

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CWP-21665-2023
Date of Decision: 09.04.2024

Suman ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ashish Rana, Advocate and
Mr. S.K. Rana, Advocate for the petitioner
Mr. Ramesh Chand Sharma, Advocate for respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking direction to respondents to pay salary along with all perks and allowances w.e.f. 13.06.2000 to 17.05.2018. She is further claiming invalid pension.
2. By order dated 12.06.2000 (Annexure P-4), the husband of petitioner (deceased employee), on the basis of opinion dated 28.04.2000 (Annexure P-1) of Medical Board, was declared invalid and accordingly struck off from the strength of the force. In the said order, it was specifically mentioned that he shall be entitled to invalid pension and other monetary benefits as admissible under Central Government/Departmental Rules. The deceased employee challenged order of invalidation before Rajasthan High Court by way of filing Civil Writ Petition No.1745 of 2002 which was

allowed vide order dated 11.07.2008 (Annexure P-5). The petitioner was ordered to be reinstated. The respondent challenged order of Single Judge before Division Bench of Rajasthan High Court which vide order dated 18.08.2017(Annexure P-9) substituted relief granted by Single Judge by lump sum payment of ₹3 Lakhs. The deceased employee did not challenge order of Division Bench, thus, the said order has attained finality.

3. As per invalidation order, the deceased employee was entitled to invalid pension which is payable in terms of Central Civil Services (Pension) Rules, 1972 (for short '**1972 Rules**'). The respondent has denied invalid pension on the ground that deceased employee did not complete 10 years service, thus, he was not entitled to said pension.

4. The petitioner is claiming 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."

5. 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.”

6. 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

7. 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

09.04.2024
Mohit Kumar

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