



CWP-34951-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CWP-34951-2019
Date of Decision: 29.05.2024

Mahesh Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Aditya Yadav, Advocate for the petitioner
Ms. Jyotika Panesar, Advocate for
Mr. Arvind Moudgil, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 30.11.2011 (Annexure P-4) and 05.08.2019 (Annexure P-6) whereby respondent has rejected disability pension on the ground that petitioner has not completed 10 years' service.

2. On 02.12.2019, this Court passed the following order:

“Inter alia contends that the petitioner served with the Border Security Force (BSF) in West Bengal having been enrolled on 20.12.2002. He was retired on 30.11.2011 (Annexure P-4) on the ground of physical unfitness on account of the fact that he was placed in medical category Shape-5 being permanently unfit for duties, as per Annexure P- 8, having Paranoid Schizophrenia and having a disability of 70%. Resultantly, he was held not to be entitled for pension not having qualifying service of 10 years, but entitled to service gratuity in terms of Rule 49 (I) of the Central Civil Services



(Pension) Rules, 1972. It is submitted that he had also been prosecuted for the charge of murder, but was acquitted by the Additional Sessions Judge on 05.01.2018 (Annexure P-5). He had represented for grant of disability pension, which has been rejected vide impugned order dated 05.08.2019 (Annexure P-6) on the same grounds as having not qualifying service.

*It is further submitted that as per the Central Civil Services (Extra-ordinary Pension) Rules, 1939 (for short '1939 Rules'), if the disablement is on account of the disease attributable to Government service under Rule 3-A (1) and where disablement of a Government service is conceded the employee would be liable to be awarded disability pension under Rule 9 of the 1939 Rules. The said fact has been lost sight of the authorities while denying his claim. Reliance is placed upon the judgment of the Division Bench passed in '**Union of India and others Vs. Amarjit Singh**' 2016 (1) SCT 232 to submit that length of service has no relevance if the disability is suffered which is either attributable or aggravated by the service.*

Notice of motion to the respondents be issued for 05.03.2020."

3. Learned counsels for the parties are *ad idem* that this Court vide order dated 13.12.2023 in **Sreenivasa Rao Sanapala v. Union of India and others, CWP No.25668 of 2023** and order dated 13.02.2024 in **Bhupinder Singh v. Union of India and others, CWP No.23883 of 2023** while relying upon direction of Supreme Court in **Union of India and others v. P.A. Thomas, SLP (C) No.20339/2011 decided on 14.03.2019**, has directed the respondents to consider claim of petitioner. The relevant extracts of order dated 13.12.2023 passed in **Sreenivasa Rao Sanapala (Supra)** are reproduced as below:

"5. 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 fulfil 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. In the wake of statement of both sides and aforesaid orders passed by Supreme Court as well as this Court, the present petition stands disposed of in terms of order dated 13.12.2023 passed by this Court.
5. Let the needful be done within 3 months from today

(JAGMOHAN BANSAL)
JUDGE

29.05.2024
Mohit Kumar

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