

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.8171 of 2021 (O&M)

Date of Decision:09.04.2021

Surjan Singh

.....Petitioner

Versus

State of Punjab & ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Rishav Jain, Advocate for the petitioner.

TEJINDER SINGH DHINDSA J.

Instant writ petition is directed against the order dated 26.10.2012 (Annexure P-5) declining the claim of the petitioner as regards pension/pensionary benefits. Further vide the impugned order directions have been issued for recovery of salary paid to the petitioner for the period 01.07.1982 to 16.12.1994 by taking recourse as permissible in law.

Counsel submits that petitioner was appointed as a Driver under the Department of PWD (B&R), Punjab on 27.09.1972. He retired on 16.12.1994. By virtue of 22 years of service to his credit, petitioner could not have been denied pensionary benefits to which he was otherwise eligible under the relevant Civil Service Rules. Counsel further submits that in the impugned order it has been observed that in an affidavit submitted by the petitioner at the stage of joining service there has been some apparent over-writing as regards year of birth and there is confusion between the years 1934 and 1939 but it is not clear whether

such over-writing was done by the petitioner at the time of submitting of the affidavit or the same had been done subsequently in connivance with some staff members. Contention raised by counsel is that there is no evidence that has come on record to prove that there was any fraud/over-writing/any kind of mis-representation at the hands of the petitioner and as such the impugned order declining pensionary benefits cannot sustain. It has further been argued that the petitioner had actually worked on the post of Driver upto 16.12.1994 and in the absence of any fraud/mis-representation, the salary already paid for the period 01.07.1982 to 16.12.1994 cannot be recovered. Yet another submission raised by counsel is that the petitioner has been made a victim of arbitrary action and has been dealt with unfairly. In this regard it is contended that after petitioner retired in 1994 a number of representations had been filed and the same having not evoked any response petitioner had filed CWP No.6781 of 2012 before this Court and the same was disposed of on 05.07.2012 with a direction to the concerned authorities to examine the claim of the petitioner. Thereafter the impugned order dated 05.07.2012 (Annexure P-5) has been passed which has led to the filing of the instant petition. Counsel asserts that by virtue of the impugned order the petitioner has been left without any source of sustenance in his old age.

Counsel has been heard at length and case paper-book has been perused minutely.

In the considered view of this Court, the instant petition ought to fail as it is at the hands of a dishonest person.

Pleaded case of the petitioner himself is that his date of birth is 24.06.1924. Upon attaining the age of 18 years he had joined the

Indian Army on 25.06.1942 and was discharged on 29.06.1966 as Naib Subedar. Thereafter he was appointed as a Driver with the PWD (B&R) Department, Patiala, w.e.f. 27.09.1972. In the impugned order it has been observed that the petitioner at the time of joining service had submitted an affidavit dated 02.04.1974 stating on oath that his date of birth is 24.06.1939. Petitioner had also submitted a medical certificate of fitness dated 25.01.1982 and which was duly signed by him reflecting his date of birth again as 24.06.1939. In the instant petition, petitioner does not deny the submission of the afore-noticed two documents. The only submission raised by counsel is that there is no evidence as regards the alleged over-writing with regard to year of birth to be 1939 or 1934. Such submission is of no consequence. Petitioner was aware of his year of birth being 1924 and yet he submitted his affidavit as also a medical fitness certificate stating his year of birth to be 1939. Taking the date of birth as 24.06.1924, which is the petitioner's own admission in the instant petition, he would have attained the age of 58 years i.e. age of superannuation on 30.06.1982. However, on the basis of submission of false documents petitioner continued to serve beyond the age of 58 years. Things came to light when the petitioner furnished a certificate regarding his past service in the Indian Army claiming increments on account of service rendered with the defence forces and from which it became apparent that his date of birth was 24.06.1924. Department immediately took action and retired him w.e.f. 16.12.1994.

It, therefore, clearly emerges that petitioner continued in service beyond 30.06.1982 i.e. the age of superannuation on the strength of a false affidavit as also a medical fitness certificate submitted by him

carrying a wrong year of birth. During the course of arguments, counsel on a specific query having been put, conceded that despite the petitioner being aware of his exact date of birth i.e. 24.06.1924 he chose not to bring to the notice of his employer of his having attained the age of superannuation in June 1982 itself. Under no circumstances can the petitioner be permitted to derive any benefit in lieu of service rendered beyond June 1982 i.e. when he had completed 58 years of age. On such date i.e. 30.06.1982, petitioner did not possess pensionable service.

In the facts of the present, petitioner has continued to serve beyond the age of retirement in a surreptitious manner and as such continued to draw salary from the state exchequer and at the cost of honest tax payers. Petitioner ought to pay the price for having drawn salary based on fake and forged documents.

In view of the above, this Court does not find any infirmity in the passing of the impugned order dated 26.10.2012 (Annexure P-5).

There is another aspect of the matter. Petitioner was retired w.e.f. 16.12.1994. He approached this Court after a period of 18 years by filing CWP No. 6781 of 2012 and the same was disposed of on 05.07.2012 with a direction to the concerned authority to examine the claim of the petitioner seeking pensionary benefits against the backdrop of a legal notice that had already been served and to take a final decision in the matter within a period of three months. In purported compliance of the directions issued by this Court the impugned order was passed on 26.10.2012 (Annexure P-5). Instant writ petition assailing such order has been filed after a lapse of 9 years approximately.

No plausible explanation is coming forth so as to justify the

lapse of such long periods of time post retirement as also after passing of the impugned order insofar as taking legal recourse is concerned. The afore-noticed circumstances are a clear pointer that the petitioner was very much aware that he was setting up a fraudulent claim.

Even otherwise the instant writ petition is wholly misconceived. Petitioner had also filed CWP No.14274 of 2019, seeking release of pensionary benefits. The same came up for hearing on 27.05.2019 and the same was dismissed as withdrawn. At that stage no liberty was prayed for or granted by this Court to file a second petition seeking identical relief. The order passed by the Co-ordinate Bench in CWP No.14274 of 2019 was to the following effect:-

After arguing for some time, learned counsel for the petitioner states that he be allowed to withdraw the present writ petition.

Dismissed as withdrawn.”

The instant writ petition can only be seen as petitioner taking chances before this Court. Such practice needs to be deprecated.

This Court was inclined to dismiss the instant petition with exemplary costs but has refrained from doing so keeping in view that the petitioner is now at the ripe age of 97 years.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

09.04.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No