

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.19406 of 2015

Date of decision: 28.9.2015

Sukhdev Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: MR.JUSTICE G.S.SANDHAWALIA

Present: Ms. Indu Bala, Advocate for the petitioner.

G.S.SANDHAWALIA, J, (Oral)

The challenge in the present petition is to the order dated 2.9.2003 (Annexure P/1) whereby the petitioner was dismissed from service by the Registrar-Cooperative Societies, Punjab on account of his conviction by the Special Judge, Ludhiana on 25.3.2003.

A perusal of the paper-book would go on to show that earlier Civil Writ Petition No.14359 of 2013 was filed praying for a direction to decide the representation of the petitioner dated 4.4.2013 for grant of pensionary benefits which was dismissed on 16.7.2013 (Annexure P/2). It was noticed by this Court in the said order that the conviction of the petitioner has been upheld and only the sentence was reduced in appeal and the prayer for deciding the representation was rejected on account of following reasons:-

“In the petition itself, it has been averred that the petitioner was dismissed from service consequent to his conviction vide order dated 02.09.1993. Counsel for the petitioner has not been able to advert to any provision under the Punjab Civil Services Rules, whereby a dismissed employee on account of conviction pertaining to an offence involving moral turpitude would be entitled to pensionary benefits. In the absence of even a prima facie claim for pensionary benefits having been set up, no directions can be issued to the respondent-authorities for deciding the representation that may have been filed by the petitioner.

The civil writ petition is dismissed accordingly.”

The challenge now raised is to the order dated 2.9.2003 for release of pensionary benefits.

The right of pension will not flow where a person has been dismissed from service and the petitioner is not entitled for the pensionary benefits as per Rule 2.5 of the Punjab Civil Services Rules. A Division Bench of this Court in **Kartar Singh Ex. J.E. vs. State of Punjab and another, 2006 (4) RSJ 457** has also held to the same effect. The relevant 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.”

Accordingly there is no merit in the present writ petition and the same is dismissed.

September 28, 2015
Pka

(G.S.SANDHAWALIA)
Judge