

LPA-3016-2024

2025:PHHC:016329-DB



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

**CM-7416-LPA-2024 in/and
LPA-3016-2024**

Date of Decision: February 03, 2025

Kruneshkar

.....Appellant

Versus

State of Punjab and others

..... Respondents

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

Present: Mr. Vaneet Soni, Advocate for the appellant.

Mr. R.S. Pandher, Sr. DAG, Punjab.

LISA GILL, J.

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1. Heard learned counsel for parties.
2. For the reasons mentioned in the application as well as arguments addressed, delay of 54 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 25.07.2024 passed by learned Single Bench whereby CWP-16098-2021 filed by appellant/writ petitioner alongwith two others (who are not party to this appeal) has been dismissed.

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2. Brief facts necessary for adjudication of the matter are that appellant/writ petitioner alongwith others raised a grievance against denial of release of pensionary benefits as per their last pay drawn qua current duty charge of higher post held by them at the time of retirement. It is pleaded that writ petitioners No. 1 (present appellant) and 2 while serving as Clerk/Junior Assistant were given current duty charge of higher post vide order dated 21.11.2018 for the purpose/in view of Lok Sabha Elections, 2019. Writ petitioner No. 3 was given current duty charge of Superintendent Grade II vide order dated 22.11.2018 (Annexure P2). While they were still working on the posts in question, writ petitioners No. 1 and 2 applied for and were granted voluntary retirement on 31.01.2019 and 28.02.2019 respectively and writ petitioner No. 3 retired voluntarily on 31.05.2019 from the post of Superintendent Grade I. Retiral benefits were released to them not as per their last pay drawn but as per the pay of substantive posts held by them. Aggrieved therefrom, CWP-16098-2021 was filed.

3. Learned Single Bench on considering the facts and circumstances of the matter, dismissed the writ petition while observing that an employee is entitled for fixation of his/her pay and pensionary benefits only on the basis of substantive rank held by him/her. Salary drawn on the basis of current duty charge cannot be taken into account. Reference was made to decision of Hon'ble the Supreme Court in **K. Sreedhar Rao vs. Union of India through Secretary, Ministry of Law and Justice, New Delhi 2019 (9) SCC 111**. Aggrieved therefrom, present appeal has been filed.

4. Learned counsel for appellant refers to Rule 2.2 Vol.2 Chapter 2 and Rule 16.16 of Punjab Civil Services Rules (for short – 'the Rules') to

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submit that appellant is entitled to pension and benefits on the basis of last pay drawn, therefore, learned Single Bench has erred in dismissing the writ petition filed by present appellant.

5. Learned counsel for State (on advance notice) has opposed the appeal. Learned counsel for State refers to Rule 3.12 Volume II, Chapter III of the Rules to submit that an employee to qualify for receipt of pension must fulfill three conditions therein. Reference was also made to Rule 3.17, Volume II, Chapter III of the Rules to submit that impugned order dated 25.07.2024 has been correctly passed. Dismissal of the appeal is sought.

6. Heard learned counsel for parties and have perused the file.

7. At the outset, it is useful to reproduce Rules 3.12 and 3.17 of the Rules, which reads as under:-

“ 3.12. The service of a Government employee does not qualify for pension unless it conforms to the following three conditions:-
First.-The service must be under Government.
Second.-The employment must be substantive and permanent.
Third. -The service must be paid by Government.
These three conditions are fully explained in the following rules..”

“3.17. If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of: -

(i) periods of temporary or officiating service in non-pensionable establishment;

(ii) Omitted.

(iii) Omitted.”

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8. It has been correctly held by learned Single Bench that an employee is entitled for fixation of pay and pensionary benefits only on the basis of substantive rank held by him/her. Salary drawn on the basis of current duty charge can definitely not be taken in account. It is to be reiterated that petitioners in the writ petition have fairly agreed that higher posts held by them were on temporary basis. Co-ordinate Bench in **LPA-621-2022 (Karnail Singh Brar versus State of Punjab and others)** decided on 12.02.2024 has held that employees entitled for fixation of pensionary benefits on the basis of substantive rank held by him and not that of the current duty charge. We find no merit in the arguments as raised on behalf of appellant, which are accordingly rejected.

9. Learned counsel for appellant is unable to point out any illegality, infirmity or irregularity in impugned order dated 25.07.2024 which calls for interference.

10. No other argument has been addressed.

11. Appeal being devoid of any merit is, thus, dismissed.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

February 03, 2025
Rts

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