

CWP-28999-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

127

CWP-28999-2023  
Date of Decision: 15.01.2024

Balwant Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Manu K. Bhandari, Advocate with  
Mr. Rohit Kataria, Advocate for the petitioner  
Mr. Inderpreet Singh Kang, AAG, Punjab  
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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 22.11.2023 (Annexure P-10) passed by Additional Director General of Police, Patiala Range, Patiala whereby claim of the petitioner for compassionate allowance has been declined.

2. The petitioner joined Punjab Police as Constable in 1989. He came to be terminated after holding inquiry vide order dated 18.12.2010 (Annexure P-1) passed by respondent No.3-Senior Superintendent of Police, Sangrur. The disciplinary authority while passing order of dismissal held that petitioner is not eligible for pension. The petitioner after the expiry of 13 years from the said order, served upon respondent demand notice dated 14.09.2023 (Annexure P-9) whereby he called upon the respondents to grant

compassionate allowance in terms of Rule 2.5 of Punjab Civil Service Rules

(Volume II) (for short '**Rules**'). The respondent vide order dated 22.11.2023 (Annexure P-10) has rejected claim of the petitioner holding that petitioner was dismissed from service due to his willful absence from duty and earlier bad record and Senior Superintendent of Police, Sangrur has recommended to file the legal notice being devoid of merit.

3. Learned counsel for the petitioner submits that respondent has passed the impugned order in a mechanical manner. The petitioner had requested for compassionate allowance in terms of Rule 2.5 of Rules and respondent has not adverted with this prayer of the petitioner. The petitioner was dismissed from service and while dismissing, the claim of the petitioner qua pension was rejected. The claim was rejected without noticing length of service of the petitioner. The petitioner is claiming compassionate allowance and it is a continuing cause of action, thus, writ petition is maintainable even after expiry of 13 years from the date of dismissal of the petitioner. The petitioner is assailing order dated 22.11.2023.

4. Learned counsel for the petitioner in support of his contention relied upon judgments of Supreme Court in *Asger Ibrahim Amin v. Life Insurance Corporation of India, 2016 (13) SCC 797*; *Mahinder Dutt Sharma v. Union of India and others, 2014 (11) SCC 684* as well as judgment dated 11.04.2016 of this Court in *Swarn Gir v. State of Punjab and others, CWP No.14215 of 2013*.

5. The respondent while passing order of dismissal categorically rejected claim of the petitioner qua pension. The petitioner did not assail aforesaid order and opted to remain silent. By this writ petition, the petitioner

is attempting to assail findings of the disciplinary authority qua pension. The petitioner accepted aforesaid order in 2010 and at this stage, by way of this petition, cannot be permitted to re-open the already settled issue.

6. The petitioner is further seeking setting aside of order dated 22.11.2023 passed by Additional Director General of Police, Patiala Range, Patiala on the ground that claim of the petitioner has been mechanically rejected.

7. On being asked about reason of delay of 13 years from the date of dismissal and rejection of claim of pension, learned counsel for the petitioner submits that claim of compassionate allowance is a continuing right, thus, writ petition is maintainable.

8. The petitioner is relying upon different judgments of Apex Court and this Court to the effect that pension is a recurring cause of action and writ petition is maintainable at any point of time.

9. The petitioner is claiming compassionate allowance in terms of Rule 2.5 of 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.”*

10. From the perusal of aforesaid Rule, it is quite evident that Government may grant compassionate allowance if the dismissed employee deserves special consideration. The grant of pension has been considered as constitutional right whereas compassionate allowance is neither fundamental nor constitutional nor statutory right. It is pure discretion of the Government to grant compassionate allowance in deserving cases. Considering the fact that pension is a constitutional right and it is a recurring cause, the Courts have entertained delayed writ petitions. The petitioner is not claiming pension whereas he is claiming compassionate allowance which cannot be treated at par with the pension.

11. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. Where illegality is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. State cannot deprive vested right because of a non-deliberate delay.

12. A Division Bench of this Court vide judgment dated 04.04.2018 in ***Kartar Singh v. Managing Director, HVPNL and others, CWP No.26962 of 2015***, after noticing various judgments of Apex Court has dismissed similar petition on the ground that writ petition has been filed after a long time from the date of retirement.

13. A Coordinate Bench of this Court vide order dated 03.05.2015 in *Sandeep Kharab v. State of Haryana and others, CWP No.5965 of 2011*; order dated 04.09.2012 in *Bal Krishan v. State of Punjab and others, CWP No.18498 of 2011* and order 29.11.2012 in *Tarsem Pal v. Punjab State Power Corporation Limited and others, CWP No.13965 of 2010* has dismissed petitions on the ground that writ jurisdiction cannot be invoked at the will and convenience of the litigant. Anyone who claims rights must be vigilant and he must enforce his rights within reasonable time.

14. There is no explanation for delay and as per the petitioner, he can approach Court at any point of time because he has a recurring cause. The petitioner had remedy to file appeal against dismissal order, however, he accepted the said order and remained silent for 13 years before asking the respondent to grant compassionate allowance which is not right of the petitioner. The petitioner survived for 13 years and said allowance can be granted where it is found that employee deserves special consideration. Claim after 13 years itself goes against the intent and purport of the said Rule. The petitioner by his act and conduct acquiesced action of the respondent and at this belated stage he wants to make hay. Case of the petitioner is badly hit by doctrine of delay and laches

15. In the wake of judgments of this Court and considering inordinate delay on the part of petitioner, this Court does not find it appropriate to invoke its extra-ordinary writ jurisdiction. The present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)  
JUDGE

15.01.2024  
Mohit Kumar

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