

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

CWP-12433-2019
Date of Decision: 10.04.2024

Uma Shankar ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Mukesh Yadav, Advocate for the petitioner
Mr. Saurav Saini, Advocate
for Mr. Arihant Goyal, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order dated 30.01.2018 (Annexure P-2) whereby he has been medically invalidated out of service and order dated 21.02.2019 (Annexure P-5) whereby his appeal has been rejected. The petitioner, in alternative, is claiming invalidation pension.
2. The petitioner confines his claim to invalid pension in view of directions of Supreme Court in *Union of India and others v. P.A. Thomas, SLP (C) No.20339/2011*, decided on 14.03.2019. The relevant extracts of the said order read as:

“The said amendments having been placed before the Court, the Court was of the view that further clarification was required which has now been made by a clarificatory Office

Memorandum bearing No.21/01/2016-P&PW(F) dated 12.2.2019 in the following terms:-

"2. In this connection, it is clarified that the condition of qualifying service of ten years for grant of pension under Rule 49(2) of the CCS (Pension) Rules, 1972 shall not be applicable in the case of a Government servant retiring on Invalid Pension on account of any bodily or mental infirmity, under Rule 38. Accordingly, Invalid Pension at the rate of 50% of emoluments or average emoluments, beneficial, subject to a minimum of nine thousand whichever is more rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem, shall be payable to a Government servant who retires under Rule 38 of CCS (Pension) Rules, 1972 even before completing a qualifying service of ten years."

Having perused the aforesaid clarification, we are of the view that the matter now stands adequately covered and would be governed by provisions of the amended Rules 38 and 49 of the Central Civil Services (Pension) Rules, 1972, which would be applied to all eligible cases.

The special leave petition consequently shall stand disposed of in the above terms.

Pending interlocutory applications, if any, shall stand disposed of."

3. This Court vide order dated 13.12.2023 in ***Sreenivasa Rao Sanapala v. Union of India and others, CWP No.25668 of 2023*** has directed the respondent to consider claim of the petitioner therein for invalid pension. The relevant extracts of the said order read as:-

"The petitioner complies with all the conditions as envisaged by aforesaid amended rule. The respondent is denying benefit of amended rule on the sole ground that amendment is prospective in nature. The amendment has been made to extend benefit of invalid pension to all those employees

who have suffered injury during the course of service. It is a beneficial amendment and from the perusal of the amended rule, it is difficult to conclude that amendment is prospective in nature. If it is held that amendment is prospective in nature, all those persons who have been invalidated prior to aforesaid amendment would be deprived of the benefit of invalid pension which would amount to discrimination between two equally situated persons. The said interpretation would be violative of Articles 14 and 21 of the Constitution of India. In the absence of specific or implied intention of the legislature to make the amendment prospective, this Court finds that it would be in the fitness of things and interest of justice if it is read as retrospective in nature and benefit is extended to all those employees who have been invalidated prior to aforesaid amendment and fulfill all the conditions contemplated therein.

In the wake of aforesaid facts and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The needful shall be done within six months from today.”

4. Faced with this, learned counsel for the respondents expressed his inability to controvert applicability of aforesaid order passed by Supreme Court as well as this Court

5. In the wake of aforesaid orders passed by Supreme Court and this Court, the present petition stands disposed with a direction to the respondents to consider claim of the petitioner and pass an appropriate order within 6 months from today.

(JAGMOHAN BANSAL)
JUDGE

10.04.2024
Mohit Kumar

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