

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21585 of 2015

Date of decision: 3.12.2016

Mahender Singh

... Petitioner

Versus

Director General of Police, Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Mr. JS Bedi, Addl. A.G., Haryana.

RAJIV NARAIN RAINA, J.(Oral)

None present for the petitioner despite notice in the cause list that no adjournments will be granted except for exceptional circumstances in the large bunch of cases involving compassionate appointments which this court takes up before urgent cases. Heard Mr. Bedi for the State and perused the record.

This is a rather interesting case. Mahender singh is before this Court as the petitioner claiming compassionate appointment. His father, late Dhanpat Singh was Head Constable in Haryana Police, who was dismissed from service for committing major misconduct on September 17, 1992. Three months after the dismissal, the man died. His legal heirs impugned the order in CWP No.6731 of 1993 in case titled *Dhani Devi & ors. v. The DGP Haryana & ors.*, decided by the learned Single Judge on November 26, 2013 (vide judgment Annex P-27). The learned Single Judge exercised sympathy and compassion “to enable the present petitioner, whose father was dismissed from service, to get his retiral dues”. This Court had

also “modulated the order of dismissal to order of voluntary retirement”. That apart, the Court factored in 20 years of service to the credit of Dhanpat Singh at the time of dismissal which had not been taken into consideration when the order of dismissal for willful absence for 150 days was passed and the rule in PPR, 1934 as applicable to Haryana required disciplinary authority to consider case for pension by considering the issue. Learned Single Judge by keeping all these facts in view “and particularly that he had already expired on December 22, 1992”, converted the order of dismissal into the order of compulsory retirement w.e.f. September 17, 1992. The punishment was reduced to bring the usufruct of the pension to the family which is manifestly sufficient for their worldly needs.

On the strength of this legal fiction created by the order of this Court reducing the punishment to bring him pension and pensionary benefits etc., the petitioner has staked claim for compassionate appointment from the Police Department.

Dhanpat Singh was a Wrestler and received many commendation certificates which are attached with the petition to impress upon the Court that the petitioner Mahender Singh son of Constable late Dhanpat Singh amply deserves appointment in the Police Department under the ex-gratia scheme. The request has been turned down by the order dated July 21, 2015 (Annex P-30) passed by the Director General of Police, Haryana, and in the said order passed in compliance of the directions issued by the learned Single Judge, it has been mentioned that a sum of ₹7,89,009/- has been paid towards arrears of pension and family pension and interest on gratuity, apart from other entitlement of money due which total up to a sizeable amount. The total monetary benefits paid stood at about ₹11.00

lacs. The Director General of Police Haryana has refused to accept the claim by noticing that there is no provision for employment on compassionate grounds to wards of retired employees, which status the petitioner enjoys because of the orders passed in the above-mentioned writ petition filed by his wife and family converted the dismissal into compulsory retirement.

In view of this, I find no palpable error much less an error apparent on the face of the record in the work of the Director General of Police, Haryana in rejecting the claim. Any further compassion shown by the Court by way of ex gratia appointment would be putting premium on misconduct. This is akin to something like suspending sentence while the conviction lingers on or an order of sentence to the period undergone. The sting of the severest major punishment has been converted into a lesser form in this case by replacement by another major punishment but with right to pension. However, the order of the High Court does not absolve the misconduct or exonerate the late father of the petitioner altogether. Equity begets equity even though the sins of the father should not be visited on the son.

Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

3.12.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *Yes*