

(2018) 03 J&K CK 0047
In the Jammu And Kashmir High Court
Case No : SWP No.2949 OF 2013

SAROJ KUMARI DOGRA

APPELLANT

Vs

STATE OF JAMMU & KASHMIR & OTHERS

RESPONDENT

Date of Decision : 02-03-2018

Acts Referred:

Jammu and Kashmir Civil Service Regulations — Article 163, 203

Citation : (2018) 03 J&K CK 0047

Hon'ble Judges : ALOK ARADHE

Bench : Single Bench

Final Decision : Disposed Of

Judgement

The petition is admitted for hearing.Â

With the consent of the learned counsel for the parties, the matter is heard finally.Â

In this petition, the petitioner, inter alia, seeks writ of certiorari for quashment of order dated 12.06.2009, passed by the respondent No.5 as well as

order dated 26.08.2010, passed by respondent No.2- Director Health Services Jammu, by which the leave in favour of the petitioner has not been sanctioned.Â

The petitioner also seeks writ of certiorari for quashment of order dated 05.04.2012 passed by respondent No.2- Director Health Services, Jammu, to

the extent by which the period from 28.01.2002 to 28.12.2007, has been treated as ""Dies-non" without pensionary benefits in favour of the

petitioner.Â The petitioner further seeks quashment of order passed by respondent No.5 by which the pension of the petitioner has been fixed at

Rs.6320 against the grade applicable at the time of retirement of the petitioner.Â

The petitioner also seeks quashment of order passed by respondent

No.5 insofar as it pertains to the recovery of Rs.34047.00 as excess of gratuity in favour of the petitioner.Â

Facts giving rise to the filing of the present petition briefly stated are that the petitioner was appointed as a Female Multi-Purpose Health Worker on

26.07.1974.Â She superannuated on 31.12.2007.Â The petitioner remained absent from duty from 01.05.2001 to 28.12.2007.Â It is the case of the

petitioner that the petitioner could not attend her duties due to her illness.Â The petitioner resumed her duties on 29.12.2007. The respondent No.5 by

an order dated 12.06.2009 directed the respondent No.4 that the application for commutation of pension in Form-D or Form-F cannot be admitted at

this stage as the case has been preferred after more than one year from the date of her retirement and she will have to apply in Form-ABC and to

undergo a medical examination of the prescribed Medical Board.Â The respondent No.2 by impugned order dated 05.04.2012 treated the period from

28.01.2002 to 28.12.2007 as â??Dies Nonâ? without pensionary benefits in favour of the petitioner, in view of Article 163 of the J&K Civil Service

Regulations Vol.1.Â Being aggrieved, the petitioner has approached this Court.Â

When the matter was taken up today, learned counsel for the petitioner submitted that since the petitioner was permitted to join, therefore, in view of

reference to Article 203 of the J&K Civil Service Regulations, the petitioner is entitled to the pensionary benefits and other service benefits.Â It is

further submitted that the impugned order dated 05.04.2012 has been passed without affording an opportunity of hearing to the petitioner.Â On the

other hand, learned counsel appearing on behalf of respondent Nos. 1 to 4 failed to point out either any opportunity of hearing was afforded to the

petitioner or any notice was issued to her before passing the impugned order.Â Â

I have considered the submissions made by the learned counsel for the parties and have perused the record. In view of the submissions that the

impugned order dated 05.04.2012 has been passed without affording an opportunity of hearing to the petitioner, the same is nonest.Â The impugned

order dated

05.04.2012 is hereby quashed and the respondents are directed to take a decision with regard to grant of pensionary benefits in favour of the petitioner

in the light of Article 203 and other relevant provisions of the Jammu and

Kashmir Civil Service Regulations and in light of the order dated 04.04.2009

by which the leave has been sanctioned in favour of the petitioner, after affording an opportunity of hearing to the petitioner.Â Â Let the aforesaid

exercise be carried out within a period of three months from the date of receipt of a certified copy of the order passed today.Â

With the aforesaid directions, the writ petition is disposed of accordingly, along with connected MP.