
(2013) 06 SHI CK 0126
In the High Court Of Himachal Pradesh
Case No : LPA No. 61 of 2012

Khushi Ram

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 201

Citation : (2013) 06 SHI CK 0126

Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : Arun Kumar, vice and Mr. S.R. Badhan, for the Appellant; Romesh Verma, Additional Advocate General, for the Respondent

Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. This appeal takes exception to the judgment of the learned Single Judge of this Court dated 20th May, 2011 in CWP(T) No. 11615 of 2008. Learned Single Judge dismissed the writ petition preferred by the appellant which, in turn, sought direction against the respondents to sanction compassionate allowance under Rule 41(2) of CCS(Pension) Rules, 1972 w.e.f. April 1997 and also grant of other benefits admissible to the appellant.

2. The learned Single Judge adverted to the factual background in which the DGP dismissed the claim of the appellant for grant of compassionate allowance. In that, the appellant was convicted for offence punishable under Sections 201 and 120-B of IPC and sentenced to undergo imprisonment for a period of four years. This conviction and sentence was confirmed right up to the Supreme Court vide judgment dated 24th February, 1997. The learned Single Judge has also adverted to the fact that in all, eight police officials were involved in the said offence, but during the pendency of the proceedings, five of them attained the age of superannuation. The appellant, however, was in service, but, placed under suspension.

3. After the decision of the Apex Court, the appellant was dismissed from service

vide order dated 9th April, 1997. On account of dismissal of the appellant from service, the appellant has been denied benefit of pension and gratuity. In this backdrop, the appellant had approached the Court and sought direction against the respondents to consider his claim for grant of compassionate allowance in terms of Rule 41(2) of the CCS (Pension) Rules.

4. The learned Single Judge, however, has noted that on account of dismissal or removal from service, the government servant forfeits his pension and gratuity. The government servant cannot claim compassionate allowance as a matter of right and the DGP having dismissed the claim of the appellant no relief could be granted to the appellant.

5. Ordinarily, these observations may be appropriate, but the learned Single Judge, in our opinion, with utmost respect, has completely glossed over the efficacy of proviso to sub rule (1) of Rule 41 of the CCS (Pension) Rules. That empowers the Authority competent to dismiss or remove the government servant from service to sanction compassionate allowance in appropriate case deserving of special consideration. The competent Authority ought to record its satisfaction as to why the appellant's case did not qualify for such consideration and if so recorded, whether judicial review therefor was permissible. These aspects have not been touched by the learned Single Judge at all.

6. In the circumstances, we set aside the impugned decision and relegate the writ petitioner for fresh consideration of the writ petition on efficacy of proviso to Rule 41 (1) and the decision taken by the Authority, if any, in exercise of that provision. The impugned decision is, accordingly, set aside and the writ petition is restored to the file to its original number to be proceeded afresh before the learned Single Judge.