

208.

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

CWP-14389-2014

Reserved on 16.11.2022

Pronounced on: 5.12.2022

MANVINDER SINGH

.... Petitioner

Versus

STATE OF PUNJAB & ORS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Gursimran Singh Bawa, Advocate, for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab

JAISHREE THAKUR.J

1. The present writ petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of mandamus to be issued to re-enroll the petitioner back in service as per provisions of Rules 12.24 and 12.25 of Punjab Police Rules, 1934.

2. In brief, the facts as pleaded, are that the petitioner joined the Punjab Police in 1988 as a Constable and was subsequently promoted as Head Constable in 1998 after passing the Lower School Course in 1992. In 2010, the petitioner sought voluntary retirement and was given promotion to the rank of ASI at the time of retirement. A year later in 2011, the petitioner represented before the Commissioner of Police, Amritsar for re-enrollment into the department as per provisions of Rules 12.24 and 12.25 of Punjab Police Rules, 1934. His application was forwarded to the DGP, Punjab in 2012 and was consigned to Record Room in 2013. Since the petitioner was

not informed of the decision taken on his application seeking re-enrollment, he sought information under the RTI Act regarding decision on the application and was informed that his application had been consigned. Aggrieved, the present writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioner submits that though the petitioner had sought voluntary retirement, he had applied to be re-enrolled in the service again and was ready and willing to forgo his pension after re-enrolment as he was not in a position to refund the retiral benefits as taken. It is argued that the petitioner has got his medical examination done from Civil Surgeon and was medically fit, however, was never communicated about the rejection of his application. It is further submitted that a similarly situated person, who had taken voluntary retirement, has been taken back in service.

4. *Per contra*, the counsel appearing on behalf of the respondents-State argues that the petitioner was not retired on account of compensation or invalid gratuity or pension which needs to be the case as per Rule 12.25 (1) of Punjab Police Rules 1934, as he had sought voluntary retirement to start his own work/business. It is contended that the petitioner cannot seek parity with Harjit Singh as his case for re-enrollment was approved by taking into account the outstanding work done by him in the department. The case of the present petitioner has been considered and filed.

5. The only issue that needs consideration is whether the petitioner is eligible for re-enrollment and his case can be considered on parity with Harjit Singh, who was similarly re-enrolled?

6. Rules 12.24 and 12.25 of the Punjab Police Rules 1934 are reproduced as under:-

12.24 Enlistment of ex-soldiers, reservists and ex-police officers. (1) Re-enrolment in the rank of constable is permitted and past service will count for pension under the following conditions, and subject to the further conditions as to pensions contained in rules 9.2 and 9.29:-

(a) Ex-soldiers of the Indian Army and ex-members of police forces (including Military Police), paid for from the general revenues of India, may be enlisted as constables on production of a discharge certificate showing their previous service to have fulfill the physical and other standards required by these rules for first appointments. They must also be passed medically fit by the same standards as are applied to recruits.

(b) Age of the date of enrolment in the police must be below 30, but ex Punjab police officers, and, with the special sanction of the Inspector General in each case, ex-soldiers and ex-members of other police forces may be re-enlisted up to the age of 55, if they present themselves for re-enrolment and are found medically fit within two years of their discharge.

(c) The break in service between the date of discharge and between 1st days of the month in which enrolment process is started shall not exceed four years.

(d) No claim to count previous service for pension shall be allowed unless the previous service claimed was declared and verified at the time of enrolment in the police.

(e) Service in a body of additional police shall be counted for increments in the case of a constable transferred to the regular force immediately on such transfer.

(2) No class A Army reservist or member of the Indian Territorial Force may be enrolled in the police until he has resigned his appointment in such force.

Cavalry and Infantry reservists of the Indian Army below the age of 30 years may be enrolled, provided that their military service records show good conduct. Such reservists shall not be required to undergo annual military training provided that it is certified that they are trained in drill and fire a musketry course each year. The certificate will be signed by the Assistant Inspector-General, Government Railway Police, Punjab or by the Superintendent of Police of the district in which the reservist is serving.

The ordinary police musketry course is sufficient for this purpose, vide Government of India, Home Department letter No. F-28/11/31-Police, Dated the 22nd September, 1931.

Reservists of other branches of the Indian Army may also be enlisted in the police provided that the conditions of their reserve service and periodical training as laid down in paragraph 170 of the Regulations for the Army in India do not interfere with their police duties.

The total number of all classes of reservists should not exceed five percent of the sanctioned strength of constable in each district. They should be released from employment immediately mobilization is ordered to enable them to rejoin the colours.

(3) *Claims to count service for pension shall when the above conditions are fulfilled, be dealt with as required by rules 9.2, 9.3, and 9.29. In the case of previous military service, the condition of breaks and admission to count for police pension require the sanction of the local Government. Such claims must therefore be forwarded through Deputy Inspector-General to the Inspector-General for obtaining such sanction.*

(4) *Original discharge certificates, character rolls and service books, or such of those documents as may be available, shall be submitted in support of claims under this rule.*

Note- *A case in which it is desired to appoint a person, with previous military or police service, to a rank of and above that of head constable, shall be decided in the light of so much as is applicable of this rule read with other rules in this chapter.*

12.25 Re-enrolment of police pensioners (1) *Under the orders contained in Articles 511 to 519, Civil Service Regulations, a police officer who has been discharged with a compensation or invalid gratuity or pension may be re-employed in the police service up to the age of 55 subject to the following conditions :-*

(a) He may either refund the gratuity or cease to draw pension, in which case he may count his former service for future pension, or he may retain his gratuity or pension in which case he cannot count his former service towards future pension.

(b) He shall be re- examined by the Civil Surgeon of the district in which he has been re-employed and certified as medically fit for service, and shall produce a discharge certificate showing that his previous service was classed as not lower than "good".

(2) *The order re-enrolling such officer shall specifically state the amount of any gratuity, bonus or pension received by him on discharge, and a copy of such order shall be communicated to the Accountant-General. Directions shall also be given, if necessary, for the proper deductions to be made from his pay."*

7. After having sought voluntary retirement, the petitioner applied to be taken back in service. On a conjoint reading of the Rules, as reproduced above, it is clear that an ex-police pensioner may be enlisted as Constable on production of a discharge certificate showing his previous service to have been “good” or of higher classification, and if he fulfills the physical and other standards required by these rules for first appointment. If such a person applies within two years of having retired, and age on the date of re-enrollment in the police is 30 years, which age could be up to the age of 55 years, may be re-enrolled on getting sanction from the Inspector General of Police. Furthermore, the pensioner may either refund the gratuity or cease to draw pension, in which case he may count his former service for future pension, or he may retain his gratuity or pension in which case he cannot count his former service towards future pension.

8. In the present case, the petitioner applied for voluntary retirement and his application was accepted on 17.08.2010. Within the period of two years i.e. on 29.11.2011, he applied for re-enrollment and since he did not deposit his gratuity and filed an affidavit that he would not claim pension of his former service towards pension, the application was recommended by the Commissioner of Police and the same was forwarded to the office of the Director General of Police, Punjab where the application was consigned. Rule 12.24 of Punjab Police Rules, 1934 permits re-enrollment in service, provided that the Inspector General of Police i.e. the Director General of Police accords sanction for it. The term ‘may’ as used in Rule 12.24 (1) (b) reproduced above, affirms that special sanction may be accorded by the Director General of Police for re-enrollment, meaning thereby the

re-enrollment is at the discretion of the competent authority.

9. On hearing arguments raised, this Court is of the opinion that the order as passed by the Director General of Police, Punjab is not a speaking one as no reasons are forthcoming as to why the application of the petitioner cannot be accepted and the file was consigned. The application was filed within the specified time and with an affidavit that as he could not refund the benefits taken, he would not claim the benefit of past service towards his pension. Consigning the application for re-enrollment, without assigning any reasons, especially when similarly situated person had been re-enrolled in service as per information supplied under the RTI Act, would reflect arbitrariness and discrimination. The discretion to appoint or not, is entirely within the domain of the Director General of Police, but the said discretion has to be exercised judicially, especially when exercising the said power others have been re-enrolled. That is why the factum of recording reasons for rejection gains paramount importance. Judicial intervention on an administrative decision would be called for only when it is apparent that the said decision is arbitrary or discriminatory so as to protect the citizens from illegality. In a judgment as rendered by the Supreme Court in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai KGB Versus Jagdish Sharan Varshney, 2009(4) SCC 240*** it has been held that “*Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.*”

10. Consequently, the writ petition is allowed. The respondents-State is hereby directed to re-examine the case of the petitioner and decide the same by passing a speaking order. The entire exercise be completed within a period of two months on receipt of a certified copy of the order and in case the petitioner is to be re-enrolled, let the necessary orders be issued forthwith thereafter.

(JAISHREE THAKUR)
JUDGE

5.12.2022

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