IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2503 of 2016
Date of Decision: 08.02.2016

Swaran Singh ... Petitioner

Versus

The Punjab State Power Corporation Limited and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.S. Jaidka, Advocate, for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner assails the order dated May 25, 2015 imposing a 10% cut in pension for one year. The action has been taken after issuing show cause notice dated April 18, 2013 on the petitioner for committing errors amounting to misconduct while he was in service as an Assistant Junior Engineer. The show cause notice has been issued under the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 (now PSPCL). Regulation 5 deals with penalties which can be imposed on an employee which are minor penalties. Sub-Regulation (3) of Regulation 5 authorizes recovery from pay of the whole and part of any pecuniary loss caused by the employee to the Board by negligence or breach of orders. However, the petitioner is a retired person and, therefore, the show cause notice was issued not only under Regulation 5 but read with Rule 10 of the Regulations which prescribes the procedure for imposing

minor penalties. An inquiry was conducted and it is not that show cause notice was issued; reply received; found not satisfactory and then minor punishment imposed. From a perusal of the paper book it appears that the cut in pension of one year was imposed for dereliction in checking of what are called SP connections where his work was found at fault and in breach of instructions issued by the department resulting in theft of electricity. His negligence was proven at the inquiry on which account 10% pension has been cut for one year. It is not clear from reading the impugned order or from perusing the record whether the cut is permanent or temporary. Since action was taken under Regulation 5 it will be assumed that the penalty imposed is minor. If it is minor then the deduction would be temporary in character and effect.

2. Because of the negligence of the petitioner in not checking or re-checking SP connection PSPCL argues the consumer could easily lay blame on the department and take advantage of theft of electricity because it was not checked and escape liability. Therefore, theft cannot be proved in case PSPCL lays charge. This is the failure of duty for which the minor punishment has been imposed for negligence in performance of duty which can potentially remove the base of a charge of theft of electricity by a defaulting consumer since he would take advantage of absence of checking or re-checking electricity supply apparatus installed at the site of the consumer.

3. Learned counsel for the petitioner relies on a decision of the learned Single Judge in **Sukhdev Singh vs. State of Punjab and others**, 2011 (4) PLR 735 : 2012 (2) RSJ 196 wherein this Court observed in

paras.12 & 13 as follows:-

> *"12. It may be true that for the purpose of imposition of a minor punishment like 'recovery' of the loss caused, under Rule 5(ii) of Punjab Civil Services (Punishment & Appeal) Rules, 1970, no regular enquiry is required to be held. However, the rules nowhere preclude the Disciplinary Authority from holding a domestic enquiry to arrive at a firm conclusion, even, if only, minor punishment is to be imposed.*
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> *13. There appears to be an inherent fallacy in drawing inference that 'Recovery' is always a 'minor penalty' even in the case of a retiree. The case of a retired Govt. employee is invariably distinct from a serving employee. The only punishment that can be imposed on a retired employee is enumerated in Rule 2.2(b) of CSR Vol.II, namely, recovery through cut on pension whereas in the case of a serving employee, any of the penalties under Rule 5 of the 1970 Rules can be imposed. The cut in pension for all times to come or for a specified duration shall have the same civil consequences as were noticed by the Hon'ble Supreme Court in* ***Kulwant Singh Gill Vs. State of Punjab 1991 (2) S.C.T. 30 : 1990(4)J.T.70*** *on stoppage of annual increment (s) with cumulative effect."*

4. In *Sukhdev Singh* the petitioner was indicted for drawing 'handicapped allowance' and/or 'overpayment' in respect of 'family pension' cases. The onus lay on the prosecuting department to bring on record or rely upon or refer to the relevant material by producing proof to establish the allegations levelled against the delinquent employee, irrespective of the fact that it is inflicted in a regular inquiry or otherwise. The Court observed that the only way to dislodge the physical disability claim was to produce medical evidence for which the petitioner would require to have opportunity to hold/arrive at a fair and just conclusion. It was in this background that the Court observed that a cut in pension for all times to come or for a specified

duration shall have the same civil consequences as were noticed by the Supreme Court in **Kulwant Singh Gill** v. **State of Punjab**, JT 1990 (4) SC 70 : 1991 (2) SCT 30. The Court was confronted with the situation where no regular departmental inquiry was conducted to justify a claim dependent for its sustenance on production of evidence pro and contra.

5. In the present case, the petitioner himself admits in para.3 of the petition that the inquiry was conducted in pursuance of the show cause notice. Today, he urges that this could not have been done without issuing a charge-sheet which was not issued but only a show cause notice was. If the law in PSPCL justifies imposition of cut in pension under its prevailing Regulations and the procedure laid down therein is adhered to, then cut in pension would not strike my mind as one being illegal and unsustainable in law. The term "Employee" in Regulation **5** would include a retired employee and recovery from pay can be effected by following procedure and considering the question of punishment. Therefore, the decision cited is distinguishable on facts and the observation made has to be read in the context of the facts presented before the Court in *Sukhdev Singh*. As a matter of fact Sukhdev Singh was not imposed a cut in pension. It was a case of recovery of money resulting from overpayment and, therefore, the decision is not binding in its *obiter* when Court observed en passant that a cut in pension for all times to come or for a specified duration shall have the same consequences. Since the impugned order is not permanent in nature or in effect and the cut has been imposed only for one year does not to my mind give it the flavour of major punishment for which a charge-sheet is required.

6. No ground is made out for interference. The petition stands accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

08.02.2016
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