

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

CWP No. 9810 of 1993 (O&M)
Date of Decision: 30.01.2017

KULTAR SINGH THROUGH LRs

...Petitioners

Vs.

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Manish Dadwal, Advocate
for Mr. K.S. Dadwal, Advocate,
for the petitioners.

Mr. Anshul Gupta, DAG, Punjab.

KULDIP SINGH, J (ORAL)

The petitioners have preferred the present petition under Articles 226/227 of the Constitution of India for issuance of writ of certiorari for quashing of the order dated 01/02.03.1993 (*Annexure P-15*) and for issuance of writ of mandamus for directing the respondents to grant pension, gratuity and all other pensionary benefits of the petitioner alongwith interest.

Brief facts of this case are that Kultar Singh-Ex-Gram Sewak, petitioner, now represented by his legal heirs, was appointed as Gram Sewak on 29.10.1955. After his selection by Punjab Subordinate Service Selection Board and after completing the training, he was appointed as Gram Sewak vide letter dated 27.04.1957 (*Annexure P-1*). On 29.05.1972, the petitioner was transferred from Talwara Block to Dasuya Block. But for one or the other reasons, he did not join the duty and did not handover the charge of the Talwara Block. Consequently, he was marked absent and a departmental enquiry was initiated, which culminated in passing of the punishment order dated 20.12.1974 which was endorsed to the petitioner on 07.01.1975 vide

CWP No. 9810 of 1993 (O&M)

which on account of willful absence from duty w.e.f. 22.06.1972 till the passing of the order, the petitioner Kultar Singh was removed from service w.e.f. 22.06.1972. The said order was never challenged by the petitioner. However, in the year 1993 i.e. after a period of more than 18 years, he filed the present petition whereby he challenged order dated 02.03.1993 (*Annexure P-15*) which was passed on his representation whereby the pension and other pensionary benefits were denied to him. Now, the petitioner claims that he had rendered more than 18 years of service and therefore, he is entitled to pension and other pensionary benefits.

The State on the other hand has stated that as per the Rule 2.5 of the Punjab Civil Services Rules, Volume 1, Part II, an employee who has been removed from service is not entitled to pension. Therefore, the pension was rightly denied. It was also stated that the petitioner remained willfully absent from the duty w.e.f. 22.06.1972 till his removal from service. The said order of removal from service has not been challenged. The present petition has been filed with undue delay and laches and is liable to be dismissed.

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

Learned counsel for the petitioner has argued that the petitioner had an unblemished service record of more than 18 years and in Rule 2.5 of Punjab Civil Services Rules the word “may” is used which provides discretion to the Government to grant pension. The said Rule 2.5 is reproduced as under: -

“ No pension may be granted to a Government employee dismissed or removed for misconduct, insolvency or inefficiency;

CWP No. 9810 of 1993 (O&M)

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-thirds of the pension which would have been admissible to him if he had retired on medical certificate.

Note 1.—*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 to the officer concerned on retirement 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 carries with it the legitimate inference that the officer's service has been dishonest there can*

CWP No. 9810 of 1993 (O&M)

seldom be any good case for a compassionate allowance.

Poverty is not an essential condition precedent to the grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the 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.”

The perusal of the said rule shows that it gives discretion to the Government not to allow pension to the Government employee who has been dismissed or removed from service for misconduct, insolvency or inefficiency. It also gives discretion to the Government to allow the compassionate allowance to deserving employees. Learned counsel for the petitioner has contended that in the punishment order dated 20.12.1974 (*Annexure P-3*), it was not specifically stated that the previous service of the petitioner is forfeited.

Learned counsel for the petitioner relies upon the authority of Apex Court in ***Major G.S.Sodhi Vs. Union of India; 1992 (3) Recent Service Judgements 502***. The perusal of the said judgment shows that in that case the order of removal from service was passed and it was contended before the Apex Court that the Army Men, dismissed from service, cannot claim pension as a matter of right. In that case, no order was passed on account of removal from service, the petitioner was held entitled to pension.

Learned counsel also relies upon the judgment of this Court ***Manohar Lal Vs. State of Punjab and another; 2009(2) SLR 420***. In the said case, the Court had merely directed the Government to consider the case

CWP No. 9810 of 1993 (O&M)

of the petitioner. In the present case, the case of the petitioner was considered and decided vide order dated 02.03.1993 (Annexure P-15).

Learned counsel for the petitioner also relies upon the authority of this Court of ***Kailash Sharma Vs. State of Punjab; 2004 (2) SLR 50***. In that case, in the given circumstances punishment order was converted into the order of compulsorily retirement and therefore, it was held that the employee is entitled to pension. It is not so in the present case. Learned counsel has further argued that since no order of forfeiture of past service was passed, therefore, he is entitled to pension. He also relies upon the authority of this Court ***Hardial Singh Vs. Bank of Baroda; 2012(3) Law Herald 2139***.

On the other hand, learned State counsel has relied upon two Division bench judgments of this Court passed in ***Kartar Singh Ex-J.E. Vs. State of Punjab and another 2006 (4) SCT 84*** and LPA No. 300 of 2014 ***Prem Singh and others Vs. State of Punjab and others*** decided on 06.03.2014 wherein in a case of dismissal from service, it was held that the employees are not entitled to pension. The learned counsel for the State also relied upon two single Bench judgments of the of this Court passed in ***CWP No. 19406 of 2015 titled as Sukhdev Singh Vs. State of Punjab and another*** and ***Prem Singh and others Vs. State of Punjab 2014 (1) PLR 477***

After considering the facts of the present case, I am of the view that the order dated 22.06.1972 (Annexure P-3) of removal from service was never challenged by the petitioner. He was denied pension and he has come to the Court only after about 18 years of the passing of the said order. Therefore, the petition in the first instance is barred by delay and laches. Merely, because it is a pension case, this Court cannot intervene when the

CWP No. 9810 of 1993 (O&M)

Government has refused to allow the pension. The petitioner himself submitted the representation only 24.08.1992 and the Government passed the order (Annexure P-15) on 01/02.03.1993 denying the pension.

In the present case the petitioner remained willfully absent from duty from 22.06.1972 till the conclusion of the enquiry. It appears that the petitioner did not even bother to join the enquiry and after his removal from service and denial of the pension, he remained silent for more than 18 years. The continuous absence from service is a grave misconduct and an act of indiscipline. Therefore, there is no illegality and infirmity in the impugned order.

In view of the above, the present petition stands dismissed.

January 30, 2017
Suresh Kumar

[KULDIP SINGH]
JUDGE

Whether speaking / reasoned :	✓ Yes / No
Whether Reportable :	Yes / ✓ No