

Gurbaksh Singh, Ex-Constable, the husband of the petitioner died on 22.9.2010. Now, his wife (present petitioner) has filed the present writ petition in the year 2014, challenging the impugned order dated 22.7.2005 (Annexure-P-2), vide which the claim of the husband of the petitioner for premature retirement was declined. She also seeks the quashing of the impugned order dated 22.7.2005 (Annexure-P-2), where by the husband of the petitioner was dismissed from service. She also claims the pensionary benefits on behalf of her husband till the date of death of her husband i.e. 22.9.2010 as he had completed 21 years, 9 months and 18 days of service rendered before the said date of dismissal with 18% per annum interest by considering the case under the Punjab Civil Services (Premature Retirement) Rules, 1975. It is further prayed that the punishment imposed upon the husband of the petitioner may be converted into premature/compulsory retirement in view of Rule 16.2 of the Punjab Police

CWP No. 26277 of 2014 (O/M)

Rules after considering the provisions of the Punjab Police Rules.

The State in the reply has admitted that Gurbakhsh Singh was recruited as a Constable on 20.10.1981 by the then Senior Superintendent of Police, Ludhiana. He was placed under suspension as he was not present during the morning roll call on 13.9.2004. A daily diary report No. 3 at 8:10 AM was recorded on 13.9.2004 at Police Line, Ludhiana. He continuously remained absent from the said date and never reported back for duty. A regular departmental inquiry was conducted by Inspector Manjit Singh, the then SHO, Division No. 3, Ludhiana. The husband of the petitioner was served various notices, which were received by the husband of the petitioner or his relations, but he did not join the departmental inquiry. Therefore, ex-parte departmental inquiry was conducted, in which he was held guilty. Thereafter, a show cause notice, proposing the punishment of dismissal from service, was served upon the husband of the petitioner and was received by him under his signatures on 7.7.2005. He even did not reply to the said show cause notice. Consequently, the order dated 22.7.2005 (Annexure-P-2) was passed. The husband of the petitioner remained continuously absent from duty with effect from 13.9.2004 till the date of dismissal from service and the said time was treated as non duty period. The gross service of the husband of the petitioner at the time of submission of application on 7.8.2003 for seeking premature retirement was 20 years, 8 months and 19 days. The non qualifying service of the husband of the petitioner was total 9 months, 23 days. Thus, his net qualifying service was 19 years, 10 months and 27 days, which is less than the period required for entitlement of pension, as per the Government instructions dated 7.6.1978, as he had not completed 20 years of qualifying service. On

CWP No. 26277 of 2014 (O/M)

merits, respondents justified the order of dismissal from service and denial of the pension.

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

The impugned dismissal order dated 22.7.2005 (Annexure-P-2) shows that the following punishments were awarded to the husband of the petitioner between the years 2000 to 2004 :-

Sr. No.	Allegation	Punishments
1	For the reason of continuous absence in the year 2000	Punishment of condemnable service was awarded in the year 2001.
2	For the reason of absence of 78 days, 23 hours, 5 minutes in the year 2000	Service of three years was forfeited in the year 2001.
3	For the reason of absence of 110 days, 15 hours, 30 minutes in the year 2000	Service of three years was forfeited in the year 2002.
4	Due to absence from 18.10.2001 to 30.11.2001	Punishment of condemnable service was awarded in the year 2002.
5	Due to absence from 16.6.2001 to 20.6.2001	Punishment of condemnable service was awarded in the year 2002.
6	Due to absence from 18.8.2001 to 19.8.2001	Punishment of condemnable service was awarded in the year 2003.
7	Due to absence from 6.11.2001 to 26.11.2001	Punishment of condemnable service was awarded in the year 2003.
8	Due to absence from 2.8.2001 to 16.8.2001	Punishment of condemnable service was awarded in the year 2003.
9	Due to absence from 28.9.2001 to 1.10.2001	Punishment of condemnable service was awarded in the year 2003.
10	For the reason of absence of 89 days, 4 hours, 30 minutes from 8.7.2002 to 5.10.2002	Service of four years was forfeited in the year 2003.
11	For the reason of absence of 24 days, 15 hours, 5 minutes from 22.4.2002 to 17.5.2002	Service of one year was forfeited in the year 2003.

12	For the reason of absence of 92 days, 4 hours, 30 minutes from 14.12.2001 to 16.3.2002	Service of five years was forfeited in the year 2003.
13	For the reason of absence of 110 days, 2 hours, 30 minutes from 20.10.2002 to 10.4.2003	Service of two years was forfeited in the year 2004.
14	For the reason of absence of two months, 10 days from 15.5.2003 to 25.7.2003	Service of three years was forfeited in the year 2004.
15	For the reason of absence of 10 days, 4 hours, 30 minutes from 28.5.2002 to 7.6.2002	Punishment of condemnable service was awarded in the year 2004.
16	For the reason of absence of 3 days, 23 hours, 35 minutes from 30.6.2002 to 4.7.2002	Punishment of condemnable service was awarded in the year 2004.
17	For the reason of absence of 180 days, 5 hours, 50 minutes from 27.12.2003 to 24.6.2004	Service of six years was forfeited in the year 2005.

In this way, the total 27 years' service of the husband of the petitioner was forfeited, which was much more than his actual service. In the inquiry, it was found that he was a habitual absentee. The impugned order itself reveals that the husband of the petitioner used to remain absent, some time for months together and some time for one month or more. In this way, the husband of the petitioner was an incorrigible employee and it was rightly held that he is unfit for police service. The husband of the petitioner never joined the departmental inquiry despite receipt of notices. He even did not bother to reply the show cause notice. Even during his life time till 22.9.2010, he never challenged the said dismissal order, which has now become final.

The learned counsel for the petitioner has argued that it was held in the dismissal order that a delinquent employee is not entitled to pension because his misconduct is so serious that justice demands the punishment of his dismissal from service. Admittedly, in a case of dismissal from service, an employee is not entitled to pension. The prayer of the petitioner is that the conduct of the husband of the petitioner was not so

CWP No. 26277 of 2014 (O/M)

grave, on which he should be dismissed from service. The learned counsel for the petitioner has relied upon the authority of this Court in Dhan Singh Versus State of Haryana and others, 2008 (3) SCT 2009, delivered by a Division Bench of this Court.

I am of the view that the facts of the said case are entirely different. In the said case, there was one absence period of 100 days, whereas the absence period in the present case, reproduced above, shows that the absence from duty was some time for days and some time for months together on different occasions. Rule 16.2 of the Punjab Police Rules read as under :-

“PPR 16.2 Dismissal : (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

“Explanatin – For the purpose of sub-rule (1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action :

- (i) Indulging in spying or smuggling activities ;
- (ii) disrupting the means of transport or of communication ;
- (iii) damaging public property ;
- (iv) causing indiscipline amongst fellow policemen.
- (v) Prompting feeling of enmity or hatred between different class of citizens of India on grounds of religion, race, caste, community or language ;
- (vi) Going on strike or mass casual leave or resorting to mass absentions ;

CWP No. 26277 of 2014 (O/M)

-6-

- (vii) Spreading disaffection against the Government ; and
- (viii) Causing riots and the life.”

The above rule makes it clear that dismissal from service can be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. The gravest acts of misconduct are enumerated in the said rule itself. However, the punishments awarded to the husband of the petitioner as reproduced above goes to show that there was continuous misconduct on the part of the husband of the petitioner. He was incorrigible and unfit for police service. Therefore, the order of dismissal from service was rightly imposed upon the husband of the petitioner. The authority of this Court in Jagtar Singh Versus State of Punjab and others, 2016 (3) SCT 542, delivered by Single Bench, is also distinguishable on the facts of the case.

The learned counsel for the petitioner has argued that the forfeiture of service is only a disqualification for increment and the period is to be computed for the purpose of grant of pension. He has stated that as per the written statement, respondents themselves admitted that the qualifying service of the husband of the petitioner was more than 19 years and 10 months and under Rule 6.1 of Civil Services Rules, Volume-II, the fraction of a year equal to three months and above shall be treated as a complete one half year, therefore, the qualifying service of the husband of the petitioner is to be treated as 20 years. He has also referred to the information obtained under the Right to Information Act, 2005, (Annexure-P-5), wherein it is stated that the total service of the employee was 21 years, 18 days, out of which non qualify service of 2 years, 8 months and 26 days, which mans that the qualifying service of the husband of the petitioner

CWP No. 26277 of 2014 (O/M)

comes to around 18 years and 4 months.

The learned counsel for the petitioner has further argued that even 10 years service qualifies for pension as per the Government instructions. However, the question of qualifying service is immaterial. Here, the husband of the petitioner was awarded several punishments, numbering 17, during the span of four years. There was a continuous misconduct and the husband of the petitioner was incorrigible and unfit for police service and, therefore, he was rightly dismissed from service and a dismissed employee is not entitled to pension.

The learned counsel for the petitioner has laid stress towards an application (Annexure-P-1), filed on 7.8.2003, in which it was stated that the employee is not mentally feeling well. However, no mental illness is proved nor any document is annexed with the petition to show that the deceased Ex-Constable was mentally ill. Therefore, from mere averment in the application, the illness cannot be assumed. If it was so, the employee should have filed the application, accompanied by the documents to show that he is mentally ill. The husband of the petitioner continuously used to remain absent from the year 2000 and the last absence was from 13.9.2004. The husband of the petitioner was never declared insane by any medical board or by a doctor nor there is any evidence that he was ever treated for the mental illness. Even if, the provisions of the Punjab Police Rules are applied, for such an incorrigible employee of a disciplined force, the only punishment should be dismissal from service. Now, after 9 years of the passing of the dismissal order and 4 years after the death of the husband of the petitioner, present writ petition has been filed in the year 2014, which is otherwise barred by delay and laches. It being so, there is no illegality or

CWP No. 26277 of 2014 (O/M)

infirmity in the impugned order dated 22.7.2005 (Annexure-P-2), dismissing the husband of the petitioner from service. This Court has no sympathy with the husband of the petitioner, as the discipline has to be enforced with iron hands and the indiscipline in the disciplinary forces like police and army cannot be tampered with.

In view of the matter, since a dismissed employee is not entitled to pension and this Court is not inclined to interfere in the said order, therefore, the petitioner is not entitled to grant of premature voluntary retirement or pension or family pension. Hence, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

19.1.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes