

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13978 of 2003 (O&M)
Date of decision: 16.03.2023

Amrik Singh (since deceased) through his LR

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Singh, Advocate
for the petitioner

Mr. Vikas Arora, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. Unfortunately, the petitioner, during his life time, could not witness the decision in the writ petition, however, the case is required to be decided.

2. The petitioner was appointed as driver in the year 1991 on regular basis. His services were dispensed with while invoking Rule 5.12 of the Punjab Civil Services Rule Vol-II on account of him being colour blind and hence, unfit to carry on with the duties of the driver. He challenged the correctness of the aforesaid order dated 25.08.2003 by filing the writ petition.

3. On 04.09.2003, the operation of the order passed on 25.08.2003 (Annexure P-15) was stayed. He continued to perform his duties till the age of superannuation. On account of the pendency of the writ petition, he was paid provisional pension to the extent of 90%. Now, he is no more in the world.

4. It is not in dispute that the petitioner continued to work till the age of superannuation.

5. Faced with the aforesaid situation, on 01.03.2023, the following order was passed:-

“CM-2935-CWP-2023

To be heard with the main case.

MAIN

Arguments have been heard at some length.

It is the case of the petitioner that the order Annexure P-15, is liable to be quashed whereby he has been retired from service as he was found unfit to perform the duties of the driver. On 04.09.2003, the operation of the order passed on 25.08.2003 (Annexure P-15) was stayed. This interim order continues to operate.

Sh. Vikas Arora, Assistant Advocate General, Punjab, admits that the petitioner continued on the job pursuant to the interim order of the Court till his death i.e. 02.03.2013. The family members of the petitioner are being paid provisional pension from January, 2021 as an interim measure.

Keeping in view the aforesaid facts, the learned counsel representing the State of Punjab is requested to take appropriate instructions before assisting the Court.

List, in the urgent list, on 16.03.2023.”

6. Sh. Vikas Arora, the learned counsel representing the State does not dispute the factual position, however, he submits that unless the order passed on 25.08.2003 is formally set aside, the respondents cannot release the regular pension to the family.

7. Keeping in view the facts of the case, it is not considered

appropriate to go into the correctness of the order dated 25.08.2003 because the petitioner cannot be placed in the same situation particularly when he continued to work till the date of superannuation.

8. Consequently, finding no other alternative, the order dated 25.08.2003 retiring the petitioner is formally set aside. The respondents are directed to calculate the retiral benefits of the petitioner and pay the same to his family within a period of 3 months, from today, positively.

9. Disposed of accordingly.

10. All the pending miscellaneous applications, if any, are also disposed of.

March 16, 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*