
(2015) 12 SHI CK 0101
In the High Court Of Himachal Pradesh
Case No : LPA No. 333 of 2010

State of H.P. and Others

APPELLANT

Vs

Naresh Lal

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Citation : (2015) 12 SHI CK 0101

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Sureshwar Thakur, J.

Bench : Division Bench

Advocate : Romesh Verma, Anup Rattan, Addl. A.Gs. and J.K. Verma, Dy. A.G., for the Appellant; Sanjeev Kuthiala, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. This appeal is directed against the judgment, dated 14th September, 2010, passed by a learned Single Judge of this Court in CWP(T) No. 4101 of 2008, titled Naresh Lal vs. State of H.P. and others, whereby the writ petition, filed by the petitioner (respondent herein), came to be allowed and the writ respondents (appellants herein) were directed to grant Compassionate Allowance to the writ petitioner w.e.f. 30th October, 1982, with interest at the rate of 7% per annum, (for short, the impugned judgment).

2. Heard learned counsel for the parties and gone through the writ record.

3. The writ petitioner was appointed as Constable, was dismissed from service after conducting an inquiry, on 30th October, 1982. Thereupon, he approached the Director General of Police, Himachal Pradesh for grant of Compassionate Allowance, was granted vide order dated 18th April, 1994 w.e.f. 24th March, 1994, constraining him to make a representation to the Director General of Police, Himachal Pradesh praying that he was entitled to the said Allowance right from 30th October, 1982, the date of his dismissal, instead of 24th March, 1994, was rejected constraining him to file the writ petition.

4. The questions involved in this appeal are - i) Whether Naresh Lai, writ petitioner, was entitled to Compassionate Allowance w.e.f. 24th March, 1994, the date when the order for granting Compassionate Allowance came to be made by the Authority, or on 30th October, 1982, the date on which the petitioner was dismissed from service; ii) Whether the Compassionate Allowance can be termed as Pension in terms of Central Civil Services Pension Rules, 1972, (for short, the Rules).

5. In order to determine the questions supra, we may refer to Rule 41 of the Rules *ibid*, which deals with Compassionate Allowance. It is apt to reproduce Rule 41 hereunder:

"41. Compassionate allowance

[1] A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three thousand five hundred per mensem."

6. Thus, Rule 41 of the Rules gives power to the competent Authority to sanction Compassionate Allowance in favour of a employee, who stands dismissed or removed, as the case may be, from service, provided the Allowance does not exceed two-thirds of the pension or gratuity or both.

7. We may also refer to Government of India's Decision No. 2, dated 23rd April, 1977, under Rule 41 of the Rules, that the Compassionate Allowance is a pension. It is apt to reproduce Decision No. 2 hereunder:

"2) Commutation of Compassionate Allowance permissible. - A question has been raised whether Government servants drawing Compassionate Allowance under Rule 41 of the Central Civil Services (Pension) Rules, 1972, are entitled to commute a part of such Compassionate Allowance as in the case of other kinds of pension or not. The matter has been considered and it is clarified that the Compassionate Allowance is one of the various kinds of pensions enumerated in the CCS (Pension) Rules, 1972, and as such the CCS (Commutation of Pension) Rules, 1981, would apply to the Compassionate Allowance in the same manner as in respect of any other class of pension.

[G.I., M.F., O.M. No. F.14(3)-E.V(A) 176, dated the 23rd April, 1977.]"

8. Thus, from a perusal of Rule 41 of the Rules *ibid*, read with Government of India's Decision No. 2, supra, one comes to an inescapable conclusion that the Compassionate Allowance is "one of the various kinds of pensions enumerated in

the CCS (Pension) Rules, 1972".

9. Pension is always payable from the date an employee ceases to be in the employment and not from any other date. It is also well settled principle of law that pension is a property and not a bounty and the person entitled for it cannot be deprived of it from the date he is entitled to it.

10. The Apex Court in Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc., held that dismissal order would relate back to the date on which the order was passed by the Management and would not be operative from any other date. It is apt to reproduce paragraph 2 of the said decision hereunder:

"2. In view of the aforesaid decisions and in view of the findings recorded by the Labour Court, we are of the considered opinion that the view expressed in Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another, is not correct. It is accordingly overruled. Following the judgment of the Constitution Bench, we hold that on the Labour Court's recording a finding that the domestic enquiry was defective and giving opportunity to adduce the evidence by the Management and the workman and recording of the finding that the dismissal by the management was valid, it would relate back to the date of the original dismissal and not from the date of the judgment of the Labour Court."

11. This Court in case L.S. Thakur Vs. Punjab National Bank and Others, , has held that the order of dismissal or removal of an employee from service would be effective from the day on which he/she was removed or dismissed from service. Terming the Compassionate Allowance as pension, it was further held that employee would be entitled to pension from the date of dismissal or removal from service. It is apt to reproduce paragraph 4 of the said decision hereunder:

"4. It is pertinent to mention that the Scheme was notified w.e.f. 1.11.1999. The stand of the Bank is that the petitioner retired from service on 26.12.1989 and, therefore, is not covered by the Scheme. Shri P.P. Chauhan contended that the order of compulsory retirement was passed on 11.11.1997 after the Scheme came into force. This submission in my view cannot be accepted because though the order of compulsory retirement may have been passed on 11.11.1997 it will be effective from 26.12.1989 i.e. the day on which he was removed from service. The order of compulsory retirement only replaced the order of removal and therefore will have effect from the said date and it has to be effective from 26-12-1989.

5. In P.H. Kalyani Vs. Air France Calcutta, a Constitution Bench of the Apex Court held that when a Labour Court/Industrial Tribunal finds that the domestic enquiry was defective and gives the party an opportunity to again lead evidence and thereafter another disciplinary order is passed and that order is held to be valid, then the subsequent order relates back to the date when the original order of dismissal was passed. Following the laid down by the Constitution Bench, the Apex Court in Punjab Dairy Development Corporation Limited and another, etc.

Vs. Kala Singh, etc., also took the same view. Thus it is apparent that the order of compulsory retirement passed in the year 11-11-1997 would relate back to 26-12-1989 when the original order of dismissal was passed."

12. The Apex Court in its latest decision in case titled as Mahinder Dutt Sharma Vs. Union of India (UOI) and Others, , while dilating upon Rule 41 of the Rules ibid, has laid down certain parameters for grant of Compassionate Allowance. It is apt to reproduce paragraphs 14 and 15 of the said decision hereunder:

"14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

14.1 (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behavior would fall in this classification.

14.2 (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behavior which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behavior, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.

14.3 (iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

14.4 (iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in

this category.

14.5 (v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

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 leveled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized 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."

13. Applying the tests to the facts of the instant case, we are of the considered view that the Writ Court has rightly made the discussion and has rightly held that the writ petitioner was entitled to Compassionate Allowance from the date he was dismissed from service. Thus, the impugned judgment is legal one, needs no interference.

14. Accordingly, we hold that there is no merit in the instant appeal and the same is dismissed, alongwith pending CMPs, if any.