

CWP No. 18512 of 2014

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

CWP No. 18512 of 2014
Date of Decision: 29.07.2016

SHIV NATH

..... Petitioner

VS.

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Bikramjit Singh Bawa, Advocate,
for the petitioner.

Mr. Rajat Bansal, AAG, 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.)

Brief facts of this case are that petitioner-Shiv Nath joined as Constable in Punjab Police on 04.10.1977 and ultimately rose to become Sub Inspector w.e.f. on 01.4.2010. His retirement was due on 31.01.2014. However, under the policy of the Government, keeping in view the service record, he was granted one year extension in service and his date of retirement became 31.01.2015. It further comes out that an FIR No. 02 dated 03.04.2013 was registered against the petitioner and three others under Section 302, 201, 363, 366-A, 120-B, 217, 218 of the Indian Penal Code registered at Police Station Punjab State Crime, SAS Nagar (Mohali) and vide judgement dated 17.05.2014 which has been passed during the extended period of service after retirement, the petitioner was convicted under Section 217 and 218 IPC and sentenced to maximum imprisonment for two and half years alongwith fine.

Aggrieved by the said order, the petitioner preferred an appeal bearing No.

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CRA-S-2517-SB-2014 before this Court and vide order dated 29.05.2014 (*Annexure P-2*), this Court has suspended the sentence of the petitioner. The appeal is lying admitted and is yet to be decided. In the meanwhile, the petitioner retired from service on 31.01.2015 vide DDR No. 21 dated 31.01.2015 (*Annexure P-7*). It comes out that on account of the conviction, order dated 17.03.2015 (*Annexure P-8*) has been passed i.e. after the retirement of the petitioner, whereby it is ordered that the petitioner shall not be entitled to pension and other pensionary benefits except GPF and GIS. It is this order which has been impugned by the petitioner on the ground that such order cannot be passed without holding any enquiry under Rule 2.2 (b) and the same is illegal in the eyes of law.

The State in the reply has not disputed the factual position regarding extension of service as well as date of retirement of the petitioner. The passing of impugned order is also not disputed, rather, it is stated that the amount of GPF and GIS has already been released. The reference has been made to certain punishments awarded to the petitioner during the service.

The State has taken the stand that the impugned order has been lawfully passed in view of the Rule 2.2 (a) of the Punjab Civil Services Rules, Volume II, Chapter 2.

I have heard learned counsel for the parties.

Admittedly, the petitioner has been convicted while on extended period of service on 17.05.2014, thereafter he was retired from service w.e.f. 31.01.2015. During his service, neither any punishment order was passed under Article 311 of the Constitution of India nor any departmental enquiry on account of his conviction was conducted.

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The perusal of the Rule 2.2 (a) of the Punjab CSR shows that the Government reserves the right of withholding or withdrawing the pension or any part thereof, if the pensioner is convicted for ‘**serious crime**’ or guilty of ‘**grave misconduct**’. Therefore, it means that the State has to decide that the crime committed by the petitioner is of serious nature and the alleged misconduct is grave in nature. The provisions of Rule 2.2 B are reproduced as under: -

“ Rule 2.2:

(b) The Government further reserve 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 –

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- (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 such institution; 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 2.2 (b) makes it clear that in case of pensioner, the departmental proceedings have to be initiated apparently to determine whether the misconduct is ‘grave’ or whether the crime of which he has been convicted, is ‘serious’. It follows that without holding departmental proceedings, no order under Rule 2.2 (b) could be passed.

The perusal of the impugned order shows that no such departmental proceedings were conducted. Admittedly, after the conviction of the petitioner under Section 217 and 218 IPC, the pension file was moved and it remained pending. The opinion of the District Attorney Legal was also sought and ultimately the matter was decided on 17.03.2015 i.e. only after the retirement of the petitioner. At that time, the petitioner had already been retired from service on 31.01.2015 and as such the impugned order dated 17.03.2015 (*Annexure P- 8*) being contrary to the provisions of Rule 2.2 (b) is hereby set aside.

Consequently, the respondents are at liberty to follow the provisions of Rule 2.2 (b), if they so desire. If they decide to proceed under the

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provision of Rule 2.2 (b), then provisional pension as per Government Rules shall be released to the petitioner alongwith other service benefits and if they decide not to proceed under 2.2 (b) then of course, the entire pension and other pensionary benefits will have to be released.

The State of Punjab is directed to pass necessary orders as observed above within three months from the date of receipt of certified copy of this order.

In view of the above observation, the writ petition stands allowed.

July 29, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

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