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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 13.03.2024

+ W.P.(C) 8906/2022 & CM. APPLS. 26783/2022, 37048/2022

PADAM SINGH BAGGA

..... Petitioner

Versus

UNION OF INDIA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Ankur Chibber and Mr. Nikunj Arora, Advocates
with petitioner in person.

For the Respondents:

Mr. Ravi Prakash, CGSC with Mr. Farman Ali and
Ms. Astu , Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 27.05.2022 whereby petitioner was awarded a major penalty of compulsory retirement under Section 10 of the Indo Tibetan Boarder Police Force Act, 1992 read with Section 10 and 19 of the Indo Tibetan Boarder Police Force Rules



1994.

2. Subject action was taken against the petitioner on the ground that petitioner had contracted a plural marriage during subsistence of the first marriage.

3. The contention of the petitioner is that first marriage was dissolved by a decree of divorce. He submits that decree of divorce was challenged by the first wife and before the challenge was successful, petitioner had contracted a second marriage.

4. Per contra, the contention of learned counsel for the respondent is that the dissolution of the first marriage has been held upto the Supreme Court to be on account of a fraud perpetuated by the petitioner and as such the order dissolving the first marriage was a nullity and being a nullity the contracting of second marriage amounted to a plural marriage and breach of the provisions of the Act.

5. Learned counsel for the petitioner submits that without prejudice to the rights and contentions, since petitioner has continued to serve in the ITBP till today and having completed more than 20 years of regular service and further that the order of compulsory retirement records that petitioner shall be compulsorily retired and would be entitled to get pension as per the rules, he has instructions to withdraw the petition. He, however, prays that regular service of petitioner till today be taken into account for the purposes of



computation of pension and other retiral benefits.

6. Reference may be had to Rule 29 of the ITBP Rules which reads as under:

29. (1) Date of dismissal, removal, discharge or retirement.- The effective date of dismissal, removal, discharge, retirement shall be:-

- (a) the date mentioned in the order of dismissal or removal or discharge or retirement, or*
- (b) if no such date is mentioned, the date on which the person concerned is relieved from duties.*
- (c) The dismissal, removal, discharge or retirement of a person subject to the Act shall not be from retrospective effect.*

7. Rule 29(1) stipulates that the effective date of dismissal, removal, discharge or retirement is the date mentioned in the order and if no date is mentioned then on the date a person is actually relieved from duties.

8. Rule 29(2) stipulates that dismissal, removal, discharge of retirement of a person subject to the Act shall not be from retrospective effect.

9. Petitioner had impugned the order of compulsory retirement in



this petition. By order dated 03.06.2022, this Court had directed stay of the operation of the order of compulsory retirement dated 27.05.2022. The stay order has continued till today. Petitioner has also continued in regular service till date.

10. In view of Rule 29, the effective date of compulsory retirement shall be the date when petitioner is actually relieved from duty. Since petitioner has continued to serve till date and is seeking to withdraw the petition, we are of the view that the regular service rendered by the petitioner from the date of his recruitment till the date he is actually now relieved is liable to be counted as his regular service for computation of all retiral benefits.

11. Petition is accordingly dismissed as withdrawn directing that the service rendered by the petitioner from the date of recruitment till he is now relieved shall be counted as his regular service for computation of his pension and other retiral benefits. Respondents are at liberty to give effect to the order of compulsory retirement from a prospective date keeping in view Rule 29 (2) of the ITPB Rules.

12. Further, respondent shall also pass an appropriate order under Section 40 of the CCS Pension Rules with regard to the grant of admissible pension and other retiral benefits to the petitioner.

13. Needless to state that it would be open to the petitioner to avail



of such further remedy as may be available in law in case petitioner is aggrieved by any order passed under Rule 40 of the CCS Pension Rules.

14. It is clarified that the said order has been passed in the peculiar facts and circumstances of the case.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

MARCH 13, 2024
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