

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

CWP-4338-1997(O&M)
Date of decision : 30.01.2015

Vikram Singh

.....Petitioner

Vs.

Union of India and another

...Respondents

CORAM : HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Pawan Sharma, Advocate
for the petitioner.

Mr.Sanjay Joshi, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J (ORAL)

Order dated 20.03.1997 is under challenge at the hands of the petitioner, whereby respondent No.2 terminated the petitioner from service on medical grounds. Petitioner also seeks a writ in the nature of mandamus directing the authorities to get the petitioner re-examined either from PGI, Chandigarh or from All India Institute of Medical Sciences, New Delhi.

Notice of motion was issued and pursuant thereto written statement was filed on behalf of the respondents. Writ petition was admitted for regular hearing vide order dated 30.07.1999 passed by a Division Bench of this Court

During pendency of the writ petition, petitioner moved a Civil

Miscellaneous Application No.9151 of 2012 seeking amendment in the writ petition, which has been allowed vide a separate order. Petitioner added another prayer seeking a writ in the nature of mandamus directing the respondents to release invalid pension in favour of the petitioner along with interest on the arrears of pension. Respondents filed their written statement to the amended writ petition.

Learned counsel for the petitioner, at the very outset, fairly states that because of afflux of time, he does not intend to press this writ petition for the writ in the nature of certiorari qua impugned order dated 20.03.1997 (Annexure P-1) because the petitioner had already attained the age of superannuation. He further submits that under the changed circumstances, the only prayer made by the petitioner by way of amended writ petition for releasing the invalid pension may be considered and granted. In this regard, learned counsel for the petitioner submits that the case is squarely covered by two judgments of this Court in **Mrs. Sukhpal Kaur Vs. Union of India, 2008(2) RSJ 684** passed by a Division Bench and order dated 04.11.2008 passed in CWP No.3329 of 1991 titled as “**Ex.Rifleman Dhaninder Singh Vs. Union of India and others**”. He concluded by submitting that the petitioner will be satisfied if the present case is disposed of in terms of the order dated 04.11.2008 passed by this Court in Dhaninder Singh's case (supra).

Faced with the above, despite his best efforts having been made, learned counsel for the respondents could not deny the correctness of the statement made by the learned counsel for the petitioner and particularly, the fact that the present case is squarely covered by the order dated 04.11.2008 passed by the Division Bench of this Court in Dhaninder Singh's case (supra).

The relevant observations made by this Court in order dated 04.11.2008 passed in Dhaninder Singh's case (supra), which can be gainfully followed in the present case, read as under:-

“The petitioner was rendered unfit for Military Service and was discharged on 30.4.1989 from service on Invalid Pension. At that point of time, the petitioner had rendered 8 years, 7 months and 20 days service. The petitioner was not paid pension. He made representation to respondent No.3. However, vide Annexures P-4 and P-5, the claim of the petitioner for invalid pension was rejected.

It is the case of the petitioner that while discharging him, it was specifically mentioned that he was being discharged on invalid pension vide Annexure P-1 and rejection of his claim vide Annexures P-4 and P-5 on the ground that he has not completed requisite service of 10 years for claiming pension is erroneous as the condition of 10 years minimum service cannot be applied in the case of 'Invalid Pension'.

Learned counsel for the petitioner has placed reliance upon the judgment of this Court in Mohinder Singh Versus State of Haryana 2000(1) SCT 149 and contended that a similar Rule, i.e., Rule 5.11 of the Punjab

Civil Services Rules, Volume II as applicable in the State of Haryana, have been interpreted by this Court wherein it has been held that the condition of 10 years of qualifying service for grant of invalid pension is not necessary and therefore, he is entitled to the invalid pension.

However, Shri Rajiv Sharma, learned counsel appearing on behalf of Union of India has vehemently opposed the argument raised by the counsel for the petitioner and has stated that since the case of the petitioner is not covered under Rules 38 and 49-B of the Central Civil Services Pension Rules, 1972, (hereinafter referred to as the Rules), therefore, no relief can be granted to him.

I have heard learned counsel for the parties. The fact that petitioner was discharged from service on invalid pension could not be disputed by the learned counsel appearing on behalf of Union of India. It could also not be disputed by him that minimum of 10 years of service is required for grant of pension under Rule 49-B of the Rules, whereas no such requirement is mentioned for grant of invalid pension under Rule 38 of the Rules.

In Mohinder Singh's case (supra), this Court had the occasion to interpret Rules 5.11 and 5.12 of the Punjab Civil Services Rules, Volume II as applicable in the State of Haryana. The pith and substance of these rules is para materia to Rule 38 of Central Civil Services (Pension) Rules, 1972.

While interpreting Rule 5.11 and 5.12 of the Punjab Civil Services Rules, Volume II as applicable in the State of Haryana, this Court observed as under:-

“The petitioner's claim for pensionary

benefits has been declined on the premises that he has rendered less than 10 years of qualifying service and as such is not entitled to pensionary benefits. The question, as to whether, the employee who has been retired on medical grounds prior to having rendered 10 years qualifying service was entitled to pensionary benefits came up for consideration in Raghbir Chand V. State of Haryana, 1997(1) S.C.T. 503. While examining the provision of Rule 5.11 extracted above, this court concluded that the aforesaid rule specifically dealt with retirement based on bodily or mental infirmity leading to incapacity for service. Whereas the general rule for grant of pension related to retirement on attaining the age of superannuation wherein 10 years of qualifying service is a precondition for the grant of pensionary benefits. In the aforesaid case, it has been held that the general rule would have no applicability for the grant of pension as a consequence of retirement under Rule 5.11. In other words, invalid pension stipulated for retirement on account of bodily or mental infirmity leading to incapacity for service does not require 10 years of qualifying service for purposes of earning pensionary benefits. We duly affirm the aforesaid legal position.”

Learned counsel for the respondents was unable to distinguish the aforesaid judgment.

Relying upon the above judgment of this Court and the fact that petitioner was discharged from service on

invalid pension, I am of the considered view that orders Annexures P-4 and P-5 rejecting the claim of the petitioner for grant of invalid pension are erroneous and are liable to be set aside. Ordered accordingly.

The respondents are directed to grant the pensionary benefits to the petitioner for invalid pension with consequential relief of arrears with interest at the rate of 6 % per annum. It is further directed that arrears of pension be paid within 4 months from the receipt of certified copy of this judgment.”

This Court has restrained itself from making any comments about the observation made about the validity or otherwise of the order dated 20.03.1997 (Annexure P-1). It is so said because under the changed circumstances the said order has become redundant.

No other argument was raised on behalf of either of the parties.

In view of the above said respective stands taken by the learned counsel for the parties, the present writ petition is allowed in terms of order dated 04.11.2008 passed by this Court in in Dhaninder Singh's case (supra).

Consequently, respondents authorities are directed to grant invalid pension to the petitioner at an early date but in any case within a period of three months from the date of receipt of a certified copy of this order. Petitioner shall also be entitled for interest @ 6% per annum as ordered by this Court in Dhaninder Singh's case (supra).

Resultantly, with the above said observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
Judge

January 30, 2015

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