

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

(210)

CWP-26123-2022

Date of decision: - 03.05.2024

Jaipal Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. R.K. Malik, Senior Advocate, with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Amandeep Joshi, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is a petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari to quash the decision dated 19.10.2022 (Annexure P-5) by which the claim of the petitioner for grant of invalid pension has been rejected on the ground that the petitioner has not completed 10 years of service, with a further direction to the respondents to release invalid pension to the petitioner from the date the petitioner was invalidated from police service on medical grounds and arrears therefor be granted along with the interest.

2. Learned senior counsel for the petitioner has submitted that the petitioner was enrolled as a Constable on 15.04.1973 and that the Superintendent of Police, Gurugram had referred the petitioner for medical examination to the Chief Medical Officer, Gurugram and on the report of the Chief Medical Officer, Gurugram, the petitioner had been

invalidated from Police Service vide order dated 16.11.1976, copy of which has been annexed as Annexure P-1. It is further submitted that the service conditions of the petitioner were governed by the Punjab Civil Service Rules, applicable to Haryana State and the relevant rules have been reproduced at page 4 of the writ petition. It is stated that in the year 2016, Haryana Civil Services (Pension) Rules, 2016 (for short 'Rules of 2016') were notified and Rules 26 and 32 of the Rules of 2016, which are relevant in the present case, have been reproduced at page 5 of the writ petition. Reliance has been placed upon Rule 32 of the Rules of 2016 to highlight the fact that the requirement of minimum qualifying service required for pension, being 10 years, was not applicable in the case of invalid pension, as specifically an exception was provided in Rule 32 of the Rules of 2016. The said Rule 32 of the Rules of 2016, which has been cited, has been reproduced as under: -

“32. Minimum qualifying service for monthly pension—

The minimum qualifying service required for pension is ten years. On retirement from service on whatsoever reason before completion of qualifying service of ten years, pension shall not be admissible. In such case, service gratuity in addition to retirement gratuity, if otherwise admissible under these rules, shall be granted in lieu of pension.

Exception. The condition of minimum 10 years qualifying service shall not be applicable in case of invalid pension.”

It is further submitted that in the impugned order, vide which the claim of the petitioner has been rejected, reliance has been placed upon Rule 9(1) A(i) of the Punjab Civil Service Rules, Volume-II, whereas, the said rule does not deal with the case of invalid pension and thus, the impugned order deserves to be set aside and the petitioner

deserves to be granted the relief prayed for.

3. Learned counsel appearing for the respondent-State has opposed the present writ petition and has submitted that the petitioner's case would be governed by the Punjab Police Rules, 1934 (for short 'Rules of 1934') and as per Rule 9.9 of the Rules of 1934, in case, invalid service was less than 10 years, only gratuity would be admissible. Rule 9.9 of the Rules of 1934, which has been highlighted, is reproduced as under:-

“9.9. Invalid pensions. - An invalid pension proportionate to the length of service is awarded to a police officer who by bodily or mental infirmity is permanently incapacitated for further service in the police. If the incapacity is directly due to irregular or intemperate habits, no pension can be granted. If it has not been directly caused by such habits but has been accelerated or aggravated by them, it will be for the authority by whom the pension may be granted to decide what reduction should be made on this account (Articles 441, 454 and 474 Civil Service Regulations). If the length of the invalid's service is less than ten years a gratuity only will be admissible [Article 474(a), Civil Service Regulations]. Superintendents are required to be on their guard against endeavours to retire on invalid pension by officers who are capable of serving longer.”

It is stated that the petitioner was only entitled for gratuity and that gratuity has already been paid and as far as the prayer for invalid pension is concerned, the same is not to be paid to the petitioner and accordingly, the present writ petition deserves to be dismissed.

4. This Court has heard learned counsel for the parties and has perused the paper-book.

5. A perusal of the impugned order dated 19.10.2022 would show that the authorities have relied upon Rule 9(1) A(i) of the Punjab

Civil Service Rules, Volume-II, the relevant portion of which has been reproduced at page 20 of the paper-book/writ petition and is reproduced herein below: -

“A permanent Government servant on absorption in a Public Sector Undertaking will be eligible for pro-rata pension and death-cum-retirement gratuity based on pension and death-cum-retirement gratuity based on the length of his qualifying service under Government till the date of absorption. The pension will be calculated on the basis of average emoluments under rule 6.24 of C.S.R. Vol.II, presenting the date of absorption and death-cum-retirement gratuity on the basis of the emoluments immediately before absorption. In cases where an officer at the time of absorption has less than 10 years service and is not entitled to pension, the question of proportionate pension will not arise, he will only be eligible to proportionate service gratuity in lieu of pension and the death-cum-retirement gratuity, based on length of service.”

6. Even a perusal of the written statement filed on behalf of respondents No.1 to 3 would show that the rule, which the respondent authorities were relying upon, is the above-said rule. A perusal of the above-said rule *prima facie* shows that the same is dealing with pension and not with invalid pension. Moreover, Rule 9.9 of the Rules of 1934, which is the rule which has been highlighted by learned State counsel, has not been relied upon at the time of passing of the impugned order or even in the written statement. A speaking order can be justified only on the grounds mentioned in the order. Further, in the present case, it was the duty of the authorities to consider the case of the petitioner by applying the correct rules, which were applicable to the petitioner, who had served as a Constable in the Haryana Police from 15.04.1973 to 14.11.1976. It would be the duty of the authorities to first consider as to which rule

would govern the service conditions of the petitioner and after coming to a conclusion with respect to the rule governing the service conditions of the petitioner and then, to decide the case accordingly.

7. Keeping in view the above-said facts and circumstances, the present writ petition is partly allowed and the impugned order dated 19.10.2022 is set aside with the following directions: -

- (i) The competent authority of respondent No.1-State would reconsider the matter and would take a final decision with respect to the prayer made by the petitioner, within a period of two months from the date of receipt of certified copy of the present order.
- (ii) While reconsidering the matter, the competent authority of respondent No.1-State would first consider as to which rule would be applicable with respect to the petitioner whose admitted tenure of service as a Constable in the State of Haryana is from 15.04.1973 to 14.11.1976.
- (iii) In case the rule which has been highlighted by learned senior counsel for the petitioner is applicable to the service conditions of the petitioner and in case the averments in the present writ petition are found to be meritorious, then, the necessary relief would be granted to the petitioner within a period of one month from the date, the said decision is taken. In case, the plea of the petitioner is not found meritorious, then, a speaking order clearly mentioning the rules, which are applicable and the reasons for the same, would be passed within the aforesaid period.

May 03, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes