

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

CWP No. 10130 of 2015
Date of decision: 16.09.2015

Gurnam SinghPetitioner(s)
Versus

State of Punjab and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. HNS Gill, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 03.06.2010 (Annexure P-4) whereby, the petitioner's services, who was working as a Driver with Punjab Roadways, was terminated on account of absence. Further, relief claimed is for grant of pension w.e.f. 03.06.2010 on account of having qualifying pension service of allegedly 13 years.

The petitioner remained absent from duty from 10.12.2007 after having taken leave till 09.12.2007. Notices were sent to him and regular departmental inquiry was conducted. Thereafter, notice was sent to the petitioner but no reply was given on account of the fact that he could not be served as he had gone abroad. A publication was also done but on account of non-appearance, the termination order was passed by the Director, State Transport.

The petitioner accepted the said termination for a period of more than 3 years 3 months and thereafter filed an appeal taking the plea that he was ill. The appeal was dismissed on the ground of limitation as it had to be filed within 45 days vide order dated 18.06.2014 (Annexure P-6), which is also subject matter of challenge.

Thereafter, the petitioner filed a representation for grant of pension on account that he had been appointed on 01.06.1997 and having been born on 10.03.1962 was entitled for pension from 03.06.2010. The said request has been rejected on the ground that the termination order had been passed and, therefore, pensionary benefits could not be given.

Counsel for the petitioner has placed reliance upon the judgment of Division Bench in ***Dhan Singh vs. State of Haryana and others, 2008 (3) SCT 816*** to submit that in similar circumstances, it had been directed that the length of service had not been taken into consideration and whether the employee was entitled for pensionary benefits was not taken into account. A perusal of the said judgment shows that it was passed under the Punjab Police Rules, 1934 wherein, there was a specific provision that while passing an order of dismissal, regard shall be made to the length of service and his claim to pension under Rule 16.2. The Division Bench had accordingly directed that a fresh order be passed keeping in view the said fact.

In the present case, as noticed, the termination order was passed way back in the year 2010. The petitioner chose not to file an appeal within the prescribed period and it has been found that he could not be served when the penalty of dismissal was to be imposed on him on account of the fact that he had gone abroad. During the inquiry proceedings also, he had accepted his guilt of remaining absent and never joined duty for a period of more than 2-1/2 years till his services were terminated. The plea taken in the appeal that he was ill has also not been substantiated by placing any material on the record that he was suffering from any such ailment which kept him away from his job. The department has followed the proper

procedure and conducted a regular inquiry and thereafter given an opportunity to the petitioner by issuing a necessary show cause notice as to why a major penalty should not be imposed upon him and there is no fault in the procedure which has been followed and the said order has become final since the appeal itself was belated and it was badly time barred. It is settled principle that the petitioner was to challenge the termination order within the prescribed period. In the absence of showing sufficient cause, the right of legal remedy has been lost. Merely because he had subsequently filed a representation for grant of pension, would not give him a fresh cause of action to challenge the orders of termination. The right of pension will not flow to the petitioner in view of Rule 2.5 since the said Rule provides that no pension is to be granted to a government employee dismissed or removed for misconduct even though the word termination has been used in the present case. The Division Bench of this Court in **Kartar Singh Ex. J.E. vs. State of Punjab and another, 2006 (4) RSJ 457** has laid down the said proposition. The Rule and the finding recorded reads thus:-

"2.5 No pension may be granted to a Government employee dismissed or removed for mis-conduct, insolvency or inefficiency; but to Government employee so dismissed or removed, compassionate allowances may be granted when they are deserving of special consideration; provided that the allowance granted to any Government employee shall not exceed two third of the pension which would have been admissible to him if he had retired on medical certificate.

Note : This rule vests Government with an absolute discretion to grant or not to grant any compassionate allowance, the only restriction being that if granted it shall not exceed the maximum of two

thirds of the pension that would be admissible on medical certificate. It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically, precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interest of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course of misconduct carried with it the legitimate inference that the Officer's service has been dishonest there can seldom be any good case for a compassionate allowance. Poverty is not an essential condition precedent to the grant of compassionate allowance, but special regard is also occasionally paid to the fact that officer has a wife and children dependent upon him, though this factor by itself, is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance."

3. The Rule provides that no pension is to be granted to a Government employee who has been dismissed or removed for mis-conduct, insolvency or inefficiency. Admittedly, the petitioner had been removed from service although the word 'termination' has been used relating to an absence of nine years. We, therefore, hold that in this situation the word termination would clearly dis-entitle the appellant to

the payment of pension. Even otherwise, we are of the opinion that the present matter is clearly one where the discretion available to us under Article 226 of the Constitution of India should not be exercised in favour of the appellant. We thus upheld the judgment of the learned Single Judge.”

No scope for interference in the well reasoned order is made out and the present writ petition is accordingly dismissed.

16.09.2015
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(G.S. SANDHAWALIA)
JUDGE