

**IN THE HIGHT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.21204 of 2014
Decided on: 15.12.2015

Uggar Sain Bansal

... Petitioner

Versus

State of Punjab & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.K.Arora, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

G.S.Sandhawalia, J.(Oral)

The petitioner challenges the order dated 01.01.2013 (Annexure P-5) whereby the pension of the petitioner has been stopped on account of conviction recorded in FIR No.166 dated 31.07.2007 by the Addl. Sessions Judge, Ambala registered under Sections 304-B/34 IPC and 498-A IPC. Challenge has also been raised to the appellate order dated 20.05.2014 (Annexure P-7) whereby the appeal of the petitioner has been dismissed by respondent No.1.

A perusal of the paper book would go on to show that the petitioner retired as Inspector on 30.09.2005 after rendering 35½ years of service from the department of Cooperation. After 2 years of his retirement, FIR was lodged on 31.07.2007 on account of the death of his daughter-in-law – Preeti Gupta. On account of conviction being recorded on 11/13.07.2011, the impugned order was passed by respondent No.2 – Registrar, Cooperative Societies on account of complaint being filed by the father of the deceased. Vide impugned order reference was made to the Government memo dated

30.11.2012 for stoppage of pension. The said memo has been attached as Annexure R-1/T by the State, which reads as under:

"With reference to the above cited subject, it is intimated that Sh. Uggar Sain Bansal, Inspector (Retd.) stands convicted, his pension may be stopped.

This issues on the advice of Finance Department (Finance Pension Policy and Coordination Branch)."

The petitioner thereafter filed an appeal to respondent No.1 taking the plea that his sentence has been suspended by this Court and he has been bailed out and is a senior citizen and in need of the pension and on the verge of starvation. The minor grand-daughter was also in the custody of the petitioner and therefore, pension was required. As noticed, appeal has been dismissed by passing the following order:

"With regard to above cited subject, you are intimated that matter regarding order passed by the Hon'ble Addl. Sessions Judge, Ambala dated 11.07.2011 has been considered with the Finance Department under Rule 2.2 (a) of Punjab Civil Services Rules, Volume-2. As per the advice received from the Finance Department, the Registrar, Cooperative Societies, Punjab was written to stop your pension.

Your representation/appeal for restoration of pension has been considered by the competent authority and it has been decided that it is not appropriate to restore your pension. In this regard, no separate order has been issued by this department."

Counsel has accordingly contended that under Rule 2.2(a) of Punjab CSR, Vol.-II the government has right to withdraw or withhold the pension taking into consideration the judgment of the Court whereby conviction has been recorded. It is accordingly,

submitted that neither the order dated 30.11.2012 shows any such consideration nor the appellate order dated 20.05.2014 shows any such reasoning having been recorded. It is thus, submitted that the order imposing the harsh penalty of stoppage of full pension is not justified.

Rule 2.2(a) of General Provisions relating to grant of pensions reads as under:

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

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 fifteen 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 forty 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.

The decision of the Government on any question of withholding or withdrawing the whole or any part of pension under this rule shall be final and conclusive.

Explanation: - *In this rule, the expression "serious crime" includes crime involving an offence under the Official Secrets Act, 1923 (19 of 1923); and the expression "grave misconduct" includes the communication or disclosure of any secret, official code or pass-word or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government so as to prejudicially affect the interests of the general public or the security of the State."*

It is further brought to the notice of this Court that even the wife of the petitioner was a government employee with the Education Department. Vide order dated 01.07.2013 (Annexure P-8) 5% cut in the pension was imposed by the Principal Secretary, School Education, Punjab. It is rightly submitted that the petitioner was identically placed as his wife and the State on one hand in case of his wife has imposed only 5% cut whereas on the other hand in the case of the petitioner imposed 100% cut. This action also on the face of it seems to be discriminatory and without any rationale, keeping in mind

that normally cut in pension shall not ordinarily exceed one third and the adequateness of maintenance is to be kept in mind.

In similar circumstances, the Apex Court in **Rameshwar Yadav vs. Union of India and anr., 1989(Sup2) SCC 565** considering the Pension Payment Instructions 1973 and Pension Regulations Part I 1961 pertaining to a Army man held that competent authority is to apply its mind as to what is the amount of pension, which is to be cut and reasons are to be recorded why the entire pension necessarily has to be suspended. The order whereby the complete pension was suspended, was accordingly modified. The relevant observation reads as under:

"These provisions require the competent authority to apply its mind to the question as to whether the pension should be suspended in whole or in part. While determining this question the Disbursing Officer has to consider the nature of the offence, the circumstances in which offence might have been committed and other allied matters. The officer has also to consider the hardship on the dependants of the person, if the payment of pension is suspended. In the instant case, the impugned order does not show that the competent authority applied its mind to the question as to whether the whole or a part of the pension should be suspended, instead, the authority mechanically issued orders for the suspension of the entire amount of pension for the period of imprisonment of the petitioner.

That apart, the amount of pension granted to the petitioner was Rs.108 which is a paltry amount and which in all likelihood may not be sufficient to sustain the petitioner's family members. The competent

authority did not address himself to any one of these aspects. No reasons are recorded as to why the entire pension was necessary to be suspended. The impugned order is therefore unsustainable in law."

In similar circumstances this Court in **Ramesh Kumar vs. State of Punjab and ors., 2015(3)SCT 534** also while keeping in mind Rule 2.2(b) of the Rules which pertains to the cut in pension on account of grave misconduct or negligence also held that a fresh order be passed since no such finding had been recorded nor any reason had been given regarding the withholding of the pension, which should not ordinarily exceed 1/3rd of the pension originally sanctioned. Reliance was also placed upon the judgment of the Full Bench in **Dr. Ishar Singh vs. State of Punjab & anr., 1994(1) SCT 563**. The relevant observations read as under:

"In the present case, before stoppage of pension of the petitioner, it was incumbent upon the competent authority to record a definite finding that the petitioner has been found guilty of gravest misconduct. On perusal of impugned order, it is clear that no such finding has been recorded and no reason, whatsoever, has been mentioned, whereas, it is mandatory in terms of "note" to the "explanation" to clause (b) of Rule 2.2 of the Punjab Civil Services Rules that with-holding of pension should not ordinarily exceed one third of the pension originally sanctioned. It is to be seen by the competent authority as to whether the amount of pension left to the pensioner in any case would be adequate for his maintenance. The impugned order has been passed without taking into consideration the note given with the explanation to Clause (b). The petitioner has been

convicted and sentenced for a period of one year but the casual approach of the competent authority is also apparent from the fact that in the Show Cause Notice, he has been shown to have been convicted for a period of two years. Neither 35 years of long service of the petitioner has been considered nor anything has been said about the work and conduct of the petitioner. Nothing has been brought to the notice of the Court by learned counsel for the respondent-State to show that even a complaint was there against the petitioner during his 35 years of service. Forfeiture of entire pension amounts to major punishment, which has been awarded without conducting any inquiry. Moreover, the appeal against the judgment of conviction and order of sentence is still pending and sentence of the petitioner has also been suspended. The criminal judicial proceedings have even not attained finality.

In Mohan Singh's case (supra), the petitioner was convicted in a criminal case under the PC Act and during trial, he got retired from service but he was granted provisional pension. There was cut of 25% in the provisional pension under Rule 2.2(a) of the Punjab Civil Services Rules. The cut imposed was without issuing any Show Cause Notice and as such, the impugned order of cut in pension was quashed and the writ petition filed by him was allowed. However, the liberty was granted to the respondents to pass appropriate order in accordance with law.

The Full Bench judgment of this Court in Dr. Ishar Singh's case (supra) is relevant for resolving the controversy, in hand, wherein, it has been held that the State is liable to pay pension and it cannot escape

its liability. The retiree would be entitled to 100% provisional pension till the Government finally sanctions pension or imposes any cut in pension. It has also been held that merely on pendency of enquiry, the pension cannot be withheld."

Keeping in view the above circumstances, this Court is of the opinion that fresh reconsideration is required by respondent No.1 on the issue. The order dated 30.11.2012 (Annexure R-1) also does not show any such application of mind regarding the grave misconduct or serious crime, which has been provided under Rule 2.2(a) of the Rules. All these aspects were liable to be considered by the government as per the provisions of Rule 2.2(a) of the Rules, which have not been done as noticed above.

Resultantly, this Court is of the opinion that the said orders are not sustainable on the face of the record and are liable to be quashed. Accordingly, same are set aside. However, liberty is given to respondent No.1 to re-decide the issue regarding cut in pension after giving an opportunity of hearing to the petitioner. Needful be done within a period of three months from the date of receipt of copy of the order.

The writ petition stands disposed of.

15.12.2015
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(G.S.SANDHAWALIA)
JUDGE