

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

CWP-13546-2004 (O&M)
Date of Decision: 02.09.2024

Jhabar Singh (since deceased) through LRs

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr.RS Sangwan, Advocate for the petitioner

Mr. Tapan Kumar, DAG Haryana

AMAN CHAUDHARY, J.

1. The petitioner has prayed for issuance of a writ in the nature of mandamus, directing the respondents to pay him the invalid pension along with arrears at the interest of 12% p.a., by relying on Rule 5.11 of Punjab CSR, Volume-II, as applicable to the State of Haryana.

2. The resistance offered by the learned State counsel stemming from para 2 of their reply, wherein it is stated that the medical certificate as required was not submitted as also from para 4 that he was not ready to serve, is found to be untenable inasmuch as, firstly, it was on the basis of declaration dated 17.10.2002 by Civil Surgeon Jhajjar that he was medically unfit for the post of Driver, that he was retired on the even date and secondly, in para 9 thereof, the respondents themselves have admitted there to be no suitable/ alternate job available to accommodate him at the time of retirement in their office.

3. A plea that the petitioner had less than 10 years of service has also been brought out in the counter filed, taking it to be 4 years after he was granted regularization, whereas relating it back to the initial entry into service comes to be

more than 9 years, nonetheless the issue in this regard is no longer *res integra*, as this Court in **Chander Parkash vs. State of Haryana and others**¹, allowed invalid pension to the petitioner therein in terms of Rule 5.11 *ibid*, against which no challenge was made, wherein also the reason for denial was his period of service being only 7 years odd. He, was retired vide order dated 08.02.1990 under Rule 5.18 of Punjab Civil Services Rules, Vol.II., on the ground that he, while working as a driver, had met with an accident and suffered injuries on the head and half of his body, thus, found unfit for driving the bus due to disability known as Gemiplegia, relevant paras whereof read thus:

“5. Counsel for the petitioner has placed reliance upon Rule 5.11 of the Rules to submit that once the rules itself provide that pension is to be granted on retirement on account of bodily or mental infirmity, the issue of 10 years of qualifying service can be no bar. Reliance has been placed upon a judgment of this Court in *Raghubir Chand v. State of Haryana* 1997 (1) S.C.T. 503 to contend that the requirement of serving 10 years would not be applicable, in such circumstances, when the person who had been retired on the ground of being physically unfit to serve, is entitled for pension. Rule 5.11 of the Rules reads as under:

“5.11. An invalid pension is awarded, on his retirement from the Public Service, to a Government employee, who by bodily or mental infirmity is permanently incapacitated for the public service, or for the particular branch of it to which he belongs.

Note. -The amount of invalid pension shall not be less than amount of normal family pension admissible under the family Pension Scheme, 1964.”

Whereas, Rules 5.12, 5.14 & 5.18 reads as under:

“5.12. In the case of partial incapacity (vide alternative certificate in rule 5.26), a Government employee should, if possible, be employed even on lower pay so that the expense of pensioning him may be avoided. If there be no means of employing him even on lower pay, then, he may be admitted to pension, but it should be considered whether, in view of his capacity for partially earning a living, it is necessary to grant to him the full pension admissible under the rules.

¹ 2013 SCC OnLine P&H 24019.

5.14. A Government employee discharged on other grounds other than those stated in rule 5.11 and 5.12 has no claim to pension under rule 5.11, even though he can produce medical evidence of incapacity for service.

5.18. A Government employee, who has submitted a medical certificate of incapacity for further service shall, if he is on duty, be invalidated from service, from the date of relief of his duties which should be arranged without delay on receipt of the medical certificate or, if he is granted leave under rule 8.18 of Punjab Civil Service Rules, Volume I, Part I, on the expiry of such leave. If he is on leave at time of submission of the medical certificate, he shall be invalidated from service on the expiry of that leave or extension of leave, if any, granted to him under rule 8.18 of Punjab Civil service Rules, Volume I, Part I.”

6. Present case is a classic example of the Welfare State who is supposed to protect and to look after his employees who were injured while on duty but who are being discarded like waste paper without even trying to adjust them in another job. In spite of the fact that the rules provided that an employee could be employed on lower pay so that the expense of pensioning could be avoided, they are even being denied invalid pension. This Court in *Ragbir Chand* (supra), while examining the case of similarly situated person who was retired prior to completing 10 years of service, held that the said rule dealt with a particular matter and was a separate rule which would preclude the applicability of the general rule. Relevant observations read as under:

“5. I have heard the learned counsel representing the parties and gone through the records and I am of the view that if a particular matter is specifically dealt with in a separate rule, it is that rule which will apply and would preclude the applicability of a general rule. If an employee was to get pension only after serving ten years, then in that case whatever might have been the circumstances of his retirement, he would have been entitled to pension. An employee could retire after ten years of service on the ground that he had become physically unfit to serve. There was absolutely no necessity to frame a separate rule dealing with the retirement of an employee when he was to become physically unfit to hold the post.”

7. Thereafter, the relief was granted to the petitioner and he was held entitled for invalid pension under Rule 5.11 of the Rules. The said judgment was thereafter, approved by a Division Bench of this Court in *Parvesh Devi v. State of Haryana* 2007 (1) S.C.T. 609 and reference was also made to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,

1995 (for short, the ‘Disability Act’). In that case, there was no order of retirement and the petitioner was lying in coma being 100% incapacitated due to the head injury suffered by him. This Court, keeping in view the provisions of the Disability Act, apart from granting pension, also directed that the petitioner, in that case, was entitled for salary till his date of superannuation alongwith interest @ 8%. Relevant portion of the judgment reads as under:

“10. In view of the above, the writ petition is allowed. Order dated 4.6.2002 (Mark “A”) relieving the petitioner from service and order dated 15.2.2005 (Annexure P.8) declining the request of the husband of the petitioner for grant of pension are quashed. Respondents are directed to pay salary to the petitioner as per the rates by deeming fiction as if he is in service and has been working against a supernumerary post. The arrears of pay as was being drawn by the husband of the petitioner be calculated from 1.7.2002 upto date and the payment be made to the wife of the petitioner in accordance with the rules within a period of one month from the date certified copy of the order is produced before the respondents. The salary every month shall be paid to the petitioner till the date of superannuation. The respondents shall also be liable to pay interest @ 8 percent on the arrears of salary from the the date the salary was due i.e. 1.7.2002 till the date of its payment. The amount of Rs. 39040/- already paid to the petitioner as service gratuity shall be set off from the arrears of salary. On attaining the age of superannuation, the respondents shall pass an order of retirement alongwith an order calculating the pension of the husband of the petitioner in accordance with law. The wife of the petitioner shall also be entitled to family pension accordance with the rules.”

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9. Accordingly, keeping in view the observations made in *Raghubir Chand* (supra) and *Parvesh Devi* (supra), the present writ petition is allowed. Order dated 08.06.1995, wherein, the petitioner's claim for pension had been declined is quashed and it is held that the petitioner is entitled for invalid pension from 10.02.1990, as envisaged in Rule 5.11 of the Rules. The respondents are directed to pay the invalid pension alongwith arrears due as on today, within a period of 2 months from the receipt of a certified copy of this order, alongwith interest of 8% per annum.”

4. The aforesaid dictum in **Raghubir Chand** (supra) had earlier been also followed in **Karambir Singh vs. State of Haryana**², against which no appeal was filed.

² CWP-5783-2001, decided on 08.08.2002.

5. The present petition stands disposed of in terms of the judgment in **Chander Parkash** (supra).

(AMAN CHAUDHARY)
JUDGE

02.09.2024
M.Kamra

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No