IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.342 of 2011

Decided on: **February 29, 2016.**

State of H.P. and another **…….Appellants.**

versus

Arun Sharma **…….Respondent.**

Coram

The Hon'ble Mr.Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr.Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr.Shrawan Dogra, Advocate General, with Mr.Romesh Verma and Mr.Anup Rattan, Addl.A.Gs. and Mr.J.K. Verma, Dy.A.G.

For the Respondents: Mr.Sanjeev Bhushan, Senior Advocate, with Ms.Abhilasha Kaundal, Advocate.

Mansoor Ahmad Mir, C.J. (Oral)

This appeal is directed against the judgment, dated 29th November, 2010, passed by a learned Single Judge of this Court in CWP No.2823 of 2008, titled Arun Sharma vs. State of H.P. and another, whereby the writ petition filed by the petitioner (respondent herein) came to be allowed, (for short, the impugned judgment).

2. We have heard the learned counsel for the parties and have gone through the writ record.

3. The petitioner filed the writ petition for the following reliefs, on the grounds taken in the memo of writ petition:

> "(i) That the writ in the nature of mandamus may be issued directing the respondent department to consider the name of the petitioner for promotion to the post of Female Health Supervisor fro the date her juniors have been promoted particularly w.e.f.30.8.2008 (Annexure P-5), with all consequential benefits of pay, arrears, seniority etc. etc.
>
> (ii) That the respondents may be directed to produce the entire record pertaining to the case before this Hon'ble Court for its kind perusal."

4. Writ respondents (appellants herein) filed the writ to the writ petition.

5. It appears that during the pendency of the writ petition, the petitioner moved an application for placing on record certain documents. The writ respondents filed reply to the said application and alongwith the reply, also annexed the inquiry report, dated 27th February, 2009, submitted by the

Inquiry Officer in regard to the period of absence of the writ petitioner, which reads as under:

"To

The Director Health Services,
Health & Family Welfare Department
Himachal Pradesh, Shimla-9.

Subject:- Regarding holding the Departmental enquiry for considering the case of promotion in respect of Smt. Arun Sharma, FHW, in connection with CWP No.2823/2008 filed by Smt. Arun Sharma, FHW-submission of its report.

Madam,

Respectfully and humbly, I beg to submit that I was appointed as Inquiry Officer into the above case vide your kind letter No. HFW-H(I)B(3)125/91 dated 23-1-2009.

I conducted the enquiry at CMO Office Kullu on 11-2-2009 where Smt. Arun Sharma, FHW was called. She attended the enquiry and made a statement, copy of which is originally enclosed herewith as Annexure "A" for your kind perusal.

During the course of enquiry, all the documents attached with your kind letter dated 23-1-2009 were verified from the record called for from the peripheral Office and the Office of the CMO Kullu including Service Book called from E.S.I. Hospital Parwanoo where she is presently posted, which has all been found correct, and I verified the same and the record is being returned as a collective Annexure "B".

The Service Book shows that she was initially appointed during the year 1982 and she joined as FHW on 28-1-82. The Service Book further reveals that there is no entry of her termination service, however, she has been shown re-appointed at page No.13 of the same, whereafter there is no interruption in her service. The correspondence was also checked and verified which shows that she was called to join her duties back on the order of Director Health Services vide letter of endorsement NO. HFW-Klu (B)PF/83-9535-36 dated 31-5-1983 and she joined back her duties in pursuance to above letter of endorsement. The case of

absence was taken up with the Director Health Services who vide letter NO.HFW-H(I) B(4)125/83 dated 12-3-1986 passed directions that absence period of Smt. Arun Sharma, FHW may be regularized by granting extra-ordinary leave the copy of above letter dated 12-3-1986 is enclosed herewith as Annexure "C" for perusal. This direction of the higher authorities was not complied with, but FHW was shown re-appointed as referred to above. She was not given any notice of termination, nor her services were ever terminated.

In view of above findings, I hold that the direction of the higher authority could have been complied with.

Dated: 27-2-2009 Yours faithfully,

Sd/-
Dr. B.R. Kashyap,
OSD. H&FW Dte. Shimla-9"

6. The above quoted letter does disclose that the services of the petitioner were never terminated by the writ respondents, rather she was asked to join back, which she did. It is further evident from the perusal of the above letter that the Director, Health Services, vide letter dated 12th March, 1986, had directed for regularizing the period of absence of the petitioner by granting her extraordinary leave. The learned Single Judge has rightly discussed in detail the said factum in paragraphs 2 and 3 of the impugned judgment and rightly allowed the writ petition.

7. Having said so, the impugned judgment is well reasoned and needs no interference. Accordingly, we hold that there is no merit in the instant appeal and the same is dismissed.

(Mansoor Ahmad Mir)
Chief Justice.

February 29, 2016. **(Tarlok Singh Chauhan)**
(Tilak) **Judge**