

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 23102 of 2013 (O&M)

Reserved on: September 1, 2022

Date of Pronouncement: September 9, 2022

Ram Pal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Puneet Gupta, Advocate
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner has approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari to set aside the impugned order dated 16.09.2013 (Annexure P-9), whereby the claim of the petitioner for re-enlistment under Rule 12.24 of the Punjab Police Rule 1934 ('**the PPR, 1934**') has been rejected with a further prayer to enroll the petitioner as Head Constable and to grant all benefits that flow therefrom.

2. The facts as stated and not in dispute, are that the petitioner was enrolled in the Punjab Police as a Constable on 31.08.1991 and thereafter, he was promoted as Head Constable. However, on account of family circumstances, he sought premature retirement on completion of 20 years service. His request was acceded to and he was retired w.e.f. 5.1.2012. As his family circumstances improved, the petitioner sought re-enrollment into

the police force under Rule 12.24 of the PPR, 1934, vide letter dated May, 2013. He was asked to furnish his affidavit that he would deposit all his pensionary benefits, gratuity, leave encashment etc. received by him and was also asked to get his medical fitness certificate. Respondent no.3, vide letter dated 27.6.2013, asked the Civil Surgeon, Civil Hospital, Rupnagar, to conduct medical examination of the petitioner for issuance of a Medical Fitness Certificate. The medical was conducted and the petitioner was found fit. On 2.7.2013, he also submitted his affidavit stating that he would deposit his retiral benefits taken from the department, which includes gratuity, commuted pension, leave salary and GP Fund etc. prior to joining. However, as he did not get any response, a representation was filed seeking re-enlistment under Rule 12.24 of PPR 1934, but the same was rejected on 16.9.2013 (Annexure P/9). Hence the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner submits that the claim of the petitioner seeking re-enrollment in the Punjab Police as Head constable under Rule 12.24 of the PPR, 1934 has been rejected by placing reliance upon instructions dated 27.2.1979 which in fact have no concern with the issue of re-employment and the same pertains to withdrawal of notice of voluntary retirement after the same has become effective. He would also claim re-enrollment by seeking parity with one Dewan Chand Belt No 445/R who sought voluntary retirement in 1991 and was taken back in service with a new Belt no. 316/R in 1993 and continued to work till 2010.

4. Whereas learned counsel appearing on behalf of the respondents argues that the petitioner had sought voluntary retirement from

service on having completed 20 years and his case was considered for re-enrollment, however, he could not be taken back in service in the light of Punjab Government Instructions/Circular dated 27.2.1979 which clearly specifies that once voluntary retirement has been sought and accepted, a government employee cannot be taken back in service.

5. I have heard the counsel for the parties and with their assistance have perused the pleadings of the case.

6. After having sought voluntary retirement the petitioner herein applied to be taken back in service by invoking Rule 12.24 of the PPR, 1934, which is reproduced hereunder:-

"12.24 (1). Enlistment of ex-soldiers, reservists and ex-police officers. -

(1) Re-enrollment in the rank of constable is permitted and post 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 been "good" or of higher classification, and if they 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 on the date of re-enrollment 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 reenlisted up to the age 55, if they present themselves for re enrollment and are

found medically fit within two years of voluntarily taking their discharge.

(c) The break of service between the date of enrollment in the police and the date of discharge from previous Army employ shall not exceed two years, and there must not have been more than two breaks of service in all.

(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 enrollment in the police.

(e)x x x

(2)x x x

(3)x x x

(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."

7. On seeking re-enrollment, the petitioner was asked to get his medical done by the Senior Superintendent of Police, vide letter dated 27.6.2013 and was also asked to furnish his affidavit regarding deposit of all pensionary benefits in the Government treasury, which necessary formalities had been complied with by the petitioner. However, the case of the petitioner for re-enrollment stands rejected by relying upon Government Instructions letter No. 16/72/78-2PP dated 27.2.1979 stating therein that no retired employee can join the force again. The relevant extract of the said instructions are reproduced hereunder for ready reference.

"... A question has arisen whether the request for being taken back in service of a person who is allowed to retire voluntarily after the expiry of the notice period would be accepted by the appropriate authority. The matter has been considered by government, keeping in view the policy of the Government of

India, and it has been decided that there being no provision in the Punjab Civil Services (Premature Retirement) Rules, 1975 to this effect, a government employee who is allowed to retire voluntarily after the expiry of this notice period shall not be permitted to withdraw the notice of voluntary retirement once it has become effective and he has been relieved of his duties.”

The circular as relied upon by the respondents to decline re-enrollment of the petitioner is not applicable, as the said circular pertains to withdrawal of request for voluntary retirement by an employee after the same has been accepted, whereas, the petitioner herein is seeking re-enrollment as a Head Constable by virtue of the provisions of Rule 12.24 of the PPR 1934. Reliance upon the said circular is misplaced. Consequently, the impugned order dated 16.9.2013 (Annexure P/9) is set aside.

8. Now, the question that arises is, whether any writ in the nature of mandamus can be issued directing the respondents to enroll the petitioner in the Punjab Police Service as Head Constable since Annexure P-9 has been set aside? Rule 12.24 (1) (b) stipulates that ex-Punjab Police officers with the special sanction of the Inspector General, *may* be re-enlisted up to the age 55 years, if they present themselves for re enrollment and are found medically fit within two years of voluntarily taking their discharge. The petitioner had applied for re enrollment within the specified period of two years. As per Rule 12.24 (1) (b) reproduced in the foregoing paras, it is the discretion of the Inspector General of Police to allow *re-enrollment*, and there is no such sanction available on the record to allow for a writ in the nature of mandamus to be issued. The letter asking the petitioner to furnish an affidavit regarding deposit of all pensionary benefits received in the

government treasury and instructing him to get his medical done, is by the Senior Superintendent of Police who is not the competent person. Therefore, the prayer for issuance of a writ of mandamus is declined.

9. Consequently, the writ petition is partly allowed. In case, the petitioner approaches again for re-enrollment, the said request be considered in accordance with law based upon his eligibility, within a period of two months from the date of receipt of a certified copy of this order.

September 9, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No