

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

C.M. No. 3710 of 2016 in/and
CWP No. 16316 of 2012
Date of decision: 05.04.2016

Sardara Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Ms. Monika Jalota, Advocate,
for the applicant-petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3710 of 2016

Notice in the application.

Mr. L.S. Virk, Addl. A.G., Punjab accepts notice.

The order of the Division Bench dated 12.11.2014 (Annexure P-3) is taken on record.

CWP No. 16316 of 2012

In view of the controversy in issue, hearing of the case is postponed from 07.07.2016 to today with the consent of parties since it pertains to the grant of pension, gratuity and other retiral benefits. Accordingly, case is taken on Board.

The petitioner seeks the benefit of grant of pension, gratuity and other retiral benefits. It is his case that he was working as a Constable

with the 82 Batallion, PAP Line, Chandigarh and earlier had served in the Armed Forces and earned various Commendation certificates.

A perusal of the record would show that an FIR No. 47 dated 12.06.2004 under Section 302, 498-A IPC was lodged against the petitioner during his service tenure. During the trial, the petitioner retired on 31.12.2004 as Head Constable (P.R.). Accordingly, he was sanctioned provisional pension to the tune of ₹4,009/-, which is 75% of the proposed pension vide order dated 03.08.2005 (Annexure R-1). On 10.02.2007, conviction was recorded against the petitioner and he was sentenced under Section 302 IPC for life and under Section 498-A IPC for two years alongwith fine. In Criminal Appeal No. 228-DB of 2007, the sentence was modified to one under Sections 306 and 498-A IPC and the petitioner was required to undergo 5 years on 12.05.2009. Resultantly, the writ petition was filed seeking the retiral dues.

In the written statement filed, a plea has been taken that on account of Rule 2.2(a) of the Punjab Civil Services Rules Vol-II Part-I [in short “Rule 2.2(a)”], person who has been convicted by Court has no right to pension and, therefore, his pension has rightly been stopped. Rule 2.2(a) reads thus:-

“2.2 (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 the pensioner be 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 sixteen days of the receipt of the notice or such further time not exceeding fifteen days, as may allow 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 petitioner, in any case, would be adequate for his maintenance.”

The above provision would go on to show that future conduct of the government servant is to be taken into consideration. On account of conviction on serious crime, action can be taken. However, safe guards have been prescribed for ensuring that the person can maintain himself and part of the pension can be withheld which cannot normally exceed 1/3rd of the pension originally sanctioned nor shall the amount of pension left to the pensioner be ordinarily reduced to less than ₹40 per month.

In the present case, as noticed, the State has not apparently passed any such order and has withheld the pension on its own without resorting to the provisions of Rule 2.2(a) or hearing the petitioner.

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 & another, 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.”

Counsel for the petitioner has further relied upon the judgment of the Division Bench in **LPA No. 427 of 2013, Shankar Lal vs. State of Haryana** decided on 12.11.2014 wherein also, the order whereby entire pension has been withheld was set aside. The matter was remanded to the appellate authority to pass a fresh order in consonance with Rule 2.2(a). Herein also, the situation remains the same and the State has withheld the pension without applying its mind to the complete facts and has failed to act as per the relevant rules to the detriment of the petitioner whose retiral dues

have been withheld without any justification.

Accordingly, the writ petition is allowed with a direction that the competent authority shall take action as per Rule 2.2(a) and thereafter proceed and decide as to what is the quantum of cut it proposes to make on the pension in view of the conviction recorded. A direction is issued that the petitioner shall be paid complete arrears of pension and other retiral dues alongwith interest @ 8% p.a. from the date the pension fell due and the same will be paid within a period of two months from the date of receipt of certified copy of the judgment. In case the State makes a cut as per Rule 2.2 (a) and action is taken as per the provisions of the Rule, it will be open to the petitioner to agitate his rights against the said order, in case he so desires.

05.04.2016
shivani

(G.S. SANDHAWALIA)
JUDGE