

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

CWP No. 12430 of 2015 (O&M)

Date of Decision: 17.04.2017

SURJIT KAUR

...Petitioner

VS.

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. D.R. Sharma, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Addl. A.G., Punjab.

KULDIP SINGH, J (ORAL)

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of Certiorari for quashing of the office order dated 18.12.2014 endorsed on 27.05.2015 (*Annexure P-1*) whereby Pension Payment Order No 3378 dated 23.12.2003 of the petitioner was cancelled. Prayer is also made for issuance of writ in the nature of Mandamus for directing the respondents to restore the pension of the petitioner which was earlier granted to her and for release of all retiral benefits.

Brief facts of this case are that the petitioner has joined the service with the Punjab Education Department as a Social Science Mistress on 05.08.1967 in S.D. Girls High School, Haridev Mandir, Ludhiana, which is a Government aided privately managed school getting 95% grant-in-aid from the Government of Punjab. During the service of the petitioner, she was booked in FIR No. 53 dated 16.02.2002 under Sections 406/498A/307/324/323/506 read with Section 34 Indian Penal Code (IPC)

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regarding the matrimonial dispute of her son Bhupinderpal Singh with his wife Sukhwinder Kaur, who were married on 21.02.1999. On 31.08.2002, the petitioner retired from service. However, during the trial, the Judicial Magistrate Ist Class, Ludhiana vide judgment dated 12.12.2013 (*Annexure P-3*), convicted the petitioner for offences under Sections 323/324/506/498A read with Section 34 IPC and sentenced her to various imprisonment ranging from six months to three years with fine alongwith her other family members. The petitioner has preferred an appeal against the judgment of conviction and vide order dated 10.01.2014 (*Annexure P-4*), learned Additional Sessions Judge, Ludhiana (Ms. Priya Sood) while admitting the appeal, has suspended the sentence of petitioner. It comes out that the said appeal is still pending and has not been decided so far. In the meanwhile, after issuing show cause notice, the respondents, vide order dated 18.12.2014 (*Annexure P-1*) endorsed on 27.05.2015, on the basis of conviction of the petitioner under Sections 323/324/506/498A read with Section 34 IPC, while invoking the provisions of Rule 2.2 (a) of Punjab Civil Services Rules, Volume II, cancelled the PPO No. 3378 issued to the petitioner. The petitioner has challenged the said order dated 18.12.2014 endorsed on 27.05.2015 (*Annexure P-1*).

In the reply, the respondents No. 1 and 2 have maintained that in view of the conviction of the petitioner, the Government has correctly invoked the Rule 25 of Chapter 6 of the Punjab Privately Managed Recognised Aided Schools Retirement Benefits Scheme, 1992 and Rule 2.2 (a) of the Punjab Civil Services Rules, Volume II. It is stated that the said

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order was passed after issuing show cause notice and after giving due opportunity of hearing to the petitioner.

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

Rule 2.2 (a) of the Punjab Civil Services Rules, Volume II and Rule 25 of the Chapter 6 are analogous.

Rule 2.2 (a) of the Punjab Civil Service Rules, Vol-II (Annexure P-7) under which the impugned order is passed is reproduced as under: -

“2.2. Recoveries from pensions.–(a) *Future good conduct is an implied condition of every grant of a pension. The Government, however, reserve to themselves the right of withholding or withdrawing a pension or any part of it if the pensioners is 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 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

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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 a 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 Government on any question of withholding or withdrawing the whole or any part of the pension under this rule shall be final and conclusive.

Explanation.—*In this rule, the expression “serious crime” includes crime involving, an offence under the Official Secrets Act, 1923 (19 of 1923); and the expression “grave misconduct” includes the communication or disclosure of any secret, official code or password or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.”*

According to the respondents, the pension of the petitioner has been withdrawn as the petitioner was convicted by the Judicial Magistrate Ist Class, Ludhiana, for a ‘serious crime’. The word ‘serious crime’ is not specifically defined but in the explanation of the Rule 2.2 (a) reproduced above, it included the crimes as mentioned in the Official Secrets Act, 1923. Further, it comes out that it is not necessary that the Government should withhold entire pension. It is also stated that the Government can withhold part of the pension also as the case may be.

In the present case, the PPO has been withdrawn. Meaning thereby, 100% of the petitioner has been withdrawn.

The operative portion of the impugned order (*Annexure P-1*) is reproduced below: -

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“As per Chapter 6, Rule 25 of Punjab Privately Managed Recognised Aided Schools Retirement Benefit Scheme, 1992 and as per chapter 6, Rule 22 Punjab Privately Managed Recognized Aided Schools Retirement Benefit Scheme, 2012, if any retiree is convicted in any case by the Hon’ble Court, his pensionary benefits are stopped by the Government/department. You had been given opportunity to give your defence vide this department’s letter No. 16/118-2003 Pen (2) 3378 dated 05.02.2015, during which, you could not give satisfactory proof to the department, after finding you guilty under CSR Vol. 2, Rule 2.2 of Punjab Government, cancels the P.P.O No. 3378 with immediate effect.”

The above noted portion of the impugned order shows that it is only on account of the conviction that the PPO of the petitioner has been cancelled without discussing or deciding whether the crime under which the petitioner was convicted was a ‘serious crime’ and whether it is a fit case where the entire pension of the petitioner should be withdrawn? Admittedly, there may be cases of serious nature like Murder, dacoity etc. which from its nature are treated as serious crime. However, in the present case, it is only a matrimonial dispute between the son and daughter-in-law of the petitioner. Therefore, the competent authority were required to first record the findings as to whether the authorities are of the view that it is a ‘serious crime’ and secondly, whether it is a case where part of pension or entire pension should be withheld? There are no such findings in the impugned order.

In view of the foregoing discussion, the impugned order dated 18.12.2014 endorsed on 27.05.2015 (*Annexure P-1*) is hereby quashed with a liberty to the respondents to hear the petitioner and then pass a fresh order giving findings whether the crime under which the petitioner is convicted amounts to a ‘serious crime’ and whether it is a case where the entire pension

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of the petitioner should be withheld or withdrawn? Till such order is passed, the petitioner shall continue to withdraw her pension in terms of her PPO No. PEN (2) 3378 dated 23.12.2003.

Though the question of decision of appeal is not before this Court, however, this Court is of the view that the petitioner is involved in a matrimonial dispute, therefore, in the interest of justice, the appeal filed by the petitioner against her conviction should be decided expeditiously. In view of the matter, a direction is issued to learned Additional Sessions Judge, Ludhiana (Ms. Priya Sood) or her successor, to decide the appeal filed by the petitioner expeditiously but not later than three months after excluding summer vacations.

Accordingly, the appeal is allowed in the above noted terms.

April 17, 2017

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

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