

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 5943/2014

THE STATE OF UTTAR PRADESH THR.
ITS PRINCIPAL SECRETARY & ORS.

Appellant(s)

VERSUS

DR. OM PRAKASH AGGARWAL

Respondent(s)

O R D E R

The respondent joined the Provincial Medical and Health Services as Medical Officer (II) on 09.11.1973 and was promoted as Medical Officer Incharge vide order dated on 27.10.2005. It appears that in pursuance to a Government order of the Ministry of Home Affairs, Department of Personnel and Administrative Reforms of the Foreign Assignment Section, persons interested in foreign assignment could send their names for being registered in the panel to be sent to foreign assignments when the need so arises. In pursuance thereto, respondent applied. On the occasion so arising, his willingness was sought and the respondent proceeded to Guyana for a period of three years.

The respondent apparently came back from Guyana in 1981,

did some courses and it is his case that he submitted an application to join dated 22.2.1984 but was not permitted to join because some permissions were required. There seems to be almost a silence for a long period of time over the issue. Then the respondent again woke up after almost eighteen years in the year 2002 seeking to rejoin.

The aforesaid factual scenario, in our view, thus seems to suggest that the respondent has actually abandoned service but at some stage, largely with the objective of obtaining retiral benefits, filed a petition before the High Court in which directions were issued for the State Government to take an appropriate stand.

The appellant held an inquiry and found there was unauthorised absence from 11.6.1976 to 02.7.2003. There appears to be some lack of clarity on the scenario in the initial period as if the respondent proceeded under the Union of India scheme for foreign assignment, it would be really a technical issue as to in what circumstances he was released but the fact remains that on his return he should have joined the service, which he did not. If he was improperly prevented from joining service, that was the occasion to approach the Court. However, after more than a decade and a half he sought to raise the issue. He superannuated from the service on 31.8.2006.

The High Court in terms of the impugned judgment dated 06.8.2013 has however been pleased to allow the prayer of the respondent quashing the order dated 12.7.2005 holding against the respondent's entitlement to have no break in service.

On the special leave petition being preferred, leave was granted and the operation of the impugned order was stayed. The respondent has been served but has chosen not to appear.

We have heard learned counsel for the appellant and find the impugned order unsustainable. We fail to appreciate how can the respondent get all the retiral benefits as a consequence of continuity of service when he had practically abandoned the service. His joining was with the "break in service". The endeavour to join after such a long period of time while he appears to have enjoyed his own practice is obvious i.e. to somehow get the benefits of pension and other retiral benefits even though the respondent never served for a long period of time as to what he was doing during this period of time is really not known.

In view of the aforesaid reasons, we set aside the impugned judgment and hold that the inquiry report dated 17.6.2005 would hold good with all its consequences.

The appeal is allowed leaving parties to bear their own costs.

.....J.
(SANJAY KISHAN KAUL)

.....J.
(MANOJ MISRA)

.....J.
(ARAVIND KUMAR)

NEW DELHI
02nd March, 2023

ITEM NO.101

COURT NO.2

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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Date : 02-03-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. Ankit Goel, AOR
Mr. Sachin Yadav, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(RASHMI DHYANI PANT)
COURT MASTER

(POONAM VAID)
COURT MASTER

(signed order is placed on the file)