

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.21541 of 2014

Date of Decision: 21.05.2015

Ramesh KumarPetitioner

Versus

State of Punjab and othersRespondents

CWP No.21291 of 2014

Gurmail SinghPetitioner

Versus

State of Punjab and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Gagneshwar Walia, Advocate
for the petitioner.

Mr. P.P.S. Thethi, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

By this judgment, two petitions bearing **CWP Nos.21541 of 2014** and **21291 of 2014** shall stand disposed of as common questions of law and issue are involved. However, for the sake of convenience, the facts are being derived from **CWP No.21541 of 2014**.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to release the pensionary benefits of the petitioner. A further prayer has also been made for quashing of order dated

12.12.2013, whereby, the pension of the petitioner has been ordered to be stopped permanently.

Briefly, the facts of the case, as made out in the petition, are that the petitioner was initially appointed as a Clerk on 07.05.1974 and thereafter, he was promoted as *Havaldar/Quarter Master/Sergeant* on 14.05.1987. He was further promoted as *Platoon Commander* on 22.05.1992 and as Company Commander on 26.08.2008. However, during the service period of the petitioner, an FIR No.37 dated 08.06.1996 was registered under Sections 409, 419, 467, 468, 471 and 120-B IPC read with Sections 13(1)(D) and 13(2) of the Prevention of Corruption Act, 1988 (here-in-after referred to as 'the PC Act'). On the basis of aforesaid FIR, charges were framed against the petitioner and ultimately, he was convicted and sentenced to undergo imprisonment for a period of one year with fine vide judgment dated 30.03.2013 passed by the Additional Sessions Judge, Ludhiana.

The petitioner preferred an appeal against the said judgment of conviction and order of sentence before this Court and the appeal was admitted and sentence of the petitioner was suspended vide order dated 22.05.2011. Meanwhile, during pendency of the criminal proceedings, the petitioner got retired from service on attaining the age of superannuation on 30.04.2009. However, 90% of the total pension of the petitioner was sanctioned by considering his length of service. Subsequently, vide order dated 18.06.2013, the payment of pension was stopped from the date of decision of the case by the trial Court. A Show Cause Notice was also issued to the petitioner proposing punishment of stoppage of full provisional pension on permanent basis from the date of decision of the case by the trial Court on 24.10.2013, to which, the petitioner filed detailed reply. However, respondent No.2 passed an order dated 12.12.2013,

whereby, the payment of pension to the petitioner on permanent basis w.e.f. 30.03.2013 i.e. with retrospective effect was stopped under provisions of Rule 2.2(b) and (c) of Punjab Civil Service Rules, Volume-II (here-in-after referred to as the "Punjab Civil Service Rules").

Learned counsel for the petitioner submits that the impugned order of stoppage of payment of pension to the petitioner with retrospective effect permanently is not only arbitrary and illegal but is also against the mandate of the provisions and that the punishment awarded to the petitioner is also on the excessive side. Learned counsel also submits that the petitioner was having almost 35 years of service and he was not even named in the FIR. He further submits that the petitioner was involved during investigation and supplementary charges were framed against him by the trial Court. Learned counsel also submits that the appeal against the judgment of conviction is still pending. The impugned order of stoppage of pension with permanent effect is contrary to the provisions and reply to Show Cause Notice has not even been considered. He also submits that before stopping the pension, it was incumbent upon the competent authority to come to a definite conclusion that the petitioner has been found guilty of a gravest misconduct but no such finding was recorded by the competent authority. Learned counsel also submits that in terms of note to explanation to Clause (b), it has specifically been mentioned that with-holding of pension should not ordinarily exceed one third of the pension originally sanctioned and it is to be seen as to whether the amount of pension left to the petitioner is adequate for his maintenance or not. Learned counsel also submits that there is no consideration by the competent authority with regard to aspect of adequacy of the amount of pension and as such, the impugned order is totally non-speaking. Learned counsel further submits that the petitioner has been convicted and

sentenced for a period of one year and the appeal filed by him is still pending. At the end, learned counsel for the petitioner submits that the stoppage of total pension amounts to major punishment, which cannot even be imposed without conducting any inquiry in view of provisions of Punjab Civil Service (Punishment and Appeal) Rules.

Learned counsel for the petitioner has relied upon the judgment of this Court in case ***Bharat Sanchar Nigam Limited vs Employees' Provident Fund Appellate Tribunal and another 2013(1) SCT 453*** as well as judgment of Full Bench of this Court in case ***Dr. Ishar Singh vs State of Punjab and another 1994(1) SCT 563***, in support of his contentions.

Learned counsel for the respondent-State, at the very outset, submits that co-accused of the petitioner, namely, Chetan Singh has approached this Court by way of filing ***CWP No.12977 of 2014*** and the same has been dismissed vide order dated 09.07.2014. The case of the present petitioner is at par with case of co-accused and hence, the present petition is liable to be dismissed on this ground. Learned State counsel also submits that the petitioner was found to be involved in a serious offence under the PC Act and subsequently was convicted. He also submits that the pension of the petitioner has been stopped after giving him a proper opportunity of hearing and by serving a Show Cause Notice upon him. Even the impugned order has been passed as per provisions of law.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

Admittedly, the petitioner got retired from service on 30.04.2009 on attaining the age of superannuation. It is also not disputed that during service of the petitioner, an FIR No.37 dated 08.06.1996 was

registered under Sections 409, 419, 467, 468, 471 and 120-B IPC read with Sections 13(1)(D) and 13(2) of the PC Act. The petitioner was convicted and sentenced by the trial Court to undergo imprisonment for a period of one year along with fine. Thereafter, the appeal filed by the petitioner stands admitted and his sentence has been suspended. On retirement, 90% of total pension of the petitioner was sanctioned on the basis of his length of service. Subsequently, punishment of stoppage of full provisional pension on permanent basis was awarded to the petitioner from the date of decision of the case by the trial Court. It is also not disputed that the petitioner was given a Show Cause Notice before awarding punishment of stoppage of full provisional pension on permanent basis, to which, he filed detailed reply. The order of stoppage of payment of pension on permanent basis with retrospective effect w.e.f. 30.03.2013 under Punjab Civil Service Rules, is subject matter of challenge in the present petition.

Rule 2.2(b) and (c) of Punjab Civil Services Rules, Volume-II is relevant for resolving the controversy in dispute and the same is reproduced as under :-

“ Rule 2.2:

(b) The Government further reserve to themselves the right of with-holding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement provided that -

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final

retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment –

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and the Public Service Commission should be consulted before final orders are passed.

Explanation:- For the purpose of this rule –

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted –

(i) in the case of criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and

(ii) in the case of a civil proceeding, on the date of

presentation of the plaint in the court.

Note :- As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clause (b) should not ordinarily exceed one third of pension originally sanctioned, including any amount of pension to be withheld, regard should be had to the consideration whether the amount of the pension left to the petitioner in any case would be adequate for his maintenance.

2.2(c)(1) Where any departmental or judicial proceedings is instituted under clause (b) of rule 2.2 or where a departmental proceedings is continued under clause (i) of the proviso there to against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders therein.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority.

(2) Payment of provisional pension made under sub clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than

the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

On perusal of above said rule, it is apparent that the pension in part or whole can be stopped, in case, an employee is found guilty of grave mis-conduct or negligence during the period of his service.

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 withholding 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.

The observations of the Full Bench of this Court as made in **Dr. Ishar Singh's** case (supra) in para Nos.31, 34, 53 and 59 are reproduced as under :-

“31. The pension can be affected for the reasons provided by statutory rules. The pensionary or retiral benefits could not be refused solely on the ground of initiation or intending initiation of disciplinary proceedings. The finding of misconduct envisaged by rules is a pre-condition for withholding or withdrawing pension. Pension can be affected but the reduction has to be commensurate with the correlation to the gravity of the charge attributed. Pension can only be adversely affected after show-cause notice is served and finding

returned in accordance with the procedure laid down by the statutory rules as well as keeping in view the principles of natural justice. The pension cannot be withheld retrospectively though it can be done prospectively. Concept of grant of provisional pension is provided under two contingencies viz. (i) when grant of gratuity or pension is still under consideration of the authority before it finally sanctioned the pension. The Government was unable to finalise the pension and finally determine the admissible pension for some reasonable cause and (ii) where some disciplinary proceedings are pending on the date of superannuation and they are continued after retirement.

32 and 33. xxx xxx xxx xxx

34. While interpreting pension rules one has to keep in mind that justice is constant. Its object and purpose is to render each one his due. The prime consideration of pension is its social welfare nature. Attempts must be made not to negate what the pension rules intend to achieve. Though sympathy may be irrelevant in the interpretation of the rules yet the fact of an interpretation resulting in depriving a person of his pension, and thereby rendering the purpose of pension rules as **non-est** cannot be lost sight of. Since the pension rules provide for alleviating hardship to the retiree, rule of interpretation according to spirit and not to the letters should be adhered to as far as possible. Law is for deviating hardship and not to result in hardship. It would be misplaced (sic) to mention that it is a serious matter to deprive a person his source of livelihood when one's physical and mental faculties have grown weak because of age and he cannot withstand strenuous work to earn his bread.

35 to 52. xxx xxx xxx xxx

53. On comprehensive reading of Rules 2.2(a), 2.2(b) and 2.2(c), it emerges that the State preserves to itself

the right to withhold or withdraw pension or any part of it on the happenings of circumstances imbibed in the statutory rules. Further on carefully and assiduously examining the arguments, it is quite clear that by providing Rule 2.2 Govt. has preserved its right to adversely affect the pension after the person has retired and pension has been granted to him. It provides that the pension can only be withheld or withdrawn if the pensioner after his retirement is found to be guilty of grave misconduct or has been convicted of a serious crime. Summary procedure for affecting the pension adversely has been provided by this sub-rule. The legislature has designedly desired by enacting statutory provisions that ordinarily where part of pension is withheld or withdrawn, it should not exceed 1/3 of the pension of originally sanctioned with a further limit that the pension cannot be reduced to less than Rs.40/- per month. Rules make it incumbent and impose a statutory duty on the authorities that while applying cut to pension, it should be kept in view, that the pensioner is left with an adequate pension for his maintenance.

54 to 58. xxx xxx xxx xxx]

59. I may venture to put plainly the conditions imposed by Rule 2.2(b). The proceeding can only be instituted with the sanction of the Government. The event relating to which proceedings are proposed to be instituted should not be more than four years only on the date of institution of the proceedings. The authorities are required to proceed in the manner and follow the procedure provided for passing an order of dismissal from service. When judicial proceedings are required to be initiated, it is further enjoined that the Public Service Commission should be consulted. It may be pertinent to notice that the State has provided by statutory rules in the form of notes which would be deemed to be part of the rules (as observed in earlier part of the judgment

and as laid down by the Hon'ble Supreme Court) that ordinarily affected pension shall not exceed 1/3rd of the pension sanctioned. Further emphasis has been laid down that adequacy for maintenance of the retiree would be considered.”

Moreover, an employee is required to be given proper and fair opportunity before passing of any punishment as has been held in **Dr. Ishar Singh's** case (supra), **Bharat Sanchar Nigam Limited** case (supra) and **Mohan Singh's** case (supra).

Similar petition filed by co-accused Chetan Singh was on the ground that no departmental enquiry was conducted before imposing penalty but keeping in view the facts and circumstances of the present case and also the sentence awarded to him, the said petition filed by co-accused cannot be relied upon,.

In view of the facts as mentioned above, there is a merit in the contentions raised by learned counsel for the petitioner and as such, the present petition is allowed and the impugned order dated 12.12.2013 passed by respondent No.2 is set aside being violative of provisions of Rule 2.2 (b) and (C) of the Punjab Civil Service Rules, Volume-II.

However, the respondents are directed to pass a fresh order after complying with the relevant provisions including note with the explanation of the Rules in accordance with law and after giving adequate opportunity of hearing to the petitioner within a period of two months from the date of receipt of certified copy of this order.

21.05.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE