

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 21650 of 2012

Date of decision : 04.05.2016

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Hari Singh

.....Petitioner

Versus

Punjab and Haryana High Court and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. K.S Dadwal, Advocate for the petitioner.

Mr. Ashok Bhardwaj, Advocate for the respondents.

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

RITU BAHRI, J

Present writ petition has been filed impugning the order dated 30.8.2011 passed by the District and Sessions Judge, Hoshiarpur (Annexure P-8), whereby the claim of the petitioner for compassionate allowance under Rule 2.5 of the Punjab Civil Service Rules, Vol.II has been rejected.

The facts not in dispute are that the petitioner Hari Singh was removed from service vide order dated 3.2.1996 (Annexure P-2) by the District and Sessions Judge, Hoshiarpur. The order dated

3.2.1996 (Annexure P-2) was challenged by way of Statutory Appeal No.96 as well as Writ Petition No. 4732 of 1997 was filed. But the said writ petition was ordered to be dismissed by a Division Bench of this Court vide order dated 22.4.1997(Annexure P-3). Petitioner filed an SLP No. 17162 of 1997 before Hon'ble the Supreme Court of India against the order dated 22.4.1997 (Annexure P-3) which was also dismissed vide order dated 22.9.1997. Later on a legal notice dated 18.6.2008 was served upon the Registrar of this Court, District and Sessions Judge, Hoshiarpur and the Civil Judge (Senior Division), Hoshiarpur for the grant of "Compassionate Allowance" in terms of Rule 2.5 of the Punjab Civil Services Rules, Volume-II. The Civil Judge (Sr. Div.), Hoshiarpur replied that the petitioner was removed from service after holding a departmental enquiry so he was not entitled to any pensionary benefits or compassionate allowance. The said Rule reads thus:

"2.5 No pension may be granted to a Government employee dismissed or removed for misconduct, 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."

The petitioner thereafter filed a Civil Writ Petition No. 17574 of 2008 before this Court seeking pension-cum-compassionate allowance under Rule 2.5 of the Punjab Civil Services Rules Vol.II. This petition was disposed of with a direction to the District and Sessions Judge, Hoshiarpur to consider the above stated claim of the petitioner and pass appropriate orders. In compliance of the order passed by this Court, the District and Sessions Judge, vide order dated 30.8.2011 (Annexure P-8) gave a personal hearing to the petitioner and rejected his claim for grant of compassionate allowance. The last paragraph of the order reads as under:

“The petitioner was also heard in person. He wants compassionate allowance. Word compassionate means “sympathetic or pitying” as per Oxford Concise English Dictionary. In his Writ Petition filed before the Hon'ble High Court in his notice which was served by the petitioner in this case, he has not disclosed any such grounds for the grant of compassionate allowance i.e number of his family members, their age, their occupation, his occupation or the detail of property owned by him and source of his income. He has also not stated as to how many dependants he has got. As such, he is not entitled to the grant of compassionate

allowance in the opinion of this office. Copy of this order and copies of relevant record are ordered to be sent to the competent authority for an appropriate decision.”

The petitioner is seeking quashing of the order dated 30.8.2011 (Annexure P-8). Counsel for the petitioner has referred to a recent judgment passed by the Supreme Court in the case of Mahinder Dutt Sharma vs. Union of India and others, 2014(2) SCT 692, where the case of compassionate allowance after the punishment of dismissal had been considered. The petitioner in that case had been dismissed by the Delhi Police (Punishment and Appeal) Rules, 1980. However, under Rule 41 of the Central Civil Services (Pension) Rules, 1972, he was claiming the benefit of compassionate allowance. Hon'ble the Supreme Court in paragraph 13 of the judgment has laid down the criteria for extending the benefit of compassionate allowance. Paragraph 13 of this judgment is hereby reproduced as under:

13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

(i) Was the act of the delinquent, which resulted in

the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.

(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal

gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action

which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

Counsel for the respondent has referred to a judgment passed by a Co-ordinate Bench of this Court in the case of **Amrik Singh vs. Punjab and Haryana High Court, Chandigarh and others (CWP No. 19553 of 2012)** decided on **21.12.2012** where a process server had been dismissed from service. His dismissal orders had been upheld by Hon'ble the Supreme Court as well. The competent authority considered the case of the petitioner for grant of compassionate allowance in the light of Rule 2.5 of the Punjab Civil Services Rules, Vol.II and while rejecting the claim of compassionate allowance observed that the petitioner was not surviving in a stage of abject poverty or penury. His earning capacity has been specifically noticed. It was further observed that the petitioner had been removed from service having been found guilty of insubordination and dereliction of duty. In the aforementioned writ petition filed for claiming compassionate allowance, reference was made to a Division Bench judgment of Delhi High Court in the case of ***Mahabir Prasad (Ex.L/Nk) vs. UOI and others reported as 2010 (8) AD (Delhi) 260***. In that case, the petitioner had been held entitled to the grant of compassionate allowance in the light of Rule 41 of the Central Civil Service (Pension) Rules, which is parameteria to Rule 2.5 of the Punjab Civil Services Rules, Vol.II, yet such decision was rendered in the light of Govt. of India Instructions issued vide office

memo dated 22.4.1940. These Instructions had laid down the guiding principles for the grant of compassionate allowance and the respondent had not denied that the petitioner in that case was facing financial hardship. However the facts and circumstances of Mahabir Parsad's case (*supra*) were held to be clearly distinguishable and the aforementioned petition was dismissed.

In the present case, the petitioner has approached this Court by way of legal notice after a gap of 8 years on 18.6.2008 for the grant of compassionate allowance. The petitioner has not disclosed any ground for grant of compassionate allowance for example some financial hardship. However, as per the guidelines issued by the ***Mahinder Dutt Sharma's case (supra)***, the allegations against the petitioner in the charge sheet were that on 31.8.1995, he attended his office but failed to do the work entrusted to him i.e dusting of the library books and maintenance of the lawns in the premises of the Sessions Court. He had flouted the orders of the superiors and held liable for the disciplinary action. Above said charge does not fall in any of the five distinct situations as laid down by the Supreme Court in ***Mahinder Dutt Sharma's case (supra)***. While declining the claim of the petitioner for compassionate allowance, District and Sessions Judge, Hoshiarpur observed that the petitioner did not disclose any ground for compassionate allowance i.e number of family members their age, their occupation, his occupation or the detail of property owned by him and source of his income and the number of dependants he got. In the absence of

any such information, he was not held entitled for the grant of compassionate allowance. Even in the writ petition, the petitioner has not stated that on account of the dismissal order, he is in a difficult situation due to financial crises. At the same time, the case of compassionate allowance of another employee, Amrik Singh who was dismissed along with the petitioner has been dismissed by this Court vide order dated 21.12.2012.

Hence, keeping in view the recent judgment passed by Hon'ble the Supreme Court of India in the case of ***Mahinder Dutt Sharma's case (supra)***, a case has to be made out that after the delinquent was dismissed from service, he was living in a pathetic condition or his family circumstances were such which would entitle him for grant of compassionate allowance. Moreover, keeping in view the judgment passed by this Court in ***Amrik Singh's case (supra)***, no case for interference with the impugned order is made out.

Having regard to the aforesaid, there is no merit in the writ petition and the same is dismissed.

04.05.2016
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(**RITU BAHRI**)
JUDGE