which call for intervention by this Court in exercise of appellate jurisdiction.

12. No other argument has been addressed.

13. Appeal is, accordingly, dismissed with no order to as to costs.

14. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

March 12, 2025
Rts

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