

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

**CWP No.24207 of 2015 (O&M)
Date of decision : December 01, 2016**

Jai Parkash Gupta

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Tribhawan Singla, Advocate for the petitioner.

Mr. T.N. Sarup, Addl. A.G., 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, who was working as Assistant in the office of Sub Divisional Magistrate, Malerkotla was booked in a case FIR No.13, dated 18.03.2002, registered under Sections 7/13(2) of the Prevention of Corruption Act, 1988. Consequently, he was suspended on 25.03.2002 and was reinstated on 06.05.2002. He retired from service on 31.01.2003 on attaining the age of superannuation. He was released provisional pension under Rule 2.2.(1) of Punjab Civil Services Rules, Volume-II (Annexure P-1). However, vide judgment of conviction and order of sentence dated 03.07.2004, he was convicted and sentenced. The petitioner preferred an appeal before this Court. In the meanwhile, the petitioner was continued to get 100% provisional pension till March, 2010. However, the criminal

appeal filed by the petitioner before this Court was disposed of on 19.12.2013 by reducing the sentence of rigorous imprisonment from two years to one year awarded under Section 7/13(2) of the Prevention of Corruption Act, 1988. With the modification of the sentence, the said conviction has now become final. Now, the petitioner has impugned the Annexure P-13, dated 11.08.2015, vide which the provisional pension of the petitioner was declined. The extract of said letter is reproduced as under:

“Subject: With regard to the stopping the provisional pension from March 2010 till today without any order or notice.

Reference: In reference to your application dated 11.5.2015.

In the aforesaid subject, your application is considered. Against you, an FIR No.13, dated 18.3.2002, u/s 13(2) of the P.C. Act, Police Station Vigilance Bureau, Patiala was registered and Hon'ble Sh. Varinder Kumar, Special Judge, Sangrur vide his judgment dated 3.7.2004 has convicted you for two years along with Rs.2500/- as fine. You have filed a Criminal Appeal No.CRA-S-1379-SB-2004 in the Hon'ble Punjab and Haryana, Chandigarh and the Hon'ble Punjab and Haryana High Court vide its order dated 19.12.2013 had reduced the sentence from two years to one year.

Besides that, you had filed a CWP No.12122 of 2010 in the Hon'ble Punjab and Haryana High Court for the grant of provisional pension. The Hon'ble Highe Court vide its order dated 21.5.2012, while deciding LPA No.691 of 2012 in CWP No.12122 of 2010 had dismissed your writ by declining to give the benefit of provisional pension on the ground that you are accused u/s 13 of the Act. Keeping in view the aforesaid order, the Ho'nble

Deputy Commissioner vide its order dated 22.7.2015, had dismissed your application dated 11.5.2015 after consideration.

Sd/- For Deputy Commissioner, Sangrur.”

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

Reply of the respondents does not dispute the factual position. Letter dated 11.08.2015 (Annexure P-13) is merely regarding the non-release of pension. In case of conviction, the procedure for grant of pension to the Government employee after retirement, Rule 2.2.(a) of Punjab Civil Services Rules, Volume-II is applicable, which is reproduced as under:

“2.2 (a) Future good conduct is an implied condition of every grant of a pension. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it the pensioner be convicted of serious crime or be guilty of grave misconduct.

In a case where a pensioner is convicted of a serious crime, 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 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 sixteen days of the receipt of the notice or such further time not exceeding fifteen days, as may allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(ii) *Take 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.....”

A perusal of said Rule shows that in case of conviction, the Government is to follow the procedure as laid down under Rule 2.2 (a) of the Rules *ibid*.

Admittedly, in this case, the said procedure has not been followed nor any order has been passed, in terms Rule 2.2(a) of the Rules *ibid*, after serving a show cause notice to the petitioner and giving him opportunity, in terms of the said Rule.

In the written statement also, the State does not claim that any order under Rule 2.2(a) of the Rules *ibid* was passed. Therefore, Annexure P-13 dated 11.08.2015, denying the pension to the petitioner is quashed and the State is directed to follow the procedure as laid down under Rule 2.2(a) of the Rules *ibid* and pass a speaking order thereon, in accordance with law.

In the meanwhile, the provisional pension already allowed to the petitioner will continue till the passing of the speaking order and thereafter subject to the passing of the speaking order. The arrears of the provisional pension from March 2010 till date will also be released to the petitioner.

The State is also directed to release the arrears of provisional pension within three months from the date of receipt of certified copy of this order. The proceedings under Rule 2.2(a) of the Rules *ibid* be also concluded within six months from the date of receipt of certified copy of this order.

As such, the present petition is disposed of.

(KULDIP SINGH)
JUDGE

December 01, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No