

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 26224 of 2014 (O/M)
Date of decision : 24.10.2016

Kesar Singh

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ramesh Goyal, Advocate, for the petitioner.

Mr. R.S. Pathania, Deputy 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)

The petitioner has impugned the order dated 26.9.2014 (Annexure-P-6), vide which his provisional pension was stopped on account of his conviction in a criminal case, registered under Sections 465, 471, 120-B IPC and under Section 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The petitioner, while working as Excise and Taxation Officer with the respondent-department, was booked in FIR No. 15 dated 5.7.2006, registered under Sections 409, 420, 467, 468, 471, 120-B, 201 IPC and under Section 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988, by the State Vigilance Bureau, Phase-I, Mohali. The petitioner retired from service as Assistant Excise and Taxation Commissioner on 28.2.2013. Subsequently, the learned Special Judge, SAS Nagar, Mohali, vide judgment of conviction and order of sentence dated 24.3.2014, convicted the petitioner as aforesaid and

CWP No. 26224 of 2014 (O/M)

sentenced him accordingly. The appeal (CRA-S-1663-SB-2014), preferred by the petitioner against his conviction and sentence, is pending before this Court, in which his sentence has been suspended. Subsequently, the petitioner was issued a show cause notice dated 1.8.2014 (Annexure-P-3), giving him an opportunity of personal hearing. After personally hearing the petitioner, the order dated 26.9.2014 (Annexure-P-6) was passed, whereby his pension was stopped immediately under Section 2.2 (a) of the Punjab Civil Services Rules, Volume-II, Part-II. The petitioner has impugned the said order in the present writ petition.

In the reply, the respondents have taken the view that it is a case of conviction and, therefore, his pension has been rightly stopped. The details given in the written statement need not to be mentioned.

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

Rule 2.2(a) of the Punjab Civil Services Rules, Volume-II, Part-II provides 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 petitioner 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

CWP No. 26224 of 2014 (O/M)

-3-

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 be 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.

In case where an order under clause (i) above is to be passed by the Government, the Public Service Commission shall be consulted before the final order is passed.

The decision of the appointing authority on the question of withholding or withdrawing the whole or any part of pension under this rule shall be final and conclusive.”

The perusal of the said order shows that in case of serious crime or grave misconduct, the order can be passed withholding or withdrawing a pension or part thereof. The said clause shows that in case of serious crime, the action shall be in the light of the judgment of the Court relating to such conviction.

The learned counsel for the petitioner has argued that in this case, the competent authority has not applied its mind to the facts of the case and the written statement shows that the respondents merely acted on the advice of the Legal Remembrance. The perusal of the impugned order dated 26.9.2014 (Annexure-P-6) shows that proper procedure was followed.

CWP No. 26224 of 2014 (O/M)

In this case, a show cause notice was issued to the petitioner on account of his conviction and an opportunity of personal hearing was given to him. Since the conviction of the petitioner is under various provisions of Indian Penal Code and also under the various provisions of the Prevention of Corruption Act, 1988. Therefore, prima-face, it is a case of serious crime. The mere fact that before passing the impugned order dated 26.9.2014 (Annexure-P-6), the opinion of the Legal Remembrance was sought, is no ground to hold that the authority did not apply its mind to the facts of the case. The proper procedure was followed and there is no illegality or infirmity in the same.

The learned counsel for the petitioner has argued that the criminal appeal against the conviction and sentence is pending before this Court.

I am of the view that if the said criminal appeal is decided in favour of the petitioner, he can always apply for review of the decision and the competent authority can always consider the same and decide the matter accordingly. There is no ground to interfere in the impugned order. Hence, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

24.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No