IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2932 of 2012 (O&M)
Date of decision: 28.04.2015

Mukesh Gambhir

............Appellant

Versus

State of Haryana

...........Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

Present: Mr. Raman B. Garg, Advocate,
for the appellant.

Mr. Siddharth Sanwaria, DAG, Haryana,
for the respondent.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment dated 09.04.2012 passed by the District Judge, Faridabad, dismissing his appeal against the judgment and decree dated 25.04.2011 passed by the Civil Judge (Senior Division), Faridabad, whereby suit filed by the plaintiff-appellant for declaration with consequential relief of mandatory injunction, has been decreed.

Mukesh Gambhir-plaintiff (appellant herein) had joined the service of Government of Haryana as an HCS Officer and his first posting was of Excise & Taxation Officer (ETO) w.e.f. 07.06.1979. Later on, he was promoted to higher posts from time to time and his last posting was of

Joint Excise & Taxation Commissioner (appeals), Faridabad. While working as Joint Commissioner, Excise & Taxation, Faridabad Range, he examined the records of M/s Rawat Crain Services, Main Mathura Road, Mujessar, Faridabad and found that the said firm had suppressed purchases and sales to the tune of Rs.28,80,000/-. The said firm was originally assessed by Sh. D.r. Agarwal, ETO for the year 2002-03 under Section 28 (1) of the Haryana Central Sales Tax Act, 1973. M/s Rawat Crane Services, Faridabad had disclosed sales worth Rs.2900/- and purchase worth Rs.2750/- only and stock was shown as nil. Shri D.R. Agarwal, then Assessing Officer had created a demand due of Rs.105/- only. The plaintiff-appellant found that M/s Action construction Equipments Ltd. had indicated the sale as RD Sales in their returns. M/s Rawat Crane Services had neither reflected the purchases nor sales. Vide letter dated 30.01.2006, the matter was referred to the Deputy Excise & Taxation Commissioner (ST), Faridabad West for taking action. The Deputy Excise & Taxation Commissioner referred the matter to Shri R.R. Nain, the then District Excise & Taxation Officer, who passed an assessment order dated 12.04.2006 and created a demand of Rs.7,73,279/- as sales tax liability and an amount of Rs.23,18,794/- as penalty, thereby making the liability of Rs.30,92,074/- against M/s Rawat Crane Services, Faridabad, which was owned by Shashi Ram Rawat. Against this order, the said assessee filed an appeal before the appellate authority i.e. Joint Excise & Taxation Commissioner (appeals), Faridabad. During the pendency of appeal, as an interim measure, the assessee was directed to pay an amount of Rs.4 lacs in four equal installments and to furnish security bond for the balance amount to the satisfaction of the assessing authority. On 03.11.2006, the plaintiff-appellant took over the charge of Joint Excise & Taxation Commissioner as appellate authority. He (plaintiff) gave two more opportunities to produce the proof of payment and security bond. The case was adjourned to 14.11.2006 and 21.11.2006. However, the assessee did not produce any such proof. The decision of the appeal was reserved. Thereafter, aforesaid Shashi Ram Rawat, who was nursing grudge against the plaintiff, made a complaint to the Director General of Police, Haryana on 06.12.2006 alleging that the plaintiff had demanded a bribe of Rs.5 lacs through a Sales Tax Inspector namely Navneet Chadha. Accordingly, on 07.12.2006, a trap was laid at the residence of Navneet Chadha and Mr. Sahi Ram Rawat stated to have carried Rs.2.5 lacs to the house of Navneet Chadha, which were recovered from him. This money was to be passed on to the plaintiff-appellant. Thereafter, the raiding party visited the house of plaintiff-appellant and arrested him. FIR No.502 dated 07.12.2006 was registered and the plaintiff was arrayed as an accused along with Navneet Chadha. Vide order dated 12.12.2006, he was placed under suspension. However, the Governor of Haryana, vide order dated 22.06.2008, reinstated the plaintiff subject to the outcome of criminal case. Thereafter, the plaintiff had retired on 30.09.2008 after putting in more than 27 years of service. A provisional pension of Rs.10,079/- was granted to the plaintiff vide order No.PPO 1570060S/HR under the Civil Service Rules (as applicable to Haryana State) Volume 2, Part-I, Pension-A, Preliminary Chapter-I, w.e.f. 01.10.2008. However, gratuity amount to the tune of Rs.3,50,000/- was withheld. In the criminal case, the Special Judge, Faridabad, held the plaintiff guilty and convicted him accordingly. Against this judgment, he preferred an appeal before this Court, which was admitted and the sentence of imprisonment of the plaintiff-appellant was suspended subject to furnishing of personal bond and security to the satisfaction of Special Judge, Faridabad. Thereafter, the

Principal Secretary-cum-Financial Commissioner, Excise & Taxation Department vide order dated 01.06.2010 stopped the provisional pension of the plaintiff-appellant with immediate effect on the ground that the proceedings in the criminal case had been concluded and resulted in conviction. Thereafter, the plaintiff filed a suit challenging the aforesaid order.

Upon notice, defendant-State filed written statement and controverted the allegations levelled by the plaintiff-appellant in his suit. It was admitted that the plaintiff had joined as Excise and Taxation Officer and thereafter, had been promoted to the post of Joint Excise & Taxation Commissioner. Registration of FIR No.502 dated 07.12.2006 was also admitted. It was stated that vide judgment dated 28.03.2009, the plaintiff had been convicted and sentenced. The provisional pension was stopped by the Government vide order dated 01.06.2010 in accordance with the provisions of Civil Services Rules.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the order dated 02.06.2010 is illegal, null and void and not binding on the plaintiff? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Relief.

The trial Court, after going through the evidence led by the parties, dismissed the suit. The lower appellate Court while dismissing the appeal had referred to the judgment passed in ***Darshan Singh Vs. State of***

Punjab and others, 2011 (5) PLR 583, whereby it has been held that if an employee is found guilty of grave misconduct or negligence during the service, under Rule 2.2 (b) of Civil Services Rules, Vol. II, Chapter II, the Government had a right to withhold his pension or any part of it.

Learned counsel for the appellant has referred to the verdict delivered in ***K.R. Erry Vs. State of Punjab,*** 1967 AIR (Punjab) 279, to contend that giving notice before imposition of cut in pension was mandatory. The superannuation pension could not be stopped only on the sweet will or pleasure of the Government. It was not a bounty. The right of pension was held to be a right of property and the order depriving a person of a pension partakes of quasi judicial character.

In the peculiar facts and circumstances of the case, following substantial question of law arises for consideration of this Court:-

> "Whether the cut can be imposed on pension without giving notice to an employee after he has retired."

Recently a Division Bench of this Court in ***Shankar Lal Vs. State of Haryana and others,*** LPA No.427 of 2013 (decided on 12.11.2014) has examined a case of Junior Engineer who was working in Haryana State Electricity Board. In that case, an FIR was registered against him under the Prevention of Corruption Act, 1988 and during the pendency of trial, the employee had retired. Thereafter, he was convicted and sentenced to undergo rigorous imprisonment for three years. After giving notice to the employee, his entire pension was withheld under Rule 2.2 (a) of the Punjab Civil Services Rules, Vol-II, Part-I (for short 'Rules'). The writ petition against this order was dismissed. However, the Division Bench in LPA while referring to Rule 2.2 (a) of the Rules, held that cut in pension would not exceed one-third of the total pension. The order withholding of pension was set aside and the authorities were directed to reconsider the case in the light of aforesaid Rule.

In the facts of the present case, after conviction of the plaintiff-appellant, his provisional pension, which was granted vide order No. PPO 157006-S/HR w.e.f 01.10.2008, has been stopped without issuing any notice, which as per the judgment passed by the Division Bench of this Court in ***Shankar Lal's*** case (supra), was mandatory. Moreover, as per the aforesaid judgment, cut in the pension could not be more than one-third of the total pension.

Keeping in view the judgment delivered in ***Shankar Lal's*** case (supra), the present appeal is allowed and the impugned judgments dated 25.04.2011 and 09.04.2012 passed by the Courts below are set aside. However, liberty is granted to the defendant-respondent to give prior notice to the plaintiff-appellant and thereafter, pass an appropriate order with regard to cut in the pension as per Rule 2.2 (a) of the Punjab Civil Services Rules.

In the meantime, the defendant-respondent will release pension to the plaintiff-appellant, which was stopped vide order dated 01.06.2010, within four months from the date of receipt of certified copy of this order.

(RITU BAHRI)
28.04.2015 **JUDGE**
ajp