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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15290-2020

Date of Decision:26.02.2024

RAM CHAND

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 07.01.2020 (Annexure P-5) whereby claim of the petitioner for compassionate allowance in terms of Rule 2.5 of Punjab Civil Service Rules Volume II has been declined.
2. The petitioner on 24.06.1975 joined Punjab Police as Constable and was promoted as Head Constable on 20.06.1980. He was further promoted as Assistant Sub Inspector w.e.f. 10.11.1990. He sought Ex-India leave from 05.11.1994 to 04.12.1994. He was supposed to re-join after completion of leave period, however, he failed to re-join and respondent initiated Disciplinary Proceedings against him. The Competent Authority after completing enquiry concluded that there is willful disobedience on the part of petitioner and accordingly Disciplinary Authority dismissed him from service. He unsuccessfully

preferred appeal before the Appellate Authority. He preferred CWP No.15123 of 2013 before this Court seeking setting aside of order of dismissal. This Court vide order dated 17.07.2013 dismissed the said petition.

3. After dismissal of writ petition against order of dismissal from service, the petitioner raised another issue of compassionate allowance in terms of Rule 2.5 of Punjab Civil Service Rules. He preferred CWP No.19025 of 2019 before this Court seeking direction to respondents to consider his claim and decide legal notice dated 24.12.2018. This Court without expressing any opinion on merits of the case, directed the respondents to decide his claim by passing speaking order within 3 months. The respondent by impugned order dated 07.01.2020 has rejected claim of the petitioner.

4. Mr. K.S. Dadwal, learned counsel for the petitioner submits that respondent has rejected claim of the petitioner as was re-considering question of his dismissal from service whereas petitioner had claimed for compassionate allowance in terms of Rule 2.5 of Punjab Civil Service Rules.

5. On being confronted with findings of SSP, Hoshiarpur, learned State counsel expressed his inability to controvert the fact that SSP has not adverted with Rule 2.5 of Punjab Civil Service Rules whereas representation of the petitioner has been rejected as there was prayer to re-consider his dismissal from service.

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. The petitioner is not disputing his dismissal from service.

The claim of the petitioner is confined to compassionate allowance in terms of Rule 2.5 of Punjab Civil Service Rules. The said rule is reproduced as below:

“2.5. No pension may be granted to a Government employee dismissed or removed for misconduct, insolvency or inefficiency; but to Government employee so dismissed or removed, compassionate allowances may be granted when they are deserving of special consideration: Provided that the allowance granted to any Government employee shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate.

Note 1.—This rule vests Government 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. It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically, precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case 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 has been the practice 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. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest there can seldom be any good case for a compassionate allowance. 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 has a wife and children dependent upon him, though this factor by itself, is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance.”

8. From the perusal of above quoted rule, it is quite evident that compassionate allowance is entirely different from pension which is payable on retirement of an employee. The compassionate allowance is payable where an employee has been dismissed or removed from service. The petitioner is not claiming pension whereas he is claiming compassionate allowance. The respondent while passing impugned order has opined as if there was prayer to reconsider question of dismissal from service whereas prayer of the petitioner was entirely different. The relevant extracts of the impugned order read as:

“I while complying the order dated 17.7.2019 passed in Civil Writ Petition No. 19205/19 by Hon'ble Punjab and Haryana High Court, has deeply gone through the legal notice dated 24.12.2018 served by the petitioner, his whole service record and other related documents. Apart from that had also gone through the Service Rule 2.5 and found that the petitioner by taking 30 days Ex India Leave has gone abroad and remained absent for continuous two years from service i.e. from 5.11.1994 to 4.11.1996 and while remained absent from duty is sheer violation of discipline being member of disciplined force. Therefore, the petitioner does not deserve any sympathetic view. Therefore the order of dismissal dated 5.11.1996 for dismissing the petitioner from police department is hereby remained intact.”

9. From the perusal of findings recorded by respondent, it is evident that respondent has failed to consider prayer of the petitioner in true spirit. The respondent has not considered mandate of Rule 2.5 of

Punjab Civil Service Rules. The scope of the said rule is entirely different from entitlement of pension under service rules. The claim of the petitioner is not of pension whereas he is claiming compassionate allowance.

10. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The impugned order dated 07.01.2020 (Annexure P-5) is hereby set aside and SSP, Hoshiarpur is directed to pass fresh order.

11. It is made clear that if SSP, Hoshiarpur comes to a conclusion that petitioner is entitled to compassionate allowance, it would be payable from the date of passing of fresh order by SSP, Hoshiarpur. The needful shall be done within 3 months from today.

(JAGMOHAN BANSAL)
JUDGE

26.02.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>