

**2023 STPL(WEB) 11 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.)

PREM LAL RAO

Petitioner

VERSUS

STATE OF H.P. & OTHERS

Respondents

CWPOA No. 5993 of 2019-Decided on 6-7-2023

Service Law

Service Law – Re Employment – Rejection under wrong Rule - Assistant Police sub inspector requested premature retirement due to family position – Request accepted – After two years family condition become favourable – Requested for re appointment – Rejection under Rule 12.24 of Punjab Police Rules, which provides re-enlisting as Constable only –While case of petitioner was covered and to be considered under the provisions of Rule 12.25 of Punjab Police Rules - Claim of petitioner has not been rejected by passing a speaking and reasoned order. Direction to consider the case of petitioner afresh in the light of provisions of Rule 12.25 of Punjab Police rules and to take a decision accordingly in accordance with law on or before 16th August, 2023.

(Para 13 to 20)

Advocate(s): For the Petitioner: Mr. R.L. Chaudhary, Advocate.

For the Respondents: Mr.Anup Rattan, Advocate General with Mr. Rajesh Mandhotra, Additional Advocate General.

JUDGMENT

Vivek Singh Thakur, J.-Petitioner has approached this Court against rejection of his representation, for his re-employment in the Police Department, communicated vide letter dated 5.8.2014, Annexure A-7.

2. The case of petitioner is that he had joined the Police Department as a Constable on 22.12.1986 and, thereafter, he was promoted to various posts and in the year 2012 he was serving as an Assistant Sub Inspector in Executive Clerical cadre/Accounts Branch and as on 30.4.2012 he had completed service of 26 years 4 months and 8 days. He has also received 35 appreciations during his service.

3. In the year 2012, due to adverse family circumstances, vide application dated 27.01.2012, (Annexure A- 1) petitioner had requested for pre-mature retirement w.e.f. 30.4.2012. The request was accepted and vide order dated 23.04.2012 (Annexure A-2) petitioner was ordered to be retired from police service on pre-mature retirement w.e.f. 30.4.2012.

4. Petitioner vide application dated 16.01.2014, (Annexure A-4), after becoming the circumstances in his family favourable, had applied for re-employment on the post of Assistant Sub Inspector in the Police Department. The said request was dealt with by authorities and was submitted to the Chief Secretary (Home) to the Government of H.P. vide communication dated 15.7.2014 (Annexure A-9), sent from the

Office of Director General of Police, H.P. reporting therein that petitioner was having the age between 30 years and 55 years and he was found medically fit for Government employment.

5. In response thereto, vide communication dated 5.8.2014, (Annexure A-10) it was communicated that matter of petitioner had been examined and the same was rejected.

6. Petitioner has also placed on record copies of noting sheets received under Right to Information Act dealing with his case at Government level wherein his case was recommended for re-enlistment/re-employment but as Constable.

7. In response to petition, averments with respect to service career of petitioner, his voluntary retirement, application for re-employment and consideration thereof including rejection, have not been disputed, but rejection of application of petitioner has been justified on the ground that petitioner had applied for re-employment as Assistant Sub Inspector which was not falling in the purview of the Rule 12.24 of Punjab Police Rules, which provides re-enlisting as Constable only.

8. It has been contended on behalf of petitioner that application filed by petitioner was not for his re-enlisting under Rule 12.24 of Punjab Police Rules as a Constable, but his application was falling under the purview of Rule 12.25 of Punjab Police Rules, which provides re-enlisting the police pensioners by reemployment and being a pensioner as Assistant Sub Inspector, petitioner was entitled for re-employment in terms of provisions of Rule 12.25 of Punjab Police Rules.

9. Rule 12.25 of Punjab Police Rules reads as under:-

“12.25 Re-enrolment of police pensioners:-

(1) Under the orders contained in Articles 511 to 519, Civil Service Regulations, a police officer who has been discharged with a compensation or invalid gratuity or pension may be re-employed in the police service up to the age of 55 subject to the following conditions :-

(a) He may either refund the gratuity or cease to draw pension, in which case he may count his former service for future pension, or he may retain his gratuity or pension in which case he cannot count his former service towards future pension.

(b) He shall be re- examined by the Civil Surgeon of the district in which he has been re-employed and certified as medically fit for service, and shall produce a discharge certificate showing that his previous service was classed as not lower than “good”.

(2) The order re-enrolling such officer shall specifically state the amount of any gratuity, bonus or pension received by him on discharge, and a copy of such order shall be communicated to the Accountant-General. Directions shall also be given, if necessary, for the proper deductions to be made from his pay.”

10. As on date, petitioner is about 57 years old. On the date of filing application for re-employment, he was below the age of 55 years i.e. about 48-49 years old.

11. The age of petitioner for considering the reemployment, as per Rule 12.25 of Punjab Police Rules, should be below 55 years.

12. From the material placed on record, it is apparent that claim of petitioner has not been rejected by passing a speaking and reasoned order. As a matter of fact, no reason has been assigned for rejection of

his claim. Even if it is considered that reasons have been explained by the respondents in the reply, then also, the said reason is not tenable as the case of petitioner was covered under Rule 12.25 instead of Rule 12.24 of Punjab Police Rules.

13. Undoubtedly for reasons to arrive at a decision, the relevant record can be looked into. It is also noticeable that in the submissions made in noting sheets, both Rules i.e. Rule 12.24 as well as Rule 12.25 of Punjab Police Rules were referred at the time of placing the matter before concerned authority but in the rejection order, nothing has been recorded except that considered and rejected. In the file also only two words were written by the Chief Secretary i.e. 'not justified'. No reason has been assigned for declaring the claim of petitioner as 'not justified'. There is no reasoning or finding with regard to Rule 12.24 or 12.25.

14. In case, as already recorded supra, the reason assigned for 'not justified' is with reference to the provision of Rule 12.24, the same is not tenable for the reason that case of petitioner was covered and to be considered under the provisions of Rule 12.25 of Punjab Police Rules.

15. In aforesaid facts and circumstances, the rejection of application of petitioner for his re-employment is neither justified nor tenable and the same is quashed and set aside and accordingly, communication dated 5.8.2014, Annexure A-10, also stands quashed and set aside.

16. Respondents/State, through the Principal Secretary (Home) to the Government of H.P., is directed to consider the case of petitioner afresh in the light of provisions of Rule 12.25 of Punjab Police rules and to take a decision accordingly in accordance with law on or before 16th August, 2023.

17. It is made clear that the present age of petitioner shall not come in the way for considering his case for his reemployment as he had already applied in the year 2014 and his case was rejected in the same year in the month of August, 2014 and immediately thereafter, he approached the Erstwhile H.P. State Administrative Tribunal by filing OA No. 4049 of 2015 which was transferred to this High Court on abolition of Erstwhile H.P. State Administrative Tribunal and was re-registered as present petition i.e. CWPOA No. 5993 of 2019.

18. The case of petitioner is to be considered by taking into consideration his age at the time of submission of his application and consideration/rejection of his claim by competent authority in the year 2014.

19. However, it is made clear that in case petitioner is reemployed in terms of Rule 12.25 of Punjab Police Rules and such terms are agreeable to the petitioner then on joining of service, he shall not be entitled for any actual monetary benefits for the period from 2014 till his re-employment but he shall be entitled for actual monetary benefits only after his date of re-joining but subject to provisions of Rule 12.25 of Punjab Police Rules.

20. Needless to say that petitioner shall be entitled for notional benefits of service w.e.f. 5.8.2014, the date on which his claim was rejected till his actual date of joining, on notional basis for calculation of all other benefits including financial benefits like increment(s) and pensionary benefits etc.

21. Petition stands allowed in aforesaid terms including all pending miscellaneous application(s), if any.
