

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

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**RSA-3998-2012 (O&M)
Date of decision:01.05.2018**

Sumitra and others

...Appellants

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ravi Verma, Advocate for the appellants.

Mr. Rohit Arya, AAG, Haryana.

P.B. BAJANTHRI, J. (ORAL)

Instant appeal is presented by legal heirs of deceased employee-Ram Kumar questioning the trial as well as appellate courts' judgments dated 04.02.2011 and 12.01.2012. While deceased-Ram Kumar was in service without following due procedure known to the law, he had contested the elections. Consequently, on such allegation/charges deceased-Ram Kumar was subjected to disciplinary proceedings and it was concluded in imposing the penalty of dismissal from service on 13.03.2002 while giving effect from 22.01.1998. Deceased-Ram Kumar feeling aggrieved by order of dismissal filed writ petition before this court. His writ petition was disposed of on 29.07.2005 to the extent that order of dismissal would be

effective from the date of passing order and not from 22.01.1998. Deceased-Ram Kumar submitted representation to the competent authority to invoke Rule 2.5 of the Punjab Civil Services Rules, Volume II (Haryana State) (for short 'PCSR'). Competent authority proceeded to pass order to the extent that deceased-Ram Kumar's claim cannot be taken into consideration under Rule 2.5 of PCSR with reference to charge of indiscipline and misconduct, further on the ground of delay. Such rejection dated 26.09.2008 was subject matter of suit before the trial court. Trial court dismissed the suit. Thereafter, he had suffered order before the appellate court also. Hence the present appeal.

2. Learned counsel for the appellant submitted that both the courts have not appreciated Rule 2.5 of PCSR and further while rejecting the deceased employee's grievance relating to extending benefit under Rule 2.5 of PCSR has not been examined judiciously. Further it was contended that question of delay in extending any benefit under Rule 2.5 of PCSR would not be a hurdle for the reasons that deceased-Ram Kumar's writ petition was disposed of on 29.7.2005. Thereafter, he has submitted representation in respect of implementation of Rule 2.5 of PCSR and it was rejected on 26.09.2008. Civil suit was filed on 30.10.2008. Thus, both the courts below as well as authority's decision dated 26.09.2008 is not in accordance with spirit of Rule 2.5 of PCSR to the extent of examination of misconduct which is stated to have been committed by the deceased employee read with order of dismissal.

3. On the other hand, learned counsel for the respondent submitted

that once the deceased employee suffered an order of dismissal from service and it has attained finality before this court therefore, deceased employee cannot have any grievance under Rule 2.5 of PCSR since Rule 2.5 of PCSR could be invoked only as and when employee of the State Government is dismissed from service to the extent whether is he entitled to compassionate allowance or not. Rightly, authorities have rejected the claim of the deceased employee even on the score of belated claim. It was also submitted that courts below have examined Rule 2.5 of PCSR to the extent whether deceased employee is entitled to any compassionate allowance or not.

4. Heard the learned counsel for the parties.

5. Question for consideration in the present appeal is whether deceased employee has any legal right in respect of claiming compassionate allowance under Rule 2.5 of PCSR or not? Undisputed facts are that deceased employee was subjected to disciplinary proceeding on the charge that he had contested elections without following due procedure. Dismissal order is passed under the Punishment and Appeal Rules. Disciplinary authority is required to impose any penalty if the charges were proved under the Punishment and Appeal Rules. In all fairness the concerned official respondent should have passed an independent order in respect of implementation of Rule 2.5 of PCSR of the Punjab Civil Services Rules with reference to order of dismissal. Even after disposal of deceased employee's writ petition on 29.07.2005 concerned respondent has not invoked Rule 2.5 of PCSR to the extent whether deceased employee is

entitled to compassionate allowance or not. After receipt of the deceased employee's representation proceeded to pass communication. In the communication reasons for rejecting compassionate allowance is two fold. One is offence comes under the indiscipline and misconduct. The other one is belated claim. The reasoning assigned in the communication dated 26.09.2008 is only conclusive and not supported by any reasons. In other words, having regard to the mis-conduct committed by the deceased employee has not been taken into consideration. It is also to be noted that mis-conduct is not relating to any misappropriation of the Government money. It is only a procedural violation by the deceased employee to the extent of seeking permission or resigning the post held by him before contesting the election. No doubt, it is a serious misdeed. At the same time, since there is no financial loss or misappropriation matter therefore, the competent authority must have apprised the complete service records of the deceased employee to the extent that he has rendered 3 decades of service. Such examination is not forthcoming from the communication dated 26.09.2008 which was the subject matter in the suit. Therefore, the communication dated 26.09.2008 is required to be re-examined by the competent authority. The contention of the respondent that deceased employee had cause of action as and when order of dismissal was passed cannot be accepted for the reasons that penalty is governed under the HCS (Punishment and Appeal) Rules 1987 whereas compassionate allowance is governed under the Punjab Civil Services Rules. In other words, both the issues are governed by two different set of rules. Consequently, respondent

should have passed an independent order under Rule 2.5 of PCSR as order of dismissal was passed under Punishment and Appeal Rules. Therefore, deceased employee had cause of action after disposal of writ petition on 29.07.2005. Hence, the contention of the respondent relating to delay as well as misconduct stated in the communication dated 26.09.2008 do not stand with the reasons. In view of these facts and circumstances, trial as well as appellate court judgments dated 04.02.2011 and 12.01.2012 are set aside so also communication dated 26.09.2008. Concerned respondent is hereby directed to re-examine the service records of the deceased employee read with Rule 2.5 of PCSR and pass a speaking order within a period of 4 months from the date of receipt of copy of this order and communicate to the appellant.

6. With the above observation, appeal stands allowed in part.

01.05.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No