

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

Civil Writ Petition No.15333 of 2014

Date of decision: 9.10.2015

Rajwant Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vivek K.Thakur, Advocate,
for the petitioner.

Mr.Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J. (Oral)

An additional affidavit has been filed by Ashish Choudhary, IPS, Assistant Inspector General of Police, Personnel-I, Punjab on behalf of the Director General of Police, Punjab Police Headquarter, Sector-9, Chandigarh. The same is taken on record.

2. This Court vide interim order dated 27th August, 2015 had called upon the Director General of Police, Punjab, Chandigarh to file an affidavit explaining under which provision of law the petitioner was taken back in service on 9th November, 2006 the date when he had resigned from the post of constable on 26th June, 2004. The officer was also asked to point

out under which provision of law a person who has tendered resignation can

be reinstated to service without following statutory rules to fill up the post of Constable left vacant.

3. In response to the interim order, affidavit dated 8th October, 2015 has been filed on behalf of respondent No.2/DGP, Punjab, Chandigarh. It is pointed out that the rule in question is 12.24 (1)(b) of the Punjab Police Rules, 1934 ('PPR, 1934'). It has been sworn on affidavit that the petitioner was re-enrolled as a constable by a special sanction accorded by the Director General of Police, Punjab vide order dated 24.6.2006 passed in terms of the aforesaid rule and therefore the petitioner has a case for adding the period of service spent prior to resignation till the date of re-enrollment. This rule lays down that an employee below the age of 30 years who is an Ex-Punjab Police employee can be re-enlisted up to the age of 55 years, if the employee presents himself for re-enrollment and is found medically fit within two years of voluntarily taking their discharge. The age of the petitioner was 33 years at that time. Rule 12.24 of Punjab Police Rules, 1934 has to be read. It speaks as under: -

“12.24 (1). Enlistment of ex-soldiers, reservists and ex-police officers. -

(1) Re-enrollment in the rank of constable is permitted and post service will count for pension under the following conditions, and subject to the further conditions as to pensions contained in Rules 9.2 and 9.29 : -

(a) Ex-soldiers of the Indian Army and ex-members of police forces (including Military Police), paid for from the general revenues of India, may be enlisted as constables on production of a discharge certificate showing their previous service to have been “good” or of higher classification, and if they fulfill the physical and other standards required by these rules for first appointments. They must also be passed medically fit by the same standards as are applied to

recruits.

(b) Age on the date of re-enrollment in the police must be below 30, but ex-Punjab Police officers, and, with the special sanction of the Inspector General in each case, ex-soldiers and ex-members of other police forces may be re-enlisted up to the age 55, if they present themselves for re-enrollment and are found medically fit within two years of voluntarily taking their discharge.

(c) The break of service between the date of enrollment in the police and the date of discharge from previous Army employ shall not exceed two years, and there must not have been more than two breaks of service in all.

(d) No claim to count previous service for pension shall be allowed unless the previous service claimed was declared and verified at the time of enrollment in the police.

XXXX

(4) Original discharge certificates, character rolls and service books, or such of those documents as may be available, shall be submitted in support of claims under this rule.”

4. Therefore, reading affirms that the special sanction accorded by the Director General of Police, Punjab dated 24th June, 2006 was within his discretion as per rule 12.24 (1)(b) reproduced above. It is a trite proposition of law that the Court will not issue a direction to the administrator of the rules of the manner in which discretion has to be exercised in a given case. Statutory discretion exercised reasonably and without bad faith on principles of humanism in Art. 51 A (h) of the Constitution supported by rules will not be interfered with lightly. The Court can only control abuse of discretionary and arbitrary power in administrative discretion inflicting injury beyond sustainable limits as Court has no legal measurement to understand where law ends and discretion begins unless the gap is too wide and is starkly real and causes injustice. The Courts have only to ensure that

discretion is exercised strictly within the conditions laid down by the law while exercising such discretion.

5. In **S. Pratap Singh v. State of Punjab**, AIR 1964 SC 72 the Supreme Court held that Court will not be an appellate forum where the validity of discretionary power will be allowed to be questioned. This is because the power, jurisdiction and discretion is vested by law in the government. Perhaps the only area which the Court may consider is whether the authority has arrived at the decision based wholly on circumstances extraneous to the purpose for which the discretion is vested. It is not for the Court to put itself in the place of the competent authority and decide whether or not it would have come to the same decision as arrived at by the authority. All that it should do with would be to see whether the power has been exceeded or acted upon in a manner unbecoming of the said discretion. The judicial power of interference with the exercise of administrative power on the ground of an authority acting contrary to law has been found to have enough flexibility to check abuse of discretion. Interference would be justified if the Court comes to the conclusion that extraneous considerations played spoil sport. If there are no vitiating factors, discretion should not be upturned to make way for personalized justice on a false judicial hunch of what is right or wrong. The Court cannot pose itself as a caretaker of justice till law is disobeyed.

6. On the facts of this case it is established that the disputed period has been regularized and thus it follows that the petitioner would be entitled to all benefits arising out the of deeming fiction of continuity of service which naturally results from the factum of re-enrollment on 9th

November 2006 in exercise of discretion posited in the DGP, Punjab. However, the rider placed by the department is that the period the petitioner remained out of service would be treated as *dies non* under PPR 9.29 from the date of resignation on 26th June, 2004 till 9th November, 2006. It may be noted that after re-enrollment, the petitioner served till he was invalidated out of service on medical grounds on 10th June 2009 and the petitioner stands treated as retired from service and thus entitled to pension and pensionary benefits on having completed the requisite length of service qualifying for service.

7. As said before, after re-joining service, the petitioner was invalidated out of service on 10th June, 2009 but he was not paid pension as per rules vide impugned letter dated 26th October, 2011 issued by the Accountant General, Punjab [P-4] and the further letter dated 21st August, 2011 [P-9] where the petitioner was found not held entitled to the grant of pension in view of the provisions of the Punjab Civil Services Rules, 1970. It may be noted that the petitioner was enrolled as a Constable on 28th June, 1991 and had served till 25th June, 2004 when he resigned from service, which action has been recalled by the special sanction accorded by the competent authority entitling petitioner to the benefit claimed in this petition. However, since the period from 2004 to 2006 has been declared *dies non* as submitted by Mr. Vaibhav Sharma learned DAG Punjab, the blacked out period would be excluded from qualifying service for pension and the entitlement worked out accordingly. Since the special sanction is a concession available under the rules, exercise of that discretion in the manner provided is not open to be disturbed to deny pension and when the

aforesaid period is declared *dies non* by the department that does not mean that the case of the petitioner can any longer be treated as resignation from service to deprive him of pension under the PCS Rules. This period is not in issue nor open to be tinkered with in writ jurisdiction without just cause or legal justification nor can be treated as denying pension the period of *dies non* notwithstanding. The special rule in PPR, 1934 will eclipse the PCS Rules. This is the advice of the police department to the Finance Department, Punjab. But the PCS rules denying pension to persons who resign has prevailed with the Accountant General (A&E) Punjab (respondent 4) disregarding the positive advice of the Finance Department, Punjab which is declared the correct position and the view of Respondent 4 vide letter dated 26th October 2010 (P-4) that as per Rule 3.17 A (viii) of the Punjab Civil Service Rules, Vol. II the petitioner has forfeited his past service and his appointment from from 9th November 2006 is a fresh appointment and he is covered by the new contributory pension scheme effective from 1st January 2004 is erroneous. So is the view in the subsequent communication dated 29th August 2011 (P-9) from respondent 4 addressed to the Principal Secretary to Govt. of Punjab, Department of Home Affairs and Justice, Civil Secretariat, Chandigarh suffers from the same infirmity. The Finance department was right when it approved the case of the petitioner for pension citing Rule 12.24 which permits pension in special cases read with Rule 9.2 (6) and Rule 9.29 of the PPR, 1934 which are saved by the transitional provisions in Article 313 of the Constitution of India which rules continue in force so far as consistent with the provisions of the Constitution. These rules are designed for the police department and

supply life to its special needs which are unlike other departments of Government charged with the duty of maintaining law and order and the service bears special stress. The view of the Accountant General (A&E) Punjab (respondent 4) expressed in communications Annexures P-4 and P-9 are declared bad and inoperable.

8. As a result of the above discussion the petition stands allowed qua prayers made and a writ of certiorari is issued quashing the impugned communications dated 26th October 2010 (P-4) and 29th August 2011 (P-9). The view of the Finance Department, Punjab is upheld. Resultantly, a mandamus is issued to the respondents to pay pension and pensionary benefits to the petitioner w.e.f the date he was retired on medical grounds on 10th June, 2009 with a right to arrears and the amounts be paid without any further delay and within 6 weeks, failing which the amounts will earn interest at the rate of 8.5 percent per annum till payment. However, the period of *dies non* will be deducted from the period qualifying for service pension. The petition is accordingly disposed of as above.

(RAJIV NARAIN RAINA)
JUDGE

October 9, 2015

Paritosh Kumar