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CWP-3013-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CWP-3009-2019
Date of Decision:26.02.2024

JOGINDER SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

2) CWP-3013-2019

PHUMAN SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. K.G. Chaudhry, Advocate with
Ms. Sakshi Singh, Advocate
for the petitioner (s).

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-3009-2019 and CWP-3013-2019 are disposed of since issue involved in both the petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-3013-2019.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:-

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- i. Order dated 26.07.2013 (Annexure P-1) whereby petitioner has been dismissed from service;
- ii. Order dated 26.04.2016 (Annexure P-2) whereby appeal filed by the petitioner has been dismissed;
- iii. Order dated 26.09.2016 (Annexure P-3), 30.05.2017 (Annexure P-4) and 31.07.2018 (Annexure P-5) whereby review petition have been dismissed by appellant/revisionary authorities.

3. The petitioner joined Punjab Police as Constable in 1989 and he was subsequently promoted as Head Constable. An FIR No.160 dated 29.10.2012, under Sections 21, 22, 61 and 85 of NDPS Act, 1985 at Police Station Kotwali, Kapurthala came to be registered against various persons including petitioner. A Naka was laid down by Inspector Naresh Kumar, SHO Police Station Kotwali, Kapurthala alongwith other police officials at Nawanpind Gatewala. The Police party noticed two cars and drivers of both the cars tried to escape, however, police party foiled their attempt. During search heroin was recovered from occupants of both the cars. Both the petitioners were arrested alongwith heroin. The police after completing investigation filed its report under Section 173 Cr.P.C. The petitioner alongwith others faced trial.

4. Learned Judge, Special Court, Kapurthala, vide judgment dated 19.02.2016 found both the petitioners herein guilty of commission of offence punishable under NDPS Act. Both were awarded sentence of imprisonment of 3 years. They did not file appeal before Appellate Court, thus, conviction awarded by the Trial Court became final. They have already undergone awarded sentence. The respondent on the basis of

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registration of FIR initiated departmental proceedings against the petitioners. Both the petitioners came to be dismissed from service and they unsuccessfully preferred appeal before Appellate Authority which was followed by revision/representation before higher authorities. The petitioners through instant petitions are assailing orders of dismissal.

5. Mr. K.G. Chaudhry, learned counsel for the petitioners submits that respondent authority while passing order of dismissal was required to consider mandate of Rule 16.2 (1) of Punjab Police Rules, 1934 (for short '1934 Rules'). The Disciplinary Authority while dismissing the petitioners from service did not consider their length of service and entitlement to pension. They have been mechanically dismissed from service.

In support of his contention that Disciplinary Authority was duty bound to consider length of service of petitioners and their entitlement to pension, Mr. Choudhry relies upon judgment of Division Bench of this Court in *SI Surinder Singh Vs. State of Punjab and others 2008 (4) SCT 72* as well as judgment of this Court in *CWP No.8505 of 2018* titled as *Surinder Singh Vs. State of Punjab and others*.

He further submits that a Police Officer despite conviction cannot be deprived of his valuable right of pension. The petitioners were awarded sentence of 3 years and there are instances where respondent has released pension despite conviction of more than 3 years. To buttress his contention, he places reliance upon judgment of this Court in *CWP No.14327 of 2018* titled as '*Ajit Singh (deceased) through his L.R. Jasvir Kuar Versus Accountant General (A&E), Punjab and others*' and '*Prem Chand Dhand Vs. State of Punjab and another*' 2019 (2)

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SCT 662. The respondent has further wrongly relied upon past record of the petitioners while passing order of dismissal from service.

6. Per contra, learned State counsel submits that petitioners were involved in a serious offence wherein allegation of leaking of secret information of the department was alleged against the petitioners. Though, the order of dismissal was passed prior to the order of conviction yet the impugned order cannot be said to be illegal or arbitrary as petitioners were ultimately convicted by order dated 19.02.2016. He further submits that petitioners were Police Officers and they were governed by 1934 Rules which are in the form of complete code. Sub-Rule (2) of Rule 16.2 of 1934 Rules categorically provides that if an officer is convicted, he is liable to be dismissed. There is no discretion with the authorities to retain an officer who has been convicted and sentenced to imprisonment on a criminal charge. The Revisionary Authority has taken into consideration the mandate of Sub-Rule (2) of Rule 16.2 of 1934 Rules while passing impugned order dated 26.09.2016.

7. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

8. The conceded position emerging from the record is that petitioner in 1989 was posted with the respondent-department as Constable. An FIR dated 29.10.2012 under NDPS Act, 1985 came to be registered against the petitioner. On the registration of FIR, departmental proceedings were initiated against the petitioner and vide order dated 26.07.2013, he was dismissed from the service. He preferred an appeal against the order of dismissal which came up for consideration before DIG, Jalandhar who vide order dated 26.04.2016 dismissed the appeal of

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the petitioner. The petitioner was convicted in the criminal trial by judgment dated 19.02.2016.

9. The petitioner preferred revision against the appellate order which came up for consideration before Inspector General of Police, Jalandhar who while noticing the fact that petitioner stands convicted by the Trial Court vide order dated 19.02.2016 held that as per mandate of Rule 16.2 (2) of 1934 Rules, a convicted person cannot be apart of organization and he shall be dismissed from the service. The relevant extracts of the order dated 26.09.2016 read as:

“I have gone through the relevant record and have also heard the petitioner in person. I have found on record that departmental enquiry against petitioner has been conducted as per rules and he has been indicted on the basis of convincing and irrefutable evidences. Being a police officer, the primary duty of petitioner was to apply the writ of law and take action against law breakers. But contrary to this, the petitioner himself was found to be involved in drug trafficking which is one of the gravest act of misconduct. The plea of petitioner that he has been released by Hon'ble Court is also incorrect and misleading. The petitioner has enclosed a copy of order dated 19.2.2016 passed by the Hon'ble Court of Shri Jasvir Singh Kang, Judge Special Court, Kapurthala. The order has been perused. As per order, the petitioner has been convicted in case FIR No. 160 dated 29.10.2012 u/s 21/22/61/85 PS Kotwali, Kapurthala for offence u/s 21 of NDPS Act 1985 and he has been sentenced to undergo imprisonment which he has already undergone i.e. three years and pay a fine of Rs.3000/-.

Admittedly, he has filed an appeal against his conviction which is pending decision. As per PPR 16.2(2) if the conduct of an enrolled police officer leads to his conviction n a

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criminal charge and he is sentenced to imprisonment, he shall be dismissed : Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishing other than of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the government from time to time in this behalf

In the present case, appeal of petitioner is admittedly pending and neither he has been acquitted nor his conviction in criminal case has been quashed. A convicted person cannot be part of an organization whose primary duty is to apply writ of law. Hence, the revision petition is rejected being devoid of merit and order passed by appellate authority is upheld.

A copy of the order be supplied to the petitioner free of cost against acknowledgement. Record be returned and file be consigned to record keeper. The petitioner be also informed that he has right to prefer representation against this order if he wishes to do so within a period of thirty days from the receipt of a copy of this order to next higher authority i.e. the Director General of Police, Punjab, Chandigarh as provided under Rule 16.30 and 16.32 of the Punjab Police Rules.

[Emphasis Supplied]

10. The petitioner is claiming that Disciplinary Authority while passing order of dismissal was bound to consider the length of service and petitioner's entitlement of pension. He place reliance upon a Division Bench judgment of this Court in *SI Surinder Singh (Supra)*. The relevant extracts of the judgment read as:

“9. The aforementioned statement of law would help the

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petitioner only to the extent that in the departmental inquiry no findings have been recorded that the misconduct of the petitioner is gravest in terms of Rule 16.2(1) of the Rules, as interpreted by Hon'ble the Supreme Court in Ram Singh's case (supra). It appears that the rule making authorities have intentionally used the expression 'gravest act of misconduct' to constitute a basis for the order of dismissal because such order impinges upon the pensionary rights of a delinquent employee, who might have put in a long length of service. The first part of the rule as interpreted in Para 7 of the judgment in Ram Singh's case (supra), would apply to the case of the petitioner because there is no finding recorded that the absence from duty by the petitioner from 17.4.1992 till 17.9.1993, when the order of dismissal was passed, was a gravest act of misconduct proving incorrigibility. It is further worthwhile to notice that neither the punishing authority nor any other authorities like appellate authority or revisional authority, has followed the mandatory provision of considering the length of service of the petitioner, who had joined as Constable on 10.10.1971 and remained in service till 1993. The service rendered by him does not show that he had earlier committed misconduct or he is a habitual absentee. He was sent on deputation where he earned repeated promotions. The problem started only when the petitioner was repatriated from the CID Department to his parent PAP Department, vide order dated 16.3.1992 because he was expected to join on the post of Head Constable. The petitioner while on deputation with the CID Department had earned promotions to the post of Head Constable, Assistant Sub Inspector and Sub Inspector. That appears to be the basic reason for absence from duty. However, it is established that the authorities have violated the requirement of Rule 16.2(1) of the Rules, which has been held to be mandatory.

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13. *The case of the petitioner would be covered by the aforementioned principle, inasmuch as, the disciplinary and punishing authority has ignored from consideration while passing the order of dismissal, the mandatory requirement of Rule 16.2(1) of the Rules. The petitioner has rendered meritorious service from 10.10.1970 to 16.3.1992 and, therefore, the order of dismissal would not be sustainable.*

14. *In view of the above and keeping in view the peculiar facts and circumstances of this case, we deem it just and appropriate to set aside the order of dismissal, dated 17.9.1993 (P-1) and consequential orders dated 14.12.1993 (P-6) and 18.3.1994 (P-7). The petitioner has already completed 20 years of service till the date of his dismissal as he has joined as Constable on 10.10.1971, and in terms of direction issued by Hon'ble the Supreme Court in Inder Singh's case (supra), he would be entitled to retire voluntarily from the CID Department on the post of Sub Inspector w.e.f. the date he has been dismissed from service. Accordingly, the CID Department of the Punjab Police through respondent No. 1 is directed to pass an order of voluntary retirement of the petitioner from the post of Sub Inspector by treating him in service till 17.9.1993 nay 30.9.1993. Accordingly, his pension and other retiral benefits be calculated and paid to him alongwith his arrears of salary. In the facts and. circumstances of the case, the petitioner is held entitled to payment of simple interest @ 9% per annum on the delayed payment from the date the judgment in Inder Singh's case was delivered i.e. 3.10.1997, till the date of actual payment. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order."*

From the perusal of above cited judgment, it comes out that said judgment is not applicable to the facts of the present case because

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the said judgment deals with the requirement of Rule 16.2 (1) of 1934 Rules and in the said case, petitioner was dismissed on account of absence from duty whereas petitioner in the present case was dismissed from service on account of involvement in criminal offence.

11. It is settled proposition of law that appeal/revision is considered as a continuation of the proceedings of the original case, thus, the arguments of the petitioner need to be examined in the light of Rule 16.2 of 1934 Rules, which is reproduced as below:-

“16.2. Dismissal. - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed :

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction

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and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

12. The question of interpretation of Rule 16.2 of 1934 Rules came up before the Apex Court in **State of Punjab v. Ram Singh, (1992) 4 SCC 54** wherein it was held that an officer may be dismissed in two situations i.e. on account of gravest misconduct or cumulative effect of continued misconduct. A single act may constitute gravest misconduct. The colour of gravest misconduct must be gathered from the surroundings or attending circumstances. The relevant extracts of the said judgment read as:

“7. Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are gravest acts of misconduct, since it impinges upon the pensionary rights of the delinquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under General Clauses Act singular includes plural, “act” includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word “acts” would include singular “act” as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation that ensues from the offending ‘act’. The colour of the gravest act must be gathered from the surrounding or

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attending circumstances. Take for instance the delinquent who put in 29 years of continuous length of service and had unblemished record; in thirtieth year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. *The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale and may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of re-employment, if any, may meet the ends of justice. Take for instance the delinquent officer who is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service.*

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Therefore, taking into account his long length of service and his claim for pension he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word 'or' cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct".

13. A conspectus of Rule 16.2(1) of 1934 Rules and of afore-cited judgment reveals that a police officer may be dismissed from service subject to following circumstances and conditions:

1. *If the police officer is accused of gravest misconduct;*
or
2. *The cumulative effect of continued misconduct proves that police officer is incorrigible and completely unfit for the service;*
3. *The authority passing order shall consider length of service as well as claim of pension;*
4. *Having regard to length of service and claim of pension, an employee instead of dismissal from service may be compulsorily retired.*

14. The entire case of the petitioner is founded upon reading of Sub-Rule (1) of Rule 16.2. The case of the petitioner is not covered by Sub-Rule (1) whereas it falls within four corners of Sub-Rule (2) of said Rule. Sub-Rule (1) is a general rule which permits authorities to dismiss an officer on the occurrence of an event as contemplated therein. The said Rule is an open ended rule. It is a discretionary provision and discretion is always subject to judicial review. An officer may or may not be guilty

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of gravest misconduct. It is always subject to judicial review to ascertain whether the officer is guilty of gravest misconduct or not. The question whether an officer is guilty of cumulative effect of misconduct proving incorrigibility and complete unfitness is also a question of fact and has always remained subject matter of judicial review. Sub-Rule (2) carves out an exception to Sub-Rule (1) and in a way it is a proviso to Sub-Rule (1) which leaves no discretion with authorities and enjoins that an officer shall be liable to be dismissed if he has been convicted and sentenced to imprisonment on a criminal charge.

15. The expressions used in Sub-Rule (2) needs to be noticed. The legislature has used expression '*shall*' which indicates that there is no discretion with authorities in case of conviction. Expression '*criminal charge*' is preceded by expression '*on a*' which means that nature of charge is irrelevant. The officer may be guilty of an offence either committed in the discharge of duty or having no bearing with his official duties. In every case, where an officer is convicted and sentenced to imprisonment on a criminal charge, he is liable to be dismissed. The proviso to said sub-rule is also important to be noticed. The proviso provides that if conviction is set aside in appeal or revision, the appointing authority shall review the case keeping in view the instructions issued by the Government.

16. It would also be relevant to notice Rule 16.3 of 1934 Rules. It provides that if a police officer is acquitted by criminal Court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case. Rules 16.3 of 1934

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Rules is reproduced as below:

“16.3. Action following on a judicial acquittal. –

(1) When a Police Officer has been tried and acquitted by a criminal court he shall be not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless

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(a) the criminal charge has failed on technical grounds; or

(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of Deputy Inspector General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

17. The acquittal from criminal proceedings does not automatically entitle immunity from departmental action. A police officer

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may be subjected to departmental punishment despite acquittal in criminal proceedings as per exceptions carved out in Rule 16.3 of 1934 Rules. If acquittal is not based upon exceptions carved out in Rule 16.3 of 1934 Rules, a police officer is entitled to immunity from departmental action. The natural corollary is that if an officer is punished in criminal proceedings, he should be departmentally punished.

18. Learned counsel for the petitioner while placing reliance upon judgment of this Court in *Ajit Singh (supra)* contends that a Police Officer despite conviction cannot be deprived of his valuable right of pension. This Court in *Ajit Singh (Supra)* directed the respondent to take decision on the right of the family pension of the wife of the deceased employee. The Court has relied upon Rule 2.1 and 2.2 of Punjab Civil Service Rules Volume II, Part I. As per said rules, despite conviction an employee cannot be denied 100% pension. He can be partially denied pension and not entire amount. The relevant extracts of the judgment read as:

"8. Rule 2.1 and 2.2 read as under:-

"2.1. Every pension shall be held to have been granted subject to the conditions contained in chapter VII of these rules.

2.2. (a) Recoveries from pensions.-(a) Future good conduct is an implied condition of every grant of a pension. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.

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In a case where a pensioner is convicted of a serious crime, action shall be taken in the light of the judgment of the court relating to such conviction.

In a case not covered by the preceding paragraph, if the Government considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order,-

(i) serve upon the pensioner a notice specifying the action proposed to be taken against him and the grounds on which it is proposed to be taken and calling upon him to submit, within sixteen days of the receipt of the notice or such further time not exceeding fifteen days, as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(ii) take into consideration the representation, if any, submitted by the pensioner under sub clause (i).

Where a part of pension is withheld or withdrawn the amount of such part of pension shall not ordinarily exceed one third of the pension originally sanctioned nor shall the amount of pension left to the pensioner be ordinarily reduced to less than three thousand five hundred rupees per month, having regard to the consideration whether the amount of the pension left to the pensioner, in any case, would be adequate for his maintenance.

In a case where an order under clause (i) above is to be passed by the Government, the Public Service Commission shall be consulted before the final order is passed.

9. A perusal of the above said rules would go on to show that the right as such to stop the pension on account of the conviction of a serious crime, action had to be taken in the light of the judgment of the Court relating to such conviction. In case of pensioner to be held guilty of grave misconduct, then notice is to be served upon him satisfying the action, which is to be proposed and ask him to submit

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reply and after taking into consideration the representation, pension can be reduced partly, which is not to exceed 1/3rd of the pension originally sanctioned. Similarly, the amount of pension left to the pensioner shall not be reduced to less than Rs.3,500/-, in any case, so that it is adequate for his maintenance. Thus, it is apparent that recovery from pension cannot be made of the amount exceeding 1/3rd of the pension originally sanctioned and the amount of pension left to the pensioner be reduced to less than Rs.3,500/-.

10. As noticed in the present case, provisional pension as such initially had been sanctioned in favour of the employee to the tune of Rs.11,440/-. In view the above reproduced rules, it was incumbent upon the concerned authority to have taken these factors into mind before passing the impugned order, whereby the pension was totally stopped against the provisions of rules as such.”

From the perusal of afore-cited judgment, it comes out that said judgment is based upon Rule 2.1 and 2.2 of Punjab Civil Services Rules. The said rules are applicable where conviction takes place after retirement. The case of the petitioners is not of conviction after retirement whereas it is case of conviction during service, thus, aforesaid rules are not applicable to the petitioner. The petitioner during his service was dismissed from service. An employee who is dismissed from service is not entitled to pension, though, he can claim compassionate allowance under Rule 2.5 of Punjab Civil Service Rules (Volume II). The petitioner as noticed in earlier paragraphs, was rightly dismissed from service, thus, he cannot be extended pension on the basis of Rule 2.1 and 2.2 of Punjab Civil Services Rules.

19. In the wake of mandate of Sub-Rule (2) of Rule 16.2 of

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Punjab Police Rules, 1934, this Court does not find any infirmity in the impugned orders, thus, refrain to ask the authorities to reinstate the petitioner.

20. In the wake of aforesaid discussion and findings, this Court is of the considered opinion that present petitions being bereft of merit deserve to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

26.02.2024

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>