

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

**CWP No.11422 of 2016 (O&M)
Date of decision : December 21, 2016**

Surjit Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aayush Gupta, Advocate for the petitioner.

Mr. R.S. Pathania, DAG, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Petitioner retired from service on 30.09.2007 as Civil Defence Inspector (Platoon Commander) from Civil Defence Training Institute, Ludhiana after rendering 35 years of service. During his service period, two FIR Nos.37, dated 08.06.1996, registered under Sections 409, 419, 467, 468, 471, 120-B IPC read with Section 13(1)(d) and Section 13(2) 88 of the Prevention of Corruption Act and another Fir No.11, dated 09.02.1996, registered under Sections 420, 467, 471, 120-B IPC read with Section 13(1)(d) and 13(2) Prevention of Corruption Act against some employees of Punjab Home Guards. However, the name of the petitioner was never mentioned in the FIR but after a period of three years, the petitioner was involved in the investigation of the said cases and ultimately supplementary charge-sheet in both the cases was filed against the petitioner.

When the petitioner retired from service, the trial of the said case was pending. He was sanctioned 90% of his total as provisional pension. Ultimately, the petitioner was convicted and sentenced by the trial court in both the cases, vide separate judgments dated 30.03.2013. Since the petitioner was convicted in six challans, three challans in each FIR, therefore, he preferred six appeals, the said appeals were admitted vide order dated 06.05.2013 and lying pending before this Court. His sentence was suspended till the final decision of the appeal.

It comes out that after the conviction, the petitioner was issued a show cause notice dated 23.10.2013 (Annexure P-1) and thereafter the impugned order endorsed on 09.12.2013 (Annexure P-3) was passed, vide which the pension of the petitioner was permanently stopped w.e.f. 30.03.2013, when he was convicted by the trial court. The said order was passed under Rule 2.2(b) and (c) of Punjab Civil Services Rules, Volume-II. It was further stipulated in the order that these orders are liable to be reviewed if the appeal filed by the petitioner before this Court is accepted.

The petitioner has impugned the order dated 09.12.2013 (Annexure P-3).

The respondents in the reply has not denied the fact that the petitioner was serving and retired from service and after his retirement he has been convicted in both the FIRs vide judgment dated 30.03.2013 and sentenced to undergo rigorous imprisonment for two years along with fine.

It is also stated that the provisions of Rule 2.2(b) and (c) of the Punjab Civil Services Rules, Volume-II, give right to the Government to withhold or withdraw the pension or any part of it, if the pensioner is found

involved in a serious crime or guilty of grave misconduct.

The moot question arising for consideration is as to whether on account of conviction after the retirement of an employee, while exercising the powers under Rule 2.2.(b) and (c) of Punjab Civil Services Rules, Volume-II, the pension of the retired employee can be stopped from the date of his conviction without holding any inquiry.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The perusal of the impugned order shows that the action was taken under Rule 2.2 (b) and (c) of the Punjab Civil Services Rules Volume II. Though in the reply, the State has maintained that it was taken under Rule 2.2 (a) and (b). The relevant part of the Rule 2.2 (a) of the said Rule is reproduced 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 pensioners is convicted of serious crime or be guilty or grave misconduct.

In a case where a pensioner is convicted of a serious crime, an 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 a 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) taken 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.”

It goes to show that if a pensioner is convicted of a serious crime or is guilty of grave misconduct, the action can be taken. However, a limit has been prescribed up-to which extent, pension can be withheld. In the present case, the entire provisional pension has been stopped with effect from the date of the judgment of lower Court i.e. 30.3.2013, though the order was passed later on 17.12.2013. Therefore, the impugned order does not meet the parameters laid down under Rule 2.2 (a) and has to be set aside.

Rule 2.2 (b) and (c) reads as under:-

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the 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 proceedings, the pensioner is found guilty of grave

misconduct 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 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 the institution of such proceedings: 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.

(c) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto 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 date immediately proceeding 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 thereon. 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.”

[Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i),

(ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.]

(2) Payment of provisional pension made under sub – clause (I) 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.

Note.- The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings.

2.2-A. In the case of a Government employee who retires from service, while on deputation to Central Government or any other State Government or while on foreign

service, action to sanction pension and gratuity in accordance with the provisions of Chapter IX shall be taken by the Adult Officer or the Head of Office, as the case may be, of the Cadre authority which sanctioned the deputation of the Government employee to the Central or any other State Government or to foreign service.”

The perusal of Rule 2.2 (b) shows that a pension or part of it can be withheld, if in the departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence. However, the said Rule envisages that the departmental proceedings are to be instituted to determine grave misconduct or negligence during the service. In any case, the impugned order also does not meet the parameters under Rule 2.2 (b) or (c) as in the present case, no departmental proceedings were initiated to determine the alleged grave misconduct or negligence of the petitioner while he was in service. Certain conditions are also there regarding the time limit during which the action under Rule 2.2 (b) can be taken.

In view of the matter, the impugned order dated 09.12.2013 (Annexure P-3) is not sustainable in the eye of law and is hereby quashed. However, the respondents shall be at liberty to follow the procedure as laid down under Rules 2.2.(b) and (c) of Punjab Civil Services Rules, Volume-II as they deem fit and pass an appropriate order, after following the procedure laid down in the said rules.

In the meanwhile, the provisional pension allowed to the petitioner shall be continued to be paid to him. The respondents shall also take an interim decision whether the arrears of pension are to be released to the petitioner or not.

The needful be done within two months from the date of receipt of certified copy of this order.

As such, the present petition is allowed.

(KULDIP SINGH)
JUDGE

December 21, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes