

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

(104)

CWP-29355-2023

Date of Decision : January 04, 2024

Mahender Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.K. Bagri, Advocate, for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that the petitioner is entitled for the grant of compassionate allowance as envisaged under Rule 2.5 of the Punjab Civil Services Rules as applicable to Haryana, which Rule was in operation at the time when the petitioner was dismissed from service on 05.07.2002.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner was appointed as a Conductor on adhoc basis in the year 1981 and thereafter his services were regularized. The petitioner started absenting himself without there being any valid justification and he was charge-sheeted for the said misconduct on 17.11.2000. The petitioner chose not to participate in the departmental proceedings and after completing the departmental proceedings, as charges were proved, a show cause notice was issued to the petitioner that charges of misconduct alleged against the petitioner has been proved in the departmental proceedings and

in case he has anything to say in his defence, he can file a reply to the show cause notice. However, no response to the said show cause notice was received and the petitioner was dismissed from service on 05.07.2002.

4. The order dismissing the petitioner from service was challenged by the petitioner by filing a civil suit in the year 2005. The suit was decreed by the trial Court on 25.10.2008. The said decree was challenged by the State of Haryana by filing an appeal, which appeal was decided on 13.03.2009 and the judgment and decree of the trial Court dated 25.10.2008 was set aside.

5. Feeling aggrieved against the decision of the Appellate Court, the petitioner filed RSA No.3711 of 2009, which appeal was dismissed by this Court on 07.01.2010. Not feeling satisfied with the judgment of this Court as well as the lower Appellate Court, the petitioner filed an SLP, which also came to be dismissed on 08.12.2015 and the order dated 05.07.2002 dismissing the petitioner from service was upheld and the same attained finality.

6. The present writ petition has been filed with a prayer that the petitioner is entitled for the grant of benefit of compassionate allowance under Rule 2.5 of the Punjab Civil Services Rules Volume II as applicable to Haryana, which Rule was in operation at the time when the impugned order dismissing the petitioner from service was passed on 05.07.2002.

7. Learned counsel for the petitioner argues that the petitioner had enough service to his credit at the time he was dismissed from service, hence, the petitioner is entitled for the grant of compassionate allowance as admissible under Rule 2.5 of the Punjab Civil Services Rules, as applicable to Haryana.

8. Notice of motion.

9. Mr. Harish Nain, learned Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents.

10. Learned counsel for the respondents submits that as the facts are not in dispute and the claim of the petitioner is only to grant him the benefit as admissible under Rule 2.5 of the Punjab Civil Services Rules, no formal reply is needed but the claim of the petitioner is not covered under Rule 2.5 of the Punjab Civil Services Rules as no special circumstances exist in this case.

11. Learned counsel for the respondents further submits that once the petitioner had challenged the order dated 05.07.2002 dismissing him from service, which has already been upheld upto the Hon'ble Supreme Court of India, no benefit of compassionate allowance as being claimed in the present petition, can be allowed at this stage.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. Rule 2.5 of the Punjab Civil Services Rules, which is being relied upon to claim the benefit is as under:-

"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."

14. The benefit of Rule 2.5 of the Punjab Civil Services Rules is to be given while passing an order against a Government employee, who is dismissed or removed from misconduct or inefficiency. In the present case, keeping in view the fact that the petitioner remained continuously absent from duty and did not perform the duties and also remained ex parte in the departmental proceedings, no benefit under Rule 2.5 of the Punjab Civil Services Rules of compassionate allowance was granted to the petitioner.

15. The jurisdiction to grant the said benefit under Rule 2.5 of the Punjab Civil Services Rules of compassionate allowance is with the Government. The said compassionate allowance can only be granted under the exceptional circumstances, which exist in a particular claim.

16. Learned counsel for the petitioner has not been able to point out any exceptional circumstances which exist in the facts and circumstances of the present case so as to invoke Rule 2.5 of the Punjab Civil Services Rules so as to claim the compassionate allowance. In the absence of any special circumstances, no benefit under Rule 2.5 of the Punjab Civil Services Rules can be extended to any employee.

17. Further, an employee who is not interested in continuing in service and remained absent for a long period of time and that too without any valid justification, cannot be granted the benefit of compassionate allowance.

18. In the present case, the reason for dismissal is attributable to an employee concerned and in the present case, the allegation on the basis of which the dismissal order was based, is unauthorized long absence from the duty on the part of the petitioner, hence, the claim being raised under Rule 2.5 of the Punjab Civil Services Rules, is not admissible to the petitioner especially when no exceptional circumstances are pointed out to claim the relief under Rule 2.5 of the Punjab Civil Services Rules.

19. Even otherwise, while challenging the order dated 05.07.2002, the petitioner should have raised the said plea before the Court concerned. Once the order dismissing the petitioner from service due to unauthorized long absence, has already been upheld upto the Hon'ble Supreme Court of India, after a period of 21 years, the present petition cannot be entertained so as to grant him the benefit under Rule 2.5 of the Punjab Civil Services Rules.

20. It may be noticed that even the litigation between the parties qua the order of dismissal came to an end when the SLP filed by the petitioner was dismissed in the year 2015 and the present petition has been

filed after a period of more than eight years of the said proceedings come into an end. This shows that the petitioner is unnecessarily litigating with the Department on one pretext or the other.

21. Keeping in view the above, no ground is made out to grant the benefit as being claimed in the present writ petition.

22. Dismissed.

January 04, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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