

IN THE HIGH COURT OF MANIPUR

SHOUGRA
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DEVANAN
DA SINGH

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AT IMPHAL

WP(C) No. 58 of 2018

Shri Y.S. Sandhu, aged about 70 years, then serving as Inspector in the 27th Bn. CRPF, a permanent resident of Village Hashupur, P.O. Simbhaoli, District Ghaziabad, Uttar Pradesh, at present residing at Gurudwara, Imphal, Thangal Bazar, Imphal West District, Manipur.

... **Petitioner**

-Versus -

1. The Union of India, represented by the Secretary (Home), Ministry of Home Affairs, Government of India, New Delhi.
2. The Inspector General of Police (Manipur and Nagaland), Central Reserve Police Force, P.O. Langjing, Imphal West District, Manipur.
3. The Deputy Inspector General of Police, Central Reserve Police Force, P.O. Langjing, Imphal West District, Manipur.

... **Respondents**

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mrs. G. Pushpa, Advocate
For the respondents	::	Mr. S. Samarjeet, Sr. Panel counsel
Date of Hearing	::	05-07-2023
Date of Judgment	::	24-07-2023

J U D G M E N T

[1] Heard Mrs. G. Pushpa, learned counsel appearing for the petitioner and Mr. S. Samarjeet, learned senior panel counsel appearing for the respondents.

The present writ petition had been filed with a prayer for quashing and setting aside the impugned order dated 22-08-2015 issued by the

Inspector General, M & N Sector, CRPF, which rejected the representation submitted by the petitioner and also praying for directing the respondents to pay to the petitioner his retirement/ pensionary benefits.

[2] The facts of the present case in a nutshell is that, the petitioner, while serving as an Inspector in the CRPF, was dismissed from service w.e.f. 04-03-1998 by an order dated 06-02-1998 issued by the DIGP, CRPF, after holding a Departmental Enquiry against the petitioner. The statutory appeal filed by the petitioner against his dismissal order was also rejected as being devoid of merit by an order dated 16-06-1998 issued by the IGP, M & N Sector, who was the appellate authority. Having been aggrieved, the petitioner challenged the aforesaid orders by filing a writ petition being Civil Rule No. 859 of 1998 before the Gauhati High Court, Imphal Bench. The said writ petition was allowed by a learned Single Judge by quashing and setting aside the impugned dismissal order as well as the appellate order and directing the authorities to reinstate the petitioner in service by issuing a formal order within a period of one month from the date of the judgment and order, vide judgment and order dated 04-12-2003 passed in Civil Rule No. 859 of 1998. The aforesaid judgment and order dated 04-12-2003 passed by the learned Single Judge in C.R. No. 859 of 1998 was challenged by the authorities by filing Writ Appeal No. 45 of 2004 before a Division Bench of the Gauhati High Court, however, the said writ appeal was dismissed by the appellate court by holding that the judgment and order passed by the learned Single Judge does not suffer any infirmity whatsoever requiring interference. It is also on record that before the authorities issued any formal order for reinstating the petitioner in service,

the petitioner had already crossed the date of his retirement from service, which falls on 31-01-2004.

[3] Having been not satisfied with the judgment and order passed by the learned Single Judge and the Division Bench of the Gauhati High Court, the authorities challenged the said judgments and orders by filing an SLP before the Hon'ble Apex Court and subsequently, the Civil Appeal No. 5771 of 2008, arising out of the SLP filed by the authorities, was allowed by the Hon'ble Apex Court by an order dated 22-09-2008 by holding, inter alia, that the position of law indicated by the Apex Court in its two earlier judgments rendered in the case of "**Hiran Mayee Bhattacharyya Vs. S.M. School for Girls**" reported in (2002) 10 SCC 293 and "**UP State Spg. Co. Ltd. Vs. R.S. Pandey**" reported in (2005) 8 SCC 264 is to be followed. The operative portion of the judgment are as under:-

"7. Keeping in view the aforesaid position of law indicated in the aforesaid decisions, we are of the view that the course adopted in the two cases above, is to be followed. There shall not be any reinstatement, but the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced."

"8. The learned counsel for the respondent-writ petitioner submitted that he has already retired and, therefore, he is not interested in pursuing the remedy. He may be given the chance of moving the authorities for varying the order of termination to one of compulsory retirement. If any representation in this regard, is made to the authority concerned, the same shall be considered in its proper perspective. We express no opinion in that regard."

"9. The appeal is allowed to the aforesaid extent."

[4] Instead of filing a representation in terms of the liberty given by the Hon'ble Apex Court, the petitioner filed a Cont. Case being Cont. Case (C) No. 79 of 2009 before the Gauhati High Court, Imphal Bench and the

said Cont. Case was closed by a judgment and order dated 16-11-2010 with the following observations:-

“3. Upon hearing the submissions of the learned counsel and on perusal of the said judgment and order of the Apex Court, it appears that what it meant by the petitioner in the para No. 4 of the said judgment and order is that the order for retirement of the petitioner from service is the one contemplated in FR 56(j). Therefore, it appears that what is meant by the Compulsory retirement in para No. 8 of the Apex Court is not compulsory retirement of the petitioner by way of punishment. If the order for retirement (compulsory retirement) is retirement simplicitor, the petitioner shall get all the pensionary/retirement benefits. As ordered by the Apex Court in para No. 8 of the said judgment, the petitioner as early as possible may approach the concerned authority by filing application for varying the order of the termination of the service of the petitioner and not for compulsory retirement by way of punishment. It is also made clear that since the retirement mentioned above by the petitioner in para No. 8 of the said judgment and order is only retirement simplicitor or compulsory retirement, he shall be entitled all the retirement/pensionary benefits according to the relevant rules.

With the above observation, this contempt petition is closed.”

[5] After about four years from the date of closing of the aforesaid contempt case, the petitioner filed a representation dated 12-12-2014 to the concerned authorities of the Government with a prayer for varying the order of termination of the service of the petitioner to retirement simplicitor and not of compulsory retirement by way of punishment and for payment of all the retirement/ pensionary benefits on the grounds as mentioned in the said representation. After due consideration of the said representation submitted by the petitioner, the Inspector General, M & N Sector, CRPF issued an order dated 22-08-2015 rejecting the representation submitted by the petitioner as being devoid of merit. Having been aggrieved, the petitioner

approached this court again by filing the present writ petition for redressing his grievances.

[6] Mrs. G. Pushpa, learned counsel appearing for the petitioner submitted that the impugned order dated 22-08-2015 is harsh, inhuman and it has violated all the established principle of natural justice and fairness and that the impugned order had been issued in arbitrary exercise of power with an aim to make the petitioner suffer for the whole of his life. The learned counsel further submitted that the gravity of punishment inflicted upon the petitioner is not proportionate to the wrongs committed by the petitioner and that the impugned order is draconian in nature and the same is not sustainable in the State where the rule of law prevails and as such the same is liable to be quashed and set aside. The learned counsel for the petitioner also submitted that in paragraph 3 of the judgment and order dated 16-11-2010 passed by the Gauhati High Court in Cont. Case (C) No. 79 of 2009, the learned Single Judge made specific observation that if the order of retirement of the petitioner is retirement simplicitor, the petitioner shall get all the pensionary/ retirement benefits and that as ordered by the Apex Court in para 8 of its judgment, the petitioner as early as possible may approach the concerned authority by filing application for varying the order of termination of the service of the petitioner and not for compulsory retirement by way of punishment and that the learned Single Judge also made it clear that since the retirement mentioned by the petitioner in para 8 of the said judgment and order of the Apex Court is only retirement simplicitor or compulsory retirement, he shall be entitled to all the retirement /pensionary benefits according to the relevant rules. It has been vehemently submitted by the counsel for the petitioner that as no appeal or review has

been filed against the said judgment and order dated 16-11-2010 passed by the Gauhati High Court in Cont. Case (C) No. 79 of 2009, the said judgment and order has attained finality and the respondents are duty bound to implement the said judgment and order.

[7] It has also been submitted on behalf of the petitioner that reading together paragraph 8 of the judgment of the Hon'ble Apex Court dated 22-09-2008 passed in Civil Appeal No. 5771 of 2008 and observation made in paragraph 3 of the judgment and order dated 16-11-2010 passed by the Gauhati High Court in Cont. Case (C) No. 79 of 2009, it is crystal clear that the Hon'ble Apex Court as well as the Hon'ble Gauhati High Court have intended to give certain relief to the petitioner and denial of granting such intended relief to the petitioner by the authorities by issuing the impugned order dated 22-08-2015 is arbitrary and the same has been done in colourable exercise of power. Accordingly, the impugned order is liable to be quashed and set aside.

[8] Mr. S. Samarjeet, learned senior panel counsel appearing for the respondents submitted that although the Hon'ble Apex Court in its judgment dated 22-09-2008 ordered the authorities to follow the course adopted in two of its earlier judgments in respect of the Departmental Enquiry against the petitioner, the counsel for the petitioner submitted before the Hon'ble Apex Court that the petitioner has already retired and therefore he was not interested in pursuing the remedy as ordered by the Hon'ble Apex Court and urged for giving a chance for moving the authorities for varying the order of termination to one of compulsory retirement. After recording the submission made by the counsel for the petitioner, the Hon'ble Apex Court made an observation that if any representation in that regard is made to the

authority concerned, the same should be considered in its proper perspective, however, the Hon'ble Apex Court also observed that they expressed no opinion in that regard.

[9] It has also been submitted on behalf of the respondents that instead of filing a representation in terms of the liberty granted by the Hon'ble Apex Court, the petitioner filed a Cont. Case and only after about four years from the date of disposal of the said Cont. Case, the petitioner approached the concerned authorities by filing a representation dated 12-12-2014 with the prayer for varying the order of termination of his service to retirement simplicitor and for payment of retirement/ pensionary benefits. The learned counsel for the petitioner submitted that after due consideration of the said representation, the authorities rejected the said representation as being devoid of merit and as such the authorities have not committed any illegality and there is no ground or reason for interfering with the impugned order. The learned counsel lastly submitted that the present writ petition had been filed on the basis of misconceived facts and law and the same is liable to be dismissed as being devoid of merit.

[10] I have heard the rival submissions advanced by the learned counsel appearing for the parties at length and also carefully considered all the materials available on record. In the present case, the petitioner was dismissed from service w.e.f. 04-03-2098 after holding a Departmental Enquiry. Even though the said dismissal order was quashed and set aside by the Gauhati High Court and direction was given for reinstating the petitioner in service by issuing a formal order within a period of one month from the date of the judgment and order, no formal order was issued by the authority for reinstating the petitioner in service. In the meantime, the

petitioner attained the age of his retirement from service w.e.f. 31-01-2004 and accordingly, there was no question of retirement of the petitioner from his service on attaining the age of his superannuation, as the petitioner was already dismissed from service. Ultimately, when the matter reached upto the Hon'ble Supreme Court, the Apex Court in para 7 of its judgment dated 22-09-2008 , ordered that the course adopted in two of its earlier judgments is to be followed in respect of the Departmental Enquiry against the petitioner. The Hon'ble Apex Court also clearly ordered that there shall not be any reinstatement and that the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced, meaning thereby that the petitioner shall be deemed to have been dismissed from service.

[11] On careful perusal of para 8 of the said judgment of the Apex Court, it is clearly revealed that the counsel for the petitioner submitted before the Apex Court that the petitioner had already retired and, therefore, he was not interested in pursuing the remedy as ordered by the Apex Court and made a prayer for giving the petitioner a chance for moving the authorities for varying the order of termination to one of compulsory retirement. In view of the said submission made on behalf of the petitioner before the Hon'ble Apex Court, there is no escaping from the fact that the petitioner was aware and accepted the fact that he was already dismissed from service and no question of his retirement from service arises. In view of the above factual position, the submission made by the learned counsel for the petitioner that the authorities are duty bound to implement the observations made by the learned Single Judge of the Gauhati High Court

at para 3 of his judgment and order dated 16-11-2010 in Cont. Case (C) No. 79 of 2008 cannot be countenanced

[12] This court is also of the considered view that the observations made at para 3 of the judgment and order dated 16-11-2010 in Cont. Case (C) No. 79 of 2009 is also a conditional observation, inasmuch as, it is clearly mentioned in the said paragraph itself that if the order of retirement (compulsory retirement) is retirement simplicitor, the petitioner shall get all the pensionary/ retirement benefits. In the present case, since there is no order of retirement of the petitioner from service, either compulsory retirement or retirement simplicitor, this court is of the considered view that the petitioner is not entitled to get any pensionary/ retiral benefits in terms of the observations made in para 3 of the aforesaid judgment and order dated 16-11-2010 in Cont. Case (C) No. 79 of 2009.

So far as the prayer for interference with the impugned order dated 22-08-2015 is concerned, the petitioner has failed to point out any reasonable ground or basis for interfering with the same and accordingly, this court is not inclined to grant the relief sought for by the petitioner.

In the result, the present writ petition fails and accordingly, the same is hereby dismissed as being devoid of merit, however, without any order as to cost.

JUDGE

FR/NFR

Devananda