

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.12611-2014

Date of Decision:16.09.2015

ASI BALWANT SINGH (RETD.)

....Petitioner

VERSUS

STATE OF PUNJAB & ORS.

....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Manish Dadwal, Advocate, for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

P.B BAJANTHRI, J. (Oral)

In this writ petition, the petitioner has sought for quashing of order dated 25.03.2014 vide Annexure P-4 and letter dated 05.05.2014 vide Annexure P-7, by which commutation of pension of the petitioner was calculated and sanctioned. In so far as Annexure P-7 is concerned, it relates to rejection of petitioner's request for cancellation of commutation. The petitioner attained the age of superannuation and retired from service on 30.04.2005 from the post of Assistant Sub Inspector of Police, State of Punjab.

The petitioner is stated to be involved in a criminal case under the Prevention of Corruption Act. Due to pendency of the criminal proceedings his retiral benefits were not settled timely. The petitioner was

discharged on 01.06.2006 in the criminal proceedings. The same was subject matter before this Court in a criminal appeal and the appeal was allowed in favour of the State of Punjab. Feeling aggrieved by the order passed in the criminal appeal, petitioner preferred criminal appeal No. 96 of 2010 before the Apex Court, which was allowed on 09.01.2013. In this background, the retiral benefits of the petitioner were settled in the year 2013-2014.

On 25.03.2014, retiral benefits were settled while fixing commuted value of pension. Consequently petitioner requested the respondents for cancellation of commutation on 07.04.2014 as it was disadvantage to him. Request for cancellation of the commutation value of pension of the petitioner was rejected vide Annexure P-7 dated 05.05.2014. Petitioner aggrieved by the calculation of the commutation value of pension and rejection of his request seeking for cancellation of commutation value of pension, he preferred this petition.

Learned counsel for the petitioner submitted that on 25.03.2014 commutation value of pension was calculated and fixed. Immediately thereafter, petitioner submitted for cancellation of calculation and fixation of commuted value of pension on 07.4.2014 and it was rejected on 05.05.2014. In the meanwhile the respondent process the commutation

value of the pension to the bank on 30.07.2014. For correctness of the Annexure P-7 i.e. rejection of petitioner's request for cancellation of commutation value of pension, it is relevant to read Rule 11.17 of Punjab Civil Services Rules Volume 11 which reads as follows:

“11.17 A commutation once applied for, sanctioned and given effect to, cannot be rescinded, i.e., the portion of a pension commuted cannot be restored on refund of the capitalized value.”

In view of the aforesaid provision, the respondents were required to do two things: one is sanction and another is giving effect. No doubt sanction was ordered on 25.03.2014 but in so far as giving effect is concerned, they have communicated to the concerned bank on 30.07.2014 for depositing amount. However, till date the amount has not been deposited in the bank, which is not disputed by the learned State counsel on instructions.

The learned counsel for the petitioner further contended that while commuting value of pension of the petitioner, Rule 11.10 has not been complied with. Rule 11.10 read as follows:

“11.10 The applicant may withdraw his application by written notice dispatched at any time before medical examination is due to take place, but this option shall expired on his appearance before a medical authority:

Provided that, if the medical authority directs that his age for the purpose of commutation shall be assumed to be grater than his actual age, the applicant

may withdraw his application by written notice dispatched within two weeks from the date on which he receives intimation of the revised sum payable on commutation or, if this sum is already stated in the sanctioning order within two weeks from the date on which he receives intimation of the finding of the medical authority.

If the applicant does not withdraw in writing his application within the period of two weeks prescribed above, he shall be assumed to have accepted the sum offered.”

Learned State counsel has not controverted this argument regarding compliance of Rule 11.10. Having regard to the facts and circumstances that commutation value of the pension of the petitioner was sanctioned on 25.03.2014, the petitioner's request for cancellation of commutation value of pension dated 07.04.2014 read with non-depositing of commutation value of pension of the petitioner in the concerned bank till date. Therefore rejection of the petitioner's request for commutation value of pension dated 05.05.2014 is set aside. The petitioner is permitted to cancel the commutation value of pension dated 25.03.2014. Accordingly, I declare that commutation value of pension dated 25.03.2014 vide Anneuxre P 4 is null and void, due to non-compliance of Rule 11.10 and portion of Rule 11.17 as on 25.03.2014.

Accordingly, the writ petition is allowed. Respondents are directed to restore the pension ignoring the commuted value of pension

pursuant to order dated 25.03.2014 vide Annexure P-4 and if any recovery has been made by the respondents, the same shall be refunded to the petitioner within eight weeks.

16.09.2015

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**(P.B BAJANTHRI)
JUDGE**