

DL-8

31.08.2023
Court No.5
(AD)

WP.ST 60 of 2015
With
IA No.: CAN 2 of 2023

Ratan Bahadur Rana
Vs.
The State of West Bengal & Ors.

Mr. Srikanta Paul

... for the petitioner.

Mr. T.M. Siddiqui

Mr. Supratim Dhar

... for the State respondents.

*In Re.: **IA No.: CAN 2 of 2023***

CAN 2 of 2023 is an application for restoration.

For the ends of justice and on the basis of the pleadings made in the application for restoration, the order of dismissal dated July 26, 2023 is recalled.

WP.ST 60 of 2015 is restored to its original file and number.

IA No.: CAN 2 of 2023 is disposed of.

*In Re.: **WP.ST 60 of 2015***

The writ petition is directed against an order dated December 19, 2013 passed in OA-983 of 2013 by the West Bengal Administrative Tribunal.

By the impugned order, the Tribunal refused to intervene with the order of rejection of an application made under Rule 12 of The West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

Learned Advocate appearing for the writ petitioner

submits that, the writ petitioner put in 38 years of unblemished service. The writ petitioner is facing hardship. These two conditions constitute “special consideration” as contemplated under Rule 12 of the Rules of 1971. Rule 12 being a beneficial piece of legislation. It should be construed in a manner so as to benefit the writ petitioner. Denial of compassionate allowance is hardship so far as the petitioner is concerned.

State is represented.

The writ petitioner was appointed as a constable in the police department in November 26, 1968. A departmental proceeding was initiated against the writ petitioner for his dereliction of duties and unauthorized absence from government service by a proceeding bearing no.18/06 dated January 5, 2006. Charges as against the writ petitioner were framed. He was directed to submit written explanation. The enquiry officer served several messages to the writ petitioner directing him to submit his written explanation and attend the enquiry. The writ petitioner did not attend the enquiry in spite of reminders. Enquiry officer commenced the enquiry proceedings and examined prosecution witnesses and the related documents. The enquiry officer asked the writ petitioner to submit his defence witnesses. The writ petitioner was asked to submit written statement of his defence. Despite receipt of such messages, the writ petitioner did not appear before the enquiry officer. He, however, submitted an

application pleading guilty to the charges and begged mercy.

The enquiry officer submitted a finding that, the charges as against the writ petitioner stood proved. This report dated May 28, 2006 was considered by the disciplinary authority. Thereafter, the disciplinary authority after affording opportunity of hearing to the writ petitioner passed an order of punishment. Appeal was preferred. Such appeal was dismissed. Thereafter, the writ petitioner approached the authorities for the purpose of grant of compassionate allowance in terms of Rule 12 of the Rules of 1971.

A slew of litigation followed thereafter. Ultimately, the High Court directed the authorities to consider the claim of the writ petitioner and pass a reasoned order. The authorities passed an order dated January 29, 2013 rejecting the claim for compassionate allowance. An original application was filed before the Tribunal being OA-983 of 2013 which resulted in the impugned order rejecting the claim of the writ petitioner.

We find from the records made available to Court that, the writ petitioner after being appointed as a Constable on November 26, 1968 was granted 3808 days extraordinary leave. He suffered six major punishments and eight minor punishments in his service career. He was, however, rewarded five times. The order of dismissal from service was assailed and ultimately did not meet with

success.

Rules 12 of the Rules of 1971 on which, the writ petitioner seeks compassionate allowance is as follows:

“12. Misconduct or inefficiency – No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowance may be granted when they are deserving of special consideration; provided that the allowance granted to any officer shall not exceed two-third of the pension which would have been admissible to him if he had retired on medical certificate.

Note-I Rules 9 and 10 apply mutatis mutandis to the recovery of Government dues from compassionate allowance.

Note-2 On receipt of the orders of the competent authority removing an officer from service for misconduct, insolvency or inefficiency, the Head of office if he proposes to recommend the grant of compassionate allowance, should fill in the first page of application for pension in Form 1 or the first and second pages of Form 2 as the case may be, and send to the Audit Officer concerned for report on the title to pension. The Head of Office should not wait for an application in Form 2 signed by the officer.

If the competent authority in passing orders of removal states that a certain proportion of the invalid

pension is to be granted as compassionate allowance, no further sanction to pension is necessary, and all that is required that the Audit Officer should certify to the admissibility of the pension on a pension application completed and signed by the Head of Office as mentioned above.

Note-3 *The above rule vests the competent authority with an absolute discretion to grant or not to grant any compassionate allowance, the only restriction being that if granted it shall not exceed the maximum of two-thirds of the pension that would be admissible to the officer concerned on retirement on medical certificate. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there are any such extenuating feature in the cases as would make the punishment awarded, though it may have been necessary in the interest of Government, unduly hard on the individual. In considering this question it may be necessary to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer but also the kind of service he has rendered. Poverty is not an essential condition precedent to the grant of a compassionate allowance but special regard is also occasionally paid to the fact that the officer may have a wife and children dependent upon him though the fact by itself is not ,*

except perhaps in most exceptional circumstances, sufficient for the grant of a compassionate allowance.”

Rule 12 permits the authorities to grant compassionate allowance when a person is deserving of “special consideration”.

In the facts of the present case, the “special consideration” highlighted are unblemished service period of 38 years and financial hardships subsequent to the order of dismissal.

Given the service record of the writ petitioner of extraordinary leave of 3808 days and sufferance of six major punishments and eight minor punishments, we are not in a position to persuade ourselves notwithstanding the writ petitioner being rewarded five times in his service career to consider the service career, of the writ petitioner as one of being unblemished.

The writ petitioner was absent from duties for a period in excess of ten and a half years in his service career. He suffered six major and eight minor punishments.

The writ petitioner arranged his affairs in the way where he took 3808 days extraordinary leave. This obviously means that he exhausted of his other leave available to him during his service career. Taking into consideration the entire leave period that the writ petitioner took during his service career, it cannot be said that, he served his employment with such dedication so as to come within the “special consideration” as contemplated under

Rule 12 of the Rules of 1971. Hardship is not established. Moreover, Note 3 to Rule 12 ratched up the level for consideration of economic hardship. No material is on record to suffice the test of Note 3 to Rule 12.

In such circumstances, we find no merit in the present writ petition.

WP.ST 60 of 2015 is dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

