

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

CWP No.718 of 2020

Date of decision: 14.02.2023

Sumitra

....Petitioner

Versus

The State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.J.S.Kundu, Advocate for the petitioner.

Mr. Naveen S.Panwar, DAG Haryana.

Raj Mohan Singh, J.(Oral)

The petitioner has preferred this petition for the issuance of a writ in the nature of certiorari quashing the order dated 19.09.2009 passed by the Superintendent of Police, Jind thereby dismissing the services of husband of the petitioner without granting any pension or pensionary benefits in conformity with the Rule 16.2 of the Punjab Police Rules as applicable to State of Haryana.

Perusal of the record would show that the petitioner was charge sheeted for the major misconduct and regular enquiry was held against him. On the basis of evidence led before the Enquiry Officer, husband of the petitioner was found to be guilty of the charges framed against him. Thereafter, he was dismissed from service and he remained unsuccessful in

his appeal and revision before the authorities in hierarchy. Husband of the petitioner filed CWP No.13863 of 2007 on the ground that competent authority did not take into consideration the mandatory provisions as laid down in Rule 16.2 of the Punjab Police Rules (for short 'the Rules') at the time of passing order of dismissal. Husband of the petitioner was having 33 years of service to his credit and due regard was to be given for length of service at the time of passing order of dismissal. Reference was made to ***State of Punjab and others Versus Piara Singh, 2004(2) RSJ 279 and Gurbachan Singh Bachi Vs. State of Punjab and another, 2004(2) RSJ 281 and Dhan Singh Vs. State of Haryana and others 2009(2) SLR 40***. High Court after due consideration of fact and after considering the credit of satisfactory service of more than 33 years by the husband of the petitioner held that the order of dismissal was harsh. Respondents were held at liberty to pass fresh order in accordance with law in the light of provisions of Rule 16.2 of the Rules irrespective of the earlier order of dismissal of the husband of the petitioner. In other words, liberty was given to the competent authority to pass fresh order without being influenced by the earlier order of dismissal and failure of husband of the petitioner to secure any favourable order in appeal or revision. After the order dated 15.07.2009 passed in CWP No.13863 of 2007, respondent No.4 has passed the order

dated 19.09.2009 and reiterated the order of dismissal on the ground that husband of the petitioner was enrolled in the police department on 06.04.1977 and he had rendered 29 years of service upto 17.05.2006 i.e. the date of dismissal from service though husband of the petitioner was eligible for availing the benefit of pension yet keeping in view the gravity of his proved misconduct, his incorrigibility and unbecoming of police officer, order of dismissal was passed in public interest.

Having heard learned counsel for the parties, I find that in terms of Rule 16.2 of the Punjab Police Rules, dismissal has to be awarded only for the gravest act of misconduct or as the cumulative effect or continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard, shall be had to the length of service of the offender for his claim to pension and other pensionary benefits.

As per stand taken by the respondents, no other misconduct was alleged except the present case of taking bribe of `2000/-. The following are the instances of gravest acts of misconduct as per explanation attached to Rule 16.2 of the Rules.

- (i) indulging in spying or smuggling activities;
- (ii) disrupting the means of transport or of communication;
- (iii) damaging public property;

- (iv) causing indiscipline amongst fellow policemen;
- (v) promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;
- (vi) going on strike or mass casual leave or resorting to mass abstentions;
- (vii) spreading disaffection against the Government and
- (viii) causing riots and the life.

Evidently the act of taking bribe is not included in any of the eight acts of the gravest misconduct. It appears that the impugned order is intended to preclude the husband of the petitioner to claim benefit of his past service towards pension and other retiral dues. Husband of the petitioner has already died on 06.06.2017, leaving behind the petitioner and a son. The writ petition was filed only after coming to know about the order of dismissal. The entitlement of the husband of the petitioner was held in affirmative but for the misconduct in question, the order of dismissal has been reiterated which in my considered opinion is very harsh, particularly after the demise of the husband of the petitioner. The order of dismissal shall have telling effect on the family of the deceased. Since the misconduct of the husband of the petitioner does not find mention in any of the instances given in explanation to Rule 16.2 of the Rules, therefore, I deem it appropriate to set aside the order dated 19.09.2009. The petitioner is entitled for the retiral dues and family pension after the demise of her husband in

accordance with law. However, there shall be no interest on the arrears of retiral benefits.

Disposed of accordingly.

14.02.2023
Meenu

(Raj Mohan Singh)
Judge

<i>Whether speaking/non speaking</i>	: Yes/no
<i>Whether reportable</i>	: Yes/No