

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.2746 of 2015 (O&M)
Date of Decision: 5.10.2016

Malkiat Singh

.... Petitioner

vs.

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Shailendra Sharma, Advocate for the petitioner
Mr. Rajat Bansal, Asst. AG, Punjab

Kuldip Singh J.(Oral)

Malkiat Singh, petitioner, who was working as Platoon Commander in Punjab Home Guards, at Ludhiana was involved in two FIRs i.e. FIR No. 11 dated 9.2.1996 and FIR No.37 dated 8.6.1996 under the various provisions of Prevention of Corruption Act, and Indian Penal Code, registered by the Vigilance Department.

Vide order Annexure P-1, the petitioner was compulsorily retired from service w.e.f. 21.2.2000. He was granted provisional pension to the extent of 90% and other retiral benefits i.e. Gratuity and leave encashment were released to the petitioner. In the meanwhile, the trial of the said two criminal case continued and ultimately vide judgment dated 30.3.2013, the learned Additional Sessions Judge, Ludhiana convicted and sentenced the petitioner. Appeals are pending before this Court in both the cases.

It comes out that thereafter a show cause notice of 23.10.2013 (Annexure P2) was issued to the petitioner and he was directed to submit the reply. He accordingly submitted the reply dated 17.11.2013 (Annexure P3), though in the impugned order it is stated that reply was not submitted.

Consequently, the impugned order Annexure P4 was passed on 17.12.2013

under Rule 2.2 (b) and (c) of the Punjab Civil Services Rules Volume II whereby provisional pension was stopped permanently from the date of the passing of the judgment i.e. 30.3.2013. The operative part of the impugned order reads as under:

“In this regard, as per the legal opinion obtained from Advocate General Punjab/ Director of Prosecution and Litigation Punjab, in view of judgment dated 30.3.2013 passed by Smt. Priya Sood, Additional Sessions Judge, Ludhiana, a show cause notice regarding the stoppage of provisional pension from the date of judgment was issued vide this office letter issued vide endorsement No. PHG-2013/Admn-3/11614 dated 24.10.2013 was issued and the reply was sought within 21 days. But he did not give any reply. Hence keeping in view the Rule 2.2 (B) and (C) of Punjab Civil Services Rules Vol. 2, his provision pension is stopped permanently from the date of passing the judgment (30.3.2013).”

The petitioner has impugned the said order.

In the reply, the State has taken the plea that petitioner was found involved in serious crime and guilty of grave misconduct. Therefore, action has been taken under Rule 2.2 (a) and 2.2 (b) of Punjab Civil Services Rules Volume II. The reference has been made to both the FIRs.

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

The perusal of the impugned order shows that the action was taken under Rule 2.2 (b) and (c) of the Punjab Civil Services Rules Volume II. Though in the reply, the State has maintained that it was taken under Rule 2.2 (a) and (b). The relevant part of the Rule 2.2 (a) of the said Rule is reproduced as under:-

2.2 (a) Recoveries from Pensions:- Future good conduct is an

implied condition of every grant of pension. The Government, however, reserves to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner is convicted of serious crime or be guilty of grave misconduct.

In a case where a pensioner is convicted of a serious crime, an 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 a 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 fifteen 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) taken 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.”

It goes to show that if a pensioner is convicted of a serious crime or is guilty of grave misconduct, the action can be taken. However, a

limit has been prescribed up-to which extent, pension can be withheld. In the present case, the entire provisional pension has been stopped with effect from the date of the judgment of lower Court i.e. 30.3.2013, though the order was passed later on 17.12.2013. Therefore, the impugned order does not meet the parameters laid down under Rule 2.2 (a) and has to be set aside. There is another reason also for the same. In the impugned order, it is mentioned that no reply was filed by the respondent, whereas Annexure P3 shows that in fact, the reply was filed. It goes to show that in the impugned order, the reply was not considered before passing the impugned order. Therefore, on this ground the impugned order is not sustainable.

Rule 2.2 b and c reads as under:-

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the 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 proceedings, the pensioner is found guilty of grave misconduct 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 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 ;

(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.

(c) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon. The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the

date of issue of final orders by the competent authority.”

[Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.]

(2) Payment of provisional pension made under sub – clause (I) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note.- The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings.

2.2-A. In the case of a Government employee who retires from service, while on deputation to Central Government or any other State Government or while on foreign service, action to sanction pension and gratuity in accordance with the provisions of Chapter IX shall be taken by the Adult Officer or the Head of Office, as the case may be, of the Cadre authority which sanctioned the deputation of the Government employee to the Central or any other State Government or to foreign service.”

The perusal of Rule 2.2 (b) shows that a pension or part can be withheld, if in the departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence. The entire pension or part

of it can be withdrawn. However, the said Rule envisages the departmental proceedings to determine the grave misconduct or negligence during the service. In any case, the impugned order also does not meet the parameters under Rule 2.2 (b) or (c) as in the present case, no departmental proceedings were initiated to determine the alleged grave misconduct or negligence of the petitioner while he was in service. Certain conditions are also there regarding the time limit during which the action under Rule 2.2 (b) can be taken.

In view of the matter, it is found that the impugned order (Annexure P4) is not sustainable in the eyes of the law is hereby quashed. However, the respondents shall be at liberty to follow the procedure as laid in Rule 2.2 (a) or Rule 2.2 (b) of Punjab Civil Services Volume II as they deem fit and pass an appropriate order, after following the procedure laid down in the said rules.

Until and Unless such order is passed, the provisional pension allowed the petitioner shall be continued to be paid to him. The respondents shall also take an interim decision whether the arrears of pension are to be released to the petitioner or not.

Resultantly, the present writ petition is allowed accordingly.

5.10.2016

gk

(Kuldip Singh)
Judge

Whether speaking / reasoned
Whether reportable

Yes
No