

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

**CWP No.18910 of 2013
Decided on : 12.05.2016**

Harjit Singh

... Petitioner

Versus

Punjab State Power Corporation Ltd. and others

... Respondents

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

Present : Mr. JPS Sidhu, Advocate
for the petitioner.

Mrs. Avin Sandhu, Advocate for
Mr. Amit Aggarwal, Advocate for respondents.

G.S. Sandhawal, J. (Oral)

The petitioner challenges the order dated 25.03.2013 (Annexure P-5), whereby 33% cut has been made in his pension by the Board of Directors of the respondent-Corporation.

The reason for the cut is that the petitioner's conviction under Section 324, 326, 452 IPC was upheld by this Court in Criminal Revision No.2109 of 2002 on 27.05.2009 (Annexure P-7). Accordingly, his sentence was reduced to the period already undergone by him and the fine was enhanced from ₹500 to ₹5,000/-.

The account on which this Court feels persuaded to interfere in the said order is that the conviction was initially recorded in FIR dated 15.06.1995 under the abovesaid sections on 22.12.2000. On account of his arrest in the FIR petitioner had also been suspended on 17.06.1995 and, thereafter, reinstated on

05.10.1995. His appeal had also been dismissed on 17.10.2002, due to which he was taken into custody and released on bail on 19.12.2002. Thereafter, the revision petition was dismissed by this Court, as noticed above.

The petitioner, thereafter, retired on 31.08.2011 and on not being paid his pension, represented for the payment of the same. His case was accordingly processed and it was noticed by the authorities below that the petitioner was no longer in service and, therefore, he could not be dismissed retrospectively on account of the conviction. Thereafter, the impugned order was passed, whereby the cut was imposed leading to the filing of the present writ petition challenging the said action.

The respondent-Corporation in its written statement has defended the said action on the ground that when it came to know about the dismissal of the revision petition, the action was taken. Accordingly, the cut was imposed under Rule 2.2 (b) of Punjab Civil Service Rules, Vol.2. The pleading of the petitioner that the offence under Section 326 IPC was not so serious, which would disentitle him for his superannuation benefits was countered on the strength of the Rules and that there was serious aspersion on his morality, therefore, the cut had been imposed. On account of the alleged moral turpitude the cut was justified and, accordingly, it was held that it was in consonance with the Punjab Civil Services Rules. Vide order dated 03.02.2005 (Annexure R-2),

during the pendency of the revision petition, the suspension period and the absence period was treated as non-duty period. However, the annual increments were ordered to be released.

Counsel for the petitioner has relied upon the Division Bench judgment passed in **CWP No.7991 of 2006 'Rachhpal Singh Vs. State of Punjab and others'** decided on 30.11.2006 to contend that the cut in pension could only be made under Rule 2.2 (a) and that was only if the conviction had been post the retirement, since the Rule postulated and referred to the future good conduct. It was, accordingly, submitted that even Rule 2.2 (b) provided for withholding of pension or any part of it and could be made on account of grave mis-conduct and there was nothing to show that the Corporation had applied its mind on the said issue nor any decision had been taken to dismiss the petitioner earlier. The relevant part reads as under:-

"It is not possible for us to accept the contention of the learned counsel for the respondents on the basis of Rule 2.2(a) of the Punjab Civil Services Rules (extracted hereinabove), on account of the fact that the same is applicable for an act subsequent to the date of retirement, as is apparent from the commencing words of the aforesaid Rule, namely, "future good conduct....". Since the petitioner was admittedly allowed to retire voluntarily by an order dated 29.9.2005 w.e.f. 30.9.2005, reliance on Rule 2.2(a) of the Punjab Civil Services Rules, Vol.II, is clearly mis-conceived. Rule 2.2 (a), aforesaid, can be applied to the petitioners for conduct after 30.9.2005, whereas, the pleadings in the instant writ petition make no reference to any conduct after 30.9.2005. Accordingly, it is not possible for us to accept the contention of the learned counsel for the respondents that the

petitioner can be denied pension on account of his conviction at the hands of the Judicial Magistrate Ist Class, Patiala as far back as 13.3.2001.

Learned counsel for the respondents has also placed reliance on Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II. The same is being extracted hereunder:

“2.2(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 the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.”

A perusal of the aforesaid Rule reveals, that the Government has the inherent right to withhold or withdraw pension, or any part of it, if the pensioner is found, in a departmental or judicial proceedings, to have committed a grave mis-conduct. In order to establish that the petitioner had committed a grave misconduct, learned counsel for the respondents has invited our attention to the order passed by the Judicial Magistrate Ist Class, Patiala dated 13.3.2001 as also to the order passed by the Additional Sessions Judge, Patiala dated 5.4.2002 whereby the former order was upheld.

Although the aforesaid contentions at the hands of the learned counsel for the respondents are attractive on first blush, it is not possible for us to accept the same. It was open to the respondents in exercise of the authorities vested in them under Clause (a) of second proviso to Article 311 of Constitution of India, to dismiss or remove an employee from service, consequent upon his conviction. In the present case, the conviction of the petitioner is at the hands of the Judicial Magistrate Ist Class, Patiala on 13.3.2001. Be that as it may, despite the fact that the petitioner stood convicted on 13.3.2001 under Section 279 read with Section 304-A of the Indian Penal Code, he was permitted to retire voluntarily by an order dated 29.9.2005. It is, therefore, obvious that the

respondents had consciously decided not to dismiss or remove the petitioner from service. Had the aforesaid course been adopted by the respondents, it would be open to the respondents to deny the pension to the petitioner. Now that the petitioner has been permitted to retire voluntarily on completion of 55 years of age vide order dated 29.9.2005, the petitioner cannot be denied pension earned by him on account of the qualifying service rendered by him, moreso, because the order of the petitioner's voluntary retirement was passed when the petitioner had already been convicted."

Counsel for the respondent-Corporation on the other placed reliance upon the judgment passed in the case of ***Dilshad Ali Vs. State of Punjab and another (2012) ILR 1 Punjab and Haryana 753*** to submit that conviction would amount to moral turpitude and, therefore, the order was justified.

The said argument of the respondents counsel cannot be accepted on two grounds. Firstly, perusal of the judgment of this Court upholding the conviction would go on to show that the dispute was regarding the neighbours about a plot. Accordingly, the fight ensued and the toes of the complainant had got amputated by use of a sharp edged weapon. The perusal of the impugned order does not show that the said judgment was examined in any prospective from this angle that whether there was such grave mis-conduct, which would debar the petitioner from his retiral dues. Even otherwise the occurrence which was there, was not in connection with the service of the petitioner with the Corporation and was a private dispute as such. Therefore, in the opinion of this Court mere upholding of conviction would not

bring it within the ambit of grave mis-conduct, as contended.

The reference to the case of ***Dilshad Ali (supra)*** is not applicable to the facts and circumstances of the present case, since the sentence pertained to conviction which had been recorded of a Lecturer under Section 498-A IPC for the demand of dowry. In such circumstances this Court had held that it is the greed of the husband and it would come within the ambit of moral turpitude and, accordingly, the dismissal order was upheld. The facts and circumstances of conviction in the present case are not, whereby the petitioner could be brought within the ambit of moral turpitude.

In such circumstances, this Court is of the opinion that the cut which has been imposed is not justified. Resultantly, the said order is quashed. The petitioner is held entitled for his balance retiral benefits, which shall be paid to him within a period of 3 months from the date of receipt of certified copy of this order, alongwith 8% interest from the due date till disbursal.

With the abovesaid observations, the present writ petition is allowed.

MAY 12, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE