

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

CWP No. 19058 of 2013

Date of Decision: 15.09.2016

SUKHWANT SINGH

... Petitioner

VS.

PUNJAB STATE POWER CORPORATION & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Veneet Sharma, Advocate,
for the petitioner.

Mrs. J.K. Gurna, Advocate,
for the respondents.

KULDIP SINGH, J. (Oral)

The petitioner-Sukhwant Singh was working as Upper Division Clerk in Punjab State Electricity Board, now succeeded by Punjab State Power Corporation Ltd.. He took voluntary retirement which was allowed vide letter dated 11.08.2011 and became effective from 30.09.2011. Later on, after his retirement, the petitioner was convicted by Judicial Magistrate First Class, Amritsar under Section 323, 324, 148 and 149 Indian Penal Code (for short “IPC”) and accordingly sentenced. On a complaint received in the respondent department, the impugned order (*Annexure P-2*) on 10.01.2013 was passed apparently under Rule 2.2 (B) Punjab Civil Services Rules, Volume-II, whereby 33% cut in the pension was imposed from the date of the retirement i.e. 30.09.2011 and the excess recovery was ordered to be imposed from the pension.

I have heard both the counsel for the parties.

The factual position is not disputed. The petitioner took voluntary retirement effective from 30.09.2011. It also comes out that FIR No 114 dated

CWP No. 19058 of 2013

01.07.2007 was registered at Police Station Sultanwind, Amritsar, in which he was ultimately convicted under Section 323, 324, 148 and 149 IPC and sentenced to the maximum imprisonment of one year alongwith interest.

Learned counsel for the petitioners informed that an appeal against the said judgment was dismissed by the First Appellate Court and now the revision is pending before this Court, which means said judgement has not become final till date. Rule 2.2 (b) of the Punjab Civil Services Rules Volume II Part I, invoked in the present case is reproduced as under: -

“ Rule 2.2:

(b) The Government further reserves to themselves the right of with-holding or withdrawing a pension or any part of it, whether permanently or for a specified period and 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 proceeding, the pensioner is found guilty of grave mis-conduct 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 in 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;

CWP No. 19058 of 2013

(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.”

The perusal of the rule shows that after the retirement if the pensioner is found guilty of ‘grave misconduct’ or ‘negligence’ during his service, after conducting the departmental proceedings, the order of withholding or withdrawing the pension or part of the pension, permanently or for the specific period, could be passed.

I am of the view that in the present case the offence is of causing simple injuries to a private person who has nothing to do with the service of the petitioner and it does not amount to a grave misconduct on the part of the petitioner during service. The question of negligence is not involved at all.

Secondly, while passing the impugned order no show cause notice was issued to the petitioner nor any departmental proceedings were initiated. Therefore, the impugned order dated 10.01.2013 (*Annexure P-2*), being in violation of Rule 2.2 (B) Punjab Civil Services Rules, is otherwise liable to be quashed.

The learned counsel for the petitioner has argued that at the time of seeking voluntary retirement, the petitioner had submitted an affidavit that no criminal case is pending against him. However, the impugned order dated 10.01.2013 (*Annexure P-2*) shows that it was not passed on account of suppression of the fact of pending of the criminal case before seeking

CWP No. 19058 of 2013

voluntary retirement, but was passed on account of conviction of the petitioner in the criminal case.

It being so the impugned order is not sustainable in the eyes of law and is hereby quashed. The petitioner shall be released full pension alongwith along with interest @ 9% per annum within two month from the receipt of the certified copy of this order and the recovery made, if any, from the petitioner, shall be refunded to him.

September 15, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

<i>Whether speaking / reasoned</i>	✓ <i>Yes</i> / <i>No</i>
<i>Whether Reportable</i>	✓ <i>Yes</i> / <i>No</i>