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

CWP-13020-2018
Judgment reserved on: 20.01.2025
Judgment pronounced on: 10.02.2025

DR. J.S. MANDHOK

......Petitioner

VERSUS

THE ORIENTAL INSURANCE COMPANY LTD. AND OTHERS

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Chandan Deep Singh, Advocate
for the petitioner.

Mr. Sanjiv Pabbi, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J.

1. Seeking issuance of a writ of mandamus directing respondent no. 3 to release the retirement/pensionary benefits to the petitioner and further to quash the order/letter dated 20.06.2017 (Annexure P-9) vide which the respondents have decided to release the pensionary benefits without any retrospective effects or arrears, the petitioners have approached this court.

Facts

2. The facts of the present case are that the petitioner- Dr. J.S. Madhok joined the office of the Oriental Insurance company of 03.10.1984

as Assistant Administrative Officer at Regional Office Chandigarh. He was in regular service for about 23 years and was routinely promoted during his tenure. On 16.05.2007, while serving as Senior Divisional Manager at Bhatinda, he opted for Voluntary Retirement and also gave a cheque no. 000158 of Rs. 1,03,872/- being the salary in lieu of 3 month notice period, as per the settled rules.

3. That the voluntary retirement of the petitioner was however not accepted and the notice period was considered as a period of absence and a departmental inquiry was initiated against him. The Inquiry Officer submitted his report of charge being proved, where after, vide order dated 22.12.2008, the Disciplinary Authority imposed the penalty of "removal of service which shall not be disqualification for future employment", against the petitioner.

4. That the petitioner specifically submitted that he never remained absent from the duties from 21.05.2007 as he had already handed over the charge to his senior most officer at the relevant time Mr. Charanjit Singh, as per the rules, procedures and service norms on having opted for retirement under the Voluntarily Retirement of the General Insurance (Employees) Pension Scheme, 1995 and as per the instructions of the respondent company.

5. That despite passing of an order of penalty against him, the petitioner was none-the-less entitled to his retirement benefits including pension, gratuity, leave encasement, PF etc. but the same were not disbursed to him. Further, the petitioner was also entitled to Compassionate Allowance under rule 32 of the Pension Scheme 1995.

6. That the petitioner made numerous visits to the office of the respondent company requesting it for release of his retirement/pensionary benefits but yet the respondent company released only an amount of Rs. 5,49,087/- qua the petitioner's own voluntary contribution of provident fund and Rs. 3,22,679/- against gratuity vide cheque no. 881419. The respondent company also assured the petitioner that the remaining benefits shall also be released at the earliest.

7. That the petitioner sent numerous representations dated 24.04.2010, 14.01.2012, 04.02.2013, and 01.05.2014 requesting for the release of his remaining benefits. However, when no action was taken upon them by the respondent company, the petitioner approached this court vide CWP No. 15957 of 2014 in which notice of motion was issued on 12.08.2014. Vide order dated 30.03.2017, the writ petition was disposed off by this court and it directed the respondents to decide the aforesaid representations of the petitioner within a period of two months.

8. That after the directions were issued by this court, the petitioner approached the office of the respondents with a certified copy of the aforesaid order and submitted his application dated 10.04.2017, requesting the release of his pensionary benefits.

9. That the respondent company vide letter dated 20.06.2017 informed the petitioner that after considering his case, compassionate allowance equal to half of the pension, which would have been admissible to the petitioner on the basis of qualifying service up to the date of his removal, has been approved with effect from June 2017 without any retrospective effect or arrears. The petitioner approached the office of the respondent

company seeking clarification on the above said letter, however, instead of providing any clarifications, the respondent company vide letter dated 09.08.2017 asked the petitioner to deposit certain additional documents which were submitted.

10. Thereafter, vide another letter dated 25.09.2017, the respondent company informed the petitioner that an amount of Rs. 12994/- has been sanctioned as his pension w.e.f. 08.06.2017.

11. An amount of Rs. 51,976/- was received by the petitioner on 29.09.2017 being his arrears of pension from June 2017 till September 2017 and thereafter the petitioner has been regularly receiving his pension.

12. The petitioner, still being aggrieved by the decision of the respondent company in not releasing his arrears from the date of his leaving the office i.e 22.12.2008 till June 2017, sent few other representations dated 12.12.2017, 05.02.2018 and 21.03.2018, with a further request to release the same alone with 18% interest for delay in payment, whereupon the petitioner received a letter dated 04.05.2018 from the office of respondent no. 3 intimating him that the competent authority did not find any merit in the representations sent by him demanding arrears of pensionary benefits with interest.

Arguments By The Petitioner

13. The counsel for the petitioner contends that the petitioner is an old man and faced serious problems on account of delay in the release of the pensionary retirement benefits. Having no other source of income and being

dependent on his retirement benefits, the petitioner was unable to pursue proper medical treatment due to lack of funds.

14. The counsel vehemently contends that the even though the petitioner had submitted his application for voluntary retirement and paid the salary in lieu of the notice period, however, the same was not accepted and the notice period was considered as a period of absence and wrongly imposed the penalty of "Removal from services which shall not be a disqualification for future employment" vide order dated 22.12.2008.

15. The counsel submits that the said order of penalty is in violation of the rules, procedures and service norms. The petitioner never remained absent from the duties from 21.05.2007, as alleged by the respondent company and had already handed over the charge to his senior most officer at the relevant time, Mr. Charanjit Singh while opting for Voluntary Retirement, as per the service norms. An appeal against the said order was also preferred by the petitioner but the same was dismissed. Moreover, since the penalty imposed upon the petitioner was of "removal from services which shall not be disqualification for future employment", the same legally entitles the petitioner for his retirement benefits including pension, leave encasement, PF, pending gratuities as well as compassionate allowance as per rule 32 of the Pension Scheme 1995 for his 23 years of service. Despite numerous efforts, only the petitioner's own voluntary contribution to the Provident Fund and gratuity amounting to Rs. 5,49,087/- and Rs. 3,22,679/- respectively, was released.

16. The counsel places reliance on the judgment of the Hon'ble Supreme Court in the matter of **State of Kerala v. M. Padmanabhan Nair**

reported as **(1985) 1 SCC 429** wherein the court had held that, *"Pensionand gratuity are no longer any bounty to be distributed by the government to its employees on their retirement but have become under the decisions of the Supreme Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."*

17. The counsel submits that the petitioner is entitled to an interest of 18% p.a. w.e.f. the date of his leaving the office i.e. 22.12.2008 till the date of release of the retiral dues and to establish his claim, he places reliance on the case of **Vijay L. Mehrotra v. State of UP** reported as **2000 (4) SCT 267**, wherein the apex court has observed the following:

> *"3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.*
> *4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement i.e. 31st August, 1997 till the date of payment."*

18. The counsel vehemently contends that the action of the respondents to pay the compassionate allowance only w.e.f. June 2017 and without any retrospective effect or arrears is beyond reasonable

consideration and the same should be paid to the petitioner w.e.f. the date of his leaving the office i.e. 22.12.2008 and not from June 2017. The respondent company, vide another letter dated 09.08.2017, intimated the petitioner that the competent authority has granted the compassionate allowance basic as Rs. 4653/- and DA as Rs. 8341/-, i.e. total of Rs. 12,994/- and further requested him to deposit certain documents.

19. The counsel submits that the petitioner on receipt of the aforesaid notice deposited all the documents without any delay and thereafter vide letter dated 25.09.2017, the respondent company informed the petitioner that an amount of Rs. 12994/- has been sanctioned as his pension w.e.f. 08.06.2017. Moreover, on 29.09.2017, the petitioner received an amount of Rs. 51,976/- being the arrears of pension from June 2017 till September 2017 and from then on the petitioner has been regularly receiving his pension in his account.

20. The decision of the respondent company in not releasing his arrears w.e.f. the date of his leaving the office i.e. 22.12.2008 till June 2017 was illegal and unsustainable.

Hence the present petition.

Arguments By The Respondents

21. The course for the respondents submits that it is undisputed that the petitioner opted for voluntary retirement scheme on 16.05.2007 and gave a cheque for Rs. 1,03,872/- being the amount of three months notice period salary for seeking voluntary retirement. However, he contends that vide letter dated 04.06.2007, it was conveyed to the petitioner that under Rule 30

under the Heading "Pension on Voluntary Retirement of the General Insurance (Employees) Pension Scheme, 1995", 90 days notice period is laid down. Similarly, video provision 3(a) of this rule, the power of curtailment of the notice period of 90 days vests with the Competent Authority i.e. Appointing Authority and that too on the request of the officer seeking voluntary retirement. In the present scenario, the petitioner neither made any request for curtailment of the laid down notice period of 90 days nor the notice period was waived off by the competent authority without awaiting for the order from the competent authority, the petitioner did not attend the office from 21.05.2007 and remained absent from duties in an unauthorized manner. Such absence from duties was in violation of Rule 18 of General Insurance (CDA) Rules, 1975, which rendered the petitioner liable for disciplinary action for the period of un-authorised absence. The respondent company vide letter dated 03.07.2007, hence conveyed to the petitioner that his VRS application has not been accepted and requested him to report for duties immediately.

22. The counsel further contends that the acceptance of Voluntary Retirement is subject to Vigilance clearance and cannot be claimed as a matter of right. The petitioner hence remained on a willful unauthorized absence continuously from 21.05.2007 to 23.10.2007 and since he never reported back for duties despite communication from the office, necessary disciplinary action was taken against him.

23. The counsel argues that the disciplinary authority, after going through the charge sheet as well as the enquiry report, the representation sent by the petitioner and other connected records, held that an employee is not

deemed to be relieved merely on submission of VRS application and the same is subject to the acceptance by the competent authority. The case of the petitioner for voluntary retirement was rejected on account of a vigilance enquiry pending against him and the same was intimated to the petitioner vide order dated 22.12.2008. Hence, a penalty of "Removal from service which shall not be a disqualification for future employment" was also imposed.

24. The counsel submits that the petitioner preferred an appeal against the above said order of the disciplinary authority which was also rejected vide order dated 14.05.2009. It is further submitted that the petitioner had been removed from the service vide order dated 22.12.2008 and the benefits of pension and other retirement benefits are not payable to an employee, who has been removed or dismissed from the services in accordance with the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. Hence, the petitioner is not entitled to the benefits as claimed by him. Furthermore, the petitioner has also filed one representation dated 20.07.2009 which was rejected rejected by order dated 16.12.2009 and the same was also conveyed vide letter dated 28.12.2009.

25. The counsel contends that compassionate allowance has been allowed under rule 32 of the pension scheme, 1995 as a special case, and after considering all the previous record of the petitioner. It was decided by the respondent company that the petitioner would be entitled to the compassionate allowance equal to half of the pension which would have been admissible to him on the basis of qualifying service up-to the date of his removal with effect from June 2017 and without retrospective effect or

arrears on account of the same. Thus, all admissible benefits payable to the petitioner have already been paid.

26. The counsel argues that in compliance of the order of this court dated 30.03.2017, the representation of the petitioner was decided vide order dated 20.06.2017 and compassionate allowance equal to half of the pension, which would have been admissible to the petitioner on the basis of qualifying service up to date from his removal with effect from June 2017, without any retrospective effect or arrears, was directed to be released immediately.

27. The counsel places reliance on the judgement of Hon'ble Supreme Court in the case of **Mahinder Dutt Sharma v. Union Of India reported as (2014) 11 SCC 684** to establish that compassionate allowance is to be granted only in cases deserving special consideration and that the court had observed five delinquencies leading to punishment ordinarily would disentitle an employee from such compassionate allowance.

28. The counsel submits that the petitioner has already been paid the compassionate allowance from June 2017 without any retrospective effect or arrears on account of the same in pursuance of Rule 32 of the Pension Scheme 1995 and no other amount is payable to the petitioner. Further, the petitioner is not entitled for compassionate allowance w.e.f. from 22.12.2008 as claimed by him.

29. No other arguments has been raised by the counsel for the parties.

30. I have heard the learned counsel appearing on behalf of the parties and has gone through the pleadings as well as the documents appended as also the judgments relied upon by the counsel for the parties.

Consideration

31. Before proceeding further, it would be pertinent to examine the relevant rules of the General Insurance Employees Pension Scheme 1995, and the same are being extracted below for perusal:

> *"30. Pension on voluntary retirement -*
> *(1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service :*
> *Provided that this sub-paragraph shall not apply to an employee who is on deputation unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:*
> *Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.*
> *(2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority:*
> *Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.*

(3) (a) An employee referred to in sub-paragraph (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefore ;

(b) on receipt of request under clause (a), the appointing authority may, subject to the provisions of sub-paragraph (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

(4) An employee who has elected to retire under this paragraph and has given necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority :

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement.

(6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of paragraph 2of this scheme and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension;

Explanation.- For the purpose of this paragraph, the appointing authority shall be the appointing authority specified in Appendix-I to this scheme.

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32. Compassionate Allowance -

(1) An employee who is dismissed or removed or compulsorily retired or terminated from service shall forfeit his pension :

Provided that the authority competent to dismiss or remove or compulsorily retire or terminate him from service may, if -

(i) such dismissal, removal, compulsory retirement or termination is on or after the 1stday of November, 1993 and

(ii) the case is deserving a special consideration, sanction a compassionate allowance not exceeding two-thirds of pension which would have been admissible to him on the basis of qualifying service rendered upto the date of his dismissal, removal, compulsory retirement or termination.

(2) The compassionate allowance sanctioned under the proviso to sub-paragraph(1) shall not be less than the amount of minimum pension payable under paragraph 35 of this scheme.

32. A perusal of Rule 30 (2) of the aforesaid rules makes it crystal clear that a notice of voluntary retirement required acceptance by the appointing authority. Proviso to the said rule states that in case the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

33. Moreover, as per Rule 30 (3) (b) of the rules, a notice for curtailment of notice period is to be considered on merits and may be granted by the appointing authority upon its satisfaction.

34. In the case at hand, the petitioner applied for VRS on 16.05.2007 and also submitted a cheque of Rs. 1,03,872/- being the salary of 3 months notice period. The respondent company, vide letter dated 04.06.2007 conveyed to the petitioner that neither they have received any request from the petitioner for curtailment of the notice period nor the notice period was waived of by them.

35. The respondent company later imposed a penalty of ”removal from services which shall not be a disqualification for future employment” vide order dated 22.12.2008, as upheld by the appellate authority vide order dated 14.05.2009.

36. The dispute in the present petition is to the order dated 20.06.2017 vide which the respondent company has approved compassionate allowance equal to half of the pension which would have been admissible to the petitioner on the basis of qualifying service upto the date of his removal with effect from June 2017 without any retrospective effects or arrears on account of the same. However, the petitioner is claiming that the same should be paid to the petitioner w.e.f. the date of his leaving the office i.e. 22.12.2008 and not from June 2017.

37. From a reading of Rule 32, it is manifest that an employee who is dismissed, removed, compulsorily retired or terminated shall forfeit his pension. It is also clear that Compassionate Allowance is itself calculated on

the basis of pension, which aspect leads to the conclusion that Compassionate Allowance is akin to pension, which an employee ordinarily would have been entitled to, had the circumstances of dismissal or removal from service not intervened. The aforesaid view becomes clearer by looking at Sub Rule 2 of Rule 32 whereby it is stipulated that the Compassionate Allowance shall not be less than the amount of minimum pension under Rule 35. Thus, there is no doubt that Compassionate Allowance under Rule 32 is akin to pension that an employee is entitled to.

38. Further, a plain reading of the provisions of Rule 32 bring to fore the manifold intentions enacting Rule 32, which are, that it is a discretion of the Competent Authority and that the consideration is on the subjective satisfaction of the Competent Authority and further the competent Authority is required to consider whether the case deserves of special consideration, if so, the quantum thereof; and other relevant factors.

39. Since as per settled law, pension is always payable from the date an employee ceases to be in the employment and not from any other date, Compassionate Allowance may also be granted from date of dismissal or removal. Though, I am in agreement with the conclusion that the Compassionate Allowance is akin to pension that an Employee may be entitled to, but, I am of the view that unlike pension, receipt of which is a matter of right, Compassionate Allowance is not a right and it is at the discretion of the Competent Authority. Accordingly the discretion as to the date from which it may be granted, would necessarily vest with the Competent Authority granting the same, on a case to case basis. However, it

is further clarified that such discretion would obviously be open to judicial review.

40. It is further necessary to notice that even though the punishment of dismissal from service was imposed on 22.12.2008, but no challenge has been raised to the disciplinary proceedings or the order passed therein. Thus, the legality or validity of the punishment of removal from service cannot be gone into.

41. Even though the petitioner claims that he is entitled to pensionary benefits but the petitioner nowhere deals with the applicability of Rule 32 of the Pension Scheme even though the specific preliminary objections has been raised. No replication was field by the petitioner denying applicability of the said Rule 32. The entitlement of the petitioner to claim pension thus get defeated in view of the above Rule and the entitlement is only for seeking compassionate allowance.

42. Insofar as the law laid down by the Hon'ble Supreme Court in *Mahinder Dutt Sharma* (supra) is concerned, it would be pertinent to bear in mind the guidelines laid down, while considering case of grant of Compassionate Allowance, which is quoted hereunder:

> *"15. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "... if the case is deserving of special consideration...". Where the delinquency leading to punishment falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in*

> *any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term "deserving special consideration" used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorised in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.*

43. In the present case, there is no need to examine the various considerations which are illustratively expressed by the Hon'ble Supreme Court in the above mentioned judgment, primarily for the reason that in the present case, the Competent Authority had in fact, itself taken into consideration all the relevant aspects and had granted Compassionate Allowance, though from the date of the order allowing such allowance.

44. Thus, in the present case, the only thing for consideration before this court is whether the competent authority was correct in granting Compassionate Allowance to the petitioner w.e.f. June 2017.

45. What is however further apparent that even though it is for the competent authority to decide whether the case calls for sanction of a

compassionate allowance, however, it nowhere mandates that such a consideration can be done only on moving of an application by the employee.

46. The same is a proviso to the Rule and as such, even though, it is worded in a discretionary form, however, the same is an exercise which has to be done immediately or in quick follow up. The competent authority is thus expected to take an expeditious decision, in the event of seeking applicability of Rule 32, on as to whether compassionate allowance is payable or not.

47. No such decision was however taken by the competent authority in the present case till 2017. The petitioner had been continuously sending letters and reminders for the admissible benefits including approaching the High Court and even filing contempt petitions. No explanation has been given as to why no decision was taken by the respondents on the same.

48. Invariably, the petitioner was entitled to the compassionate allowance as per the guidelines laid down in the case of Mohinder Dutt (supra), but the same was denied for a period of nearly 8 ½ years.

49. It is the bounden duty of the employer to ensure that an employee who has served the institution does not have to yearn or litigate for consideration of his admissible benefits. The employee cannot be abandoned to fate.

50. No reasons have been given by respondents as to why it could not decide on the said benefit earlier.

51. Undisputedly the petitioner had to eventually apply for compassionate allowance on 10.04.2017, pursuant to the liberty granted by this court vide its order dated 30.03.2017 and the competent authority while considering the representation of the petitioner, granted compassionate allowance by considering it a special case, vide order dated 20.06.2017.

52. The said benefit could thus be released even without compelling him for the litigation, as no special exceptional circumstances have been shown as to why the concession, if any, has been granted. It must thus be construed to be a lawful entitlement of the petitioner to which he remained deprived for the said period.

53. The present writ petition is thus partly allowed and the order dated 20.06.2017 denying release of compassionate allowance from the date of removal i.e. 22.12.2008 is set aside and the respondent is directed to compute the benefit with effect from the date of his removal and to release the same with interest @ 6% per annum from 22.12.2008 i.e. date of removal, within a period of three months of receipt of certified copy of this order.

(VINOD S. BHARDWAJ)

FEBRUARY 10, 2025 **JUDGE**

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No