

CWP No.7509 of 2014

Date of Decision: February 06, 2017

Surinder Kumar Sharma

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KULDIP SINGHPresent : Mr. Sudhir Mittal, Advocate
for the petitioner.

Mr. Nikhil Chopra, Deputy Advocate General, Punjab.

Kuldip Singh, J. (ORAL)

The petitioner has joined the services in the office of respondent No.3 w.e.f. 15.04.1969. It also comes out that on account of previous conduct, he was terminated from the service and was again appointed on 03.06.1969 and ultimately he was transferred to the Office of Commissioner, Jalandhar, Division. On account of marriage of sister of the petitioner which was to be solemnized in Canada, he applied for 90 days ex-India leave to visit Canada. The leave was granted w.e.f. 24.12.1986 with a specific condition that he will not seek extension in leave. After the expiry of leave, he did not report for joining duty and kept on sending the applications for leave, which was refused vide letter dated 24.04.1987 and ultimately he was declared absent from duty without leave w.e.f. 24.03.1987. A show cause notice dated 28.01.1988 (Annexure R-14) was also sent to the petitioner and an Inquiry Officer was also appointed and ultimately, after completion of the formalities, he was removed from the

service vide order dated 16.01.1989 (Annexure P-6).

Since he was not granted any retiral benefits, he moved an application dated 12.02.1992 for final payment from his provident fund account which was not released to him. Thereafter, he moved a representation dated 31.07.2012 (Annexure P-8) for release of the retiral benefits which was followed by another representation dated 16.08.2012. The benefits to the petitioner were refused on the ground that he was removed from the service under Rule 2.5 of the Punjab Civil Services Rules, Volume 2.

In the present petition, petitioner prays for grant of the pension.

In the reply, respondents have taken the stand that since the petitioner was removed under Rule 2.5 of the Punjab Civil Services Rules, Volume 2, Part I, therefore, he is not entitled for the pension. The respondents have also enumerated the various requests made by the petitioner for extension of his leave. It is also asserted that the removal order was passed after holding a departmental inquiry.

I have heard the learned counsel for the parties.

In the present case, the order dated 16.01.1989 removing the petitioner from his service has not been impugned. It also comes out that petitioner was on ex India leave upto 24.03.1987. He did not join his duties even after the inquiry was started. He moved the first application for payment of provident fund only in the year 1992.

Rule 2.5 of Punjab Civil Services Rules, Volume 2, Part I, reads as follows:-

“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 allowances 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.”

The said Rule makes it clear that in case of removal from service, the employee is not entitled to pension. Therefore, there is no illegality or infirmity in the impugned order dated 13.09.2013 (Annexure P-15) in refusing the pension.

Learned counsel for the petitioner has argued that the petitioner is entitled to compassionate allowances as provided in Rule 2.5 (*ibid*). It is stated that at the time of removal from the service, he had about 18 years of service and that his case is fit for compassionate allowance. Reliance has also been placed on the authority of Apex Court passed in *Civil Appeal No.2111 of 2009* titled as '*Mahinder Dutt Sharma Vs. Union of India and others in, decided on 11.04.2014.*' The perusal of that authority shows that in that case the question before the Apex Court was whether the petitioner is entitled to compassionate allowance under Rule 41 of the Pension Rules 1972. The Court laid down certain guidelines in which case the compassionate assistance is to be allowed.

In the present case, at the first instance, the petitioner claims compassionate allowance without stating the grounds in petition, on which, according to him, he is entitled for the compassionate assistance as per the authority of *Mahinder Dutt Sharma's* case (*supra*), wherein petitioner's

case enumerated certain grounds including his meritorious conduct to claim compassionate assistance in case of absence of over about 320 days from duty. On 24.03.1987 when the petitioner was in Canada. He did not report back till date and now, probably, he has crossed the age of superannuation. In the said case, the Apex Court after considering the peculiar facts, held that the petitioner therein is entitled to the compassionate assistance.

In view of the above, I am of the view that the ratio of the said judgment is not applicable to facts of present case of petitioner, as petitioner left his employer in lurch and he went to Canada and probably settled there. As per rules of Canada, a visitor is not allowed to stay there for more than six months. Therefore, he either overstayed there or he settled there and did not turn back. It was only after five years that he claimed the provident fund. The order of removal was never challenged and thereafter the process of filing the representation was initiated to claim the pension.

Keeping in view the fact that the petitioner might be doing some job while staying in Canada and he was probably settled there, it is not a case where the compassionate allowance should be allowed. There are no facts which makes out a case for compassionate assistance to the petitioner even on merits.

Consequently, the present petition is dismissed.

February 06, 2017

ps-I

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No