

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14465-2014 (O&M)
Date of decision: 23.07.2016

Ashok Kumar

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.G.S.Bal, Senior Advocate with
Mr.A.D.S.Bal, Advocate for the petitioner
Mr.R.S.Pathania, DAG Punjab

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **Yes***
- 2. To be referred to the Reporters or not ? **Yes***
- 3. Whether the judgment should be reported in the Digest? **Yes***

Kuldeep Singh, J. (Oral)

The petitioner was employed as Constable in Government Railway Police on 6.11.1978 and was promoted as Head Constable in the year 1991. The petitioner was booked in a case under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') by the Intelligence Officer, Directorate of Revenue Intelligence, Amritsar on 20.6.2009 and was ultimately convicted and sentenced on 8.11.2011 to undergo Rigorous Imprisonment for six years in addition to fine. In the meanwhile, the respondents on the ground of implication of the petitioner in the criminal proceedings, passed an order dated 19.1.2010, pre-maturely retiring the petitioner from service wef 20.1.2010. Thereafter, another order dated 5.3.2010 (Annexure P2) was passed vide which, the petitioner stood compulsorily retired w.e.f. 20.1.2010 as he was not granted extension in

service beyond the age of 55 years.

Petitioner previously approached this Court by filing CWP No.11631 of 2013 in which, this Court vide order dated 27.5.2013 directed the respondents to consider and decide the legal notice dated 10.2.2013 (Annexure P6) of the petitioner and pass a speaking order. Now a speaking order dated 16.8.2013 was passed stating that the case of the petitioner regarding release of pensionary benefits is under consideration with the Home Department. Subsequently, the Department of Home Affairs and Justice passed order dated 3.4.2014 (Annexure P9). The operative part of the order is reproduced as under:-

“Subject: Pension case of HC Ashok Kumar No.216/GRP (Retd.)

This is with reference to your letter No.1272/Acctts-3, dated 29.1.2014 on the subject noted above.

2. You are hereby informed that because of Registration of a case against HC Ashok Kumar No.216/GRP, he could not have been compulsorily retired because case registered under NDPS Act was serious and competent office passed orders of his compulsory retirement. Therefore, in view of punishment he could not be granted pension.

The plea of the petitioner is that he could not be denied pension and is entitled to pension and other pensionary benefits.

I have heard learned counsel for the parties and have also carefully gone through the file.

It is not denied on behalf of the State that the petitioner was compulsorily retired from service. Such order was passed on account of the fact that the case under the NDPS Act was pending against him.

Subsequently, he was convicted and sentenced in the said case. However, after the conviction of employee, Government did not resort to the

provisions of Section 2.2(b) of the Punjab Civil Services Rules Volume II or under Article 311 so as to review the order of compulsory retirement and dismissing him from service. Now six years have elapsed since the compulsory retirement order was passed and apparently now the government is feeling handicap in passing such order. The fact remains that no order of dismissal has been passed against the petitioner. It is not denied on behalf of the State that the pension and other pensionary benefits can be denied only when a dismissal order is passed. In case of compulsory retirement, the benefits cannot be denied.

It being so, whatever may be the reason, the fact remains that the petitioner was not dismissed from service but was compulsorily retired, whatever may be the ground. Therefore, pensionary benefits could not be denied to him. As such, the impugned order 3.4.2014 (Annexure P9) is quashed. The respondents are directed to release pension and other pensionary benefits to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

The petition is accordingly allowed.

23.07.2016

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes/ No

Whether Reportable:

Yes/No