227 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12103 of 2016 (O&M)
Date of decision : December 21, 2016

Ramesh Kumar and another **....... Petitioners**

Versus

State of Punjab and others **....... Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Shailendra Sharma, Advocate for the petitioners.

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 ?

<u>KULDIP SINGH J. (ORAL)</u>

Petitioner No.1 retired from service on 30.04.2009 as Company Commander after attaining the age of superannuation. Petitioner No.2 retired from service on 31.08.2000 as Platoon Commander after attaining the age of superannuation. During their service period, one 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 was registered by the Vigilance Department. However, the names of both the petitioners were not mentioned in the said FIR but subsequently during the course of investigation, the petitioners were also involved and supplementary challan against them was filed.

When the petitioners retired from service, the trial of the said case was pending. They were sanctioned 90% as provisional pension. Ultimately, the petitioners were convicted and sentenced by the trial court, vide judgment of conviction and order of sentence dated 30.03.2013. The petitioners preferred appeal, which is pending before this Court. Their sentence of imprisonment was suspended till the final decision of the appeal.

It comes out that after the conviction, the petitioners were issued a show cause notice dated 23.10.2013 (Annexure P-2) and thereafter the impugned order endorsed on 21.09.2015 (Annexure P-7) was passed, vide which the pensions of the petitioners were permanently stopped w.e.f. 30.03.2013, when they were convicted by the trial court. The said order was passed under Rule 2.2 of Punjab Civil Services Rules, Volume-II.

The petitioners have impugned the order dated 21.09.2015 (Annexure P-7).

The respondents in the reply has not denied that the fact that the petitioners were serving and retired from service and after their retirement they have been convicted, vide judgment dated 30.03.2013 and sentenced to undergo rigorous imprisonment for two years each 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 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.*
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> *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 with 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 reducted 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 (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.

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 21.09.2015 (Annexure P-7) 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 petitioners 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 petitioners 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