

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 295

Civil Writ Petition No.21231 of 2016 (O & M)
Date of Decision: August 03, 2017

Uggar Sain Bansal

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Ms. Alka Chatrath, Advocate, for the petitioner.

Ms. Sudeepti Sharma, Additional Advocate General,
Punjab.

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Jaspal Singh, J

1. By virtue of the instant petition, petitioner has sought issuance of a writ in the nature of certiorari, quashing order dated July 09, 2016 (Annexure P-10) vide which 100% cut in the pension of petitioner has been imposed violating the provisions of Rule 2.2 of the Punjab Civil Services Rules, Volume – II (for short, 'Rules') as well as direction to respondents to restore the same and release consequential arrears alongwith payment of interest @ 18% per annum. Prayer has also been sought for directing the respondents to release the entire pension of petitioner w.e.f. January 01, 2013 upto the date of passing the impugned order i.e. July 09, 2016 together with interest @ 18% per annum.

2. Shorn of unnecessary details, facts necessary for disposal of the instant petition are that petitioner joined the Department of Cooperation, Punjab on February 01, 1970 as Sub Inspector. He was granted promotion on the post of Inspector in the year 1978. He retired on September 30, 2005 on attaining the age of superannuation after rendering 35 ½ years of service. Pension and other retiral benefits were released to him. After retirement, petitioner alongwith his wife Smt. Chander Kanta shifted to Patiala. Their son Neeraj Bansal was married to Preeti Gupta daughter of Jai Bhagwan Gupta, resident of Ambala. The marriage was solemnized on September 06, 2005 at Ambala. On July 30, 2007, dead body of Preeti Gupta was found lying on the railway track between Ambala City and Ambala Cantt. In the autopsy report of dead body of Preeti Gupta, cause of death was given hemorrhage block due to injury to vital organs i.e. brain, liver etc. On July 31, 2007, Jai Bhagwan Gupta, father of Preeti Gupta, made a complaint before SHO, GRP, Ambala Cantt. against Neeraj Bansal, petitioner and his wife alleging that they killed his daughter for the greed of dowry. FIR No.166 dated July 31, 2007 under Sections 304-B, 498-A IPC was registered against them at Police Station, GRP, Ambala Cantt. Petitioner, his wife and son were tried in the court of Additional Sessions Judge, Ambala. Vide judgment dated July 11, 2011, they were held guilty under Sections 304-B/34 & 498-A IPC and convicted & sentenced to undergo RI for a period of 7 years besides fine to the tune of ₹ 2,000/- each and in default of payment of fine, to further undergo RI for 2 months each. Aggrieved of conviction & sentence, petitioner and his family members preferred an appeal viz. Criminal Appeal No.S-2079-SB of 2011, wherein vide order dated February 10, 2012, sentence of petitioner was suspended.

3. After conviction of the petitioner and during pendency of the appeal before this Court vide impugned order dated January 01, 2013, entire pension of petitioner was stopped. Petitioner filed an appeal dated May 09, 2013 through registered post before respondent No.1 for restoration of his pension, but that appeal stood rejected vide order dated May 20, 2014 which necessitated filing of the instant petition.

4. Learned counsel for the petitioner, while assailing the impugned order, urged that withholding of entire pension of petitioner is absolutely against the letter & spirit of Rule 2.2 of the Rules. Infact, said order is not sustainable in the eyes of law as neither any opportunity of being heard is afforded to the petitioner nor there is any compliance of aforesaid provision. Not even a show cause notice was given to petitioner before passing the impugned order. Neither any departmental enquiry was initiated/conducted to determine the alleged misconduct or negligence on the part of petitioner nor the procedure laid down under Rule 2.2(b) & (c) of Rules was followed. The Disciplinary Authority was obliged to consider whether the conduct of petitioner which has led to his conviction was such that warrants imposition of a penalty, that too, stoppage of whole of the pension.

5. While concluding arguments, it has been submitted by learned counsel for the petitioner that non-conducting of departmental enquiry before passing impugned order to determine the grave misconduct on the part of petitioner which led to his conviction, is suffice to strike down/quash the impugned order. To fortify the aforesaid contention, learned counsel has placed reliance upon various judgments of Hon'ble Apex Court as well as of this Court, viz. **Rameshwar Yadav vs. Union of India &**

others, 2008(4) SCT 72; Punjab Scheduled Castes Land Development and Finance Corporation vs. Sucha Ram, 2014(19) SCT 275; Avtar Singh vs. Union of India & others, 2007(4) SCT 426; and Ramesh Kumar vs. State of Punjab, 2017(3) SCT 269.

6. On the other hand, learned State counsel, while controverting the various pleas taken by learned counsel for the petitioner, has argued that impugned order dated January 01, 2013 is absolutely in consonance with the Rules applicable to the petitioner. Undisputably, petitioner stands convicted and sentenced under Sections 304-B/34, 498-A IPC on account of death of his daughter-in-law Preeti Gupta for demand of dowry. Moreover, allegations stood proved against petitioner as he has been convicted and sentenced as referred to above. Mere pendency of appeal does not *ipso facto* mean that no punishment can be imposed upon petitioner under Rule 2.2(a) of the Rules. Future good conduct is an implied condition of every grant of pension. The Government, however, reserves themselves the right to withhold or withdraw a pension or part of it if the pensioner is convicted in a serious crime or is guilty of a grave misconduct. Moreover, the petitioner has been convicted in the instant case for commission of a heinous crime i.e. death of daughter-in-law on account of demand of dowry which itself is a grave misconduct. Holding of an enquiry to further determine the misconduct is not at all required. Since the impugned order is absolutely perfect, legal and valid and is in accordance with the service rules, no interference by this Court is justified and the instant petition being devoid of merits deserves to be dismissed.

7. After bestowing due consideration to the rival submissions made by learned counsel for the parties, appraisal of documentary evidence

that various submissions made by learned counsel for the petitioner do carry legal weight and deserve to be accepted.

8. Undisputably, petitioner retired on September 30, 2005 on attaining the age of superannuation and the retiral benefits including pension were released to him. Subsequently, when conviction of petitioner was recorded vide judgment dated July 11, 2011 under Sections 304-B/34, 498-A IPC, his 100% pension was stopped without holding any departmental enquiry to determine whether the circumstances which led to his conviction amount to grave misconduct which is the basic ingredient for passing any order under Rule 2.2(a) of Rules. Mere fact that petitioner has been convicted and sentenced under the aforesaid provisions of the Act, does not *ipso facto* mean that it amounts to grave misconduct. Infact, a departmental enquiry is required to be conducted in order to determine the misconduct before passing any order stopping the pension of the retiree. Thus, the most crucial question which requires to be determined in this regard is as to whether on account of conviction after retirement of the petitioner while exercising powers under Rule 2.2(b) and (c) of the Rules, his pension can be stopped from the date of his conviction without holding any enquiry and the answer to this is in the negative.

9. A glance at the impugned order is suggestive of the fact that it has been passed under Rule 2.2(b) and (c) of the Rules. For the proper appreciation of the controversy involved in this case, it would be apt and appropriate to reproduce Rule 2.2(a) as well as (b) which read ut infra:-

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 pensioners is convicted of serious crime or be guilty or 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.

(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.”

10. A perusal of Rule 2.2(a) of the Rules depicts that for taking

departmental enquiry, that the pensioner is convicted of a serious crime or guilty of grave misconduct. Similarly, a limit has also been stipulated showing the extent to which the pension can be stopped or withheld. In the instant case, entire pension, which was being drawn by petitioner, from the date of his conviction has been stopped.

11. A cursory look upon Rule 2.2(b) of the Rules makes it crystal clear that pension or part thereof can be withheld if in the departmental or judicial proceedings, petitioner is found guilty of grave misconduct or negligence. It further envisages that departmental proceedings are required to be instituted to determine grave misconduct or negligence during service or subsequent thereto. Thus, it is clear from the impugned order itself that prior to its passing, no departmental proceeding was initiated or carried out to determine the alleged grave misconduct or negligence on the part of petitioner. It is the mandate of law that before passing any order stopping or withholding the pension of a pensioner, such a departmental enquiry is must and in the absence thereof, order imposing any penalty or stopping the pension cannot be termed to be legal or proper, and such an order is liable to be quashed/ set aside.

12. In **Rameshwar Yadav's case (supra)**, petitioner who retired from Army, was involved in a murder case and convicted for the offence under Section 302 IPC and was awarded imprisonment for life. In view of conviction, his pension was stopped which was challenged before the Hon'ble Apex Court under Article 32 of the Constitution of India. It was observed by the Hon'ble Apex Court that competent authority is obliged to apply its mind to question as to whether the pension should be suspended in whole or in part. While determining this question, the Disbursing Officer has

might have been committed and other allied matters. The officer has also to consider the hardship on the dependents of the person, if the payment of pension is suspended. In that case, the impugned order does not depict that the competent authority applied its mind to the question as to whether the whole or a part of the pension should be suspended, instead, the authority mechanically issued orders for the suspension of entire amount of pension. As such, impugned order was set aside.

13. In case **SI Surinder Singh (supra)**, petitioner was dismissed from service on account of his conviction and it was held that in the absence of findings of gravest act of misconduct, punishing authority is bound to consider and follow the provision of Rule 16.2 to protect the right to pension of the employee if he had rendered length of pensionable service. Ignoring such an important aspect of the matter would attract Wednesbury principle and the order was set aside.

14. In **Sucha Ram's case (supra)**, while relying upon the Division Bench judgment of this Court rendered in case **Kaur Singh vs. Punjab State Electricity Board (P & H), 2007(4) SCT 426**, Division Bench of this Court has held that mere conviction cannot constitute the basis of a dismissal order of an employee unless the competent authority has considered the conduct of the employee, which has led to the conviction.

15. In **Kaur Singh's case (supra)**, Division Bench of this Court while relying upon the judgment of Hon'ble Apex Court in case **Kulwant Singh vs. Deputy District Primary Education Officer, Gurdaspur, 1997(1) SCT 282 (P&H)**, it was observed that:

“6. The principles laid down in the aforementioned authoritative judgment of Hon'ble the Supreme Court, if are applied to the facts of the present case then it becomes evident that the impugned order does not reflect any consideration of conduct of the petitioners which

have led to their conviction. The judgment of the Criminal Court was required to be read by the competent authority which has passed the order and then after due application of mind it was required to be concluded as to whether the petitioners were worthy of retention in service or they are to be reduced in rank or any other suitable punishment was required to be inflicted.”

16. In similar circumstances, this Court in case **Ramesh Kumar vs. State of Punjab & others, 2015(3) SCT 534**, has observed as under:-

“13. In Mohan Singh's case (supra), the petitioner was convicted in a criminal case under the PC Act and during trial, he got retired from service but he was granted provisional pension. There was cut of 25% in the provisional pension under Rule 2.2(a) of the Punjab Civil Services Rules. The cut imposed was without issuing any Show Cause Notice and as such, the impugned order of cut in pension was quashed and the writ petition filed by him was allowed. However, the liberty was granted to the respondents to pass appropriate order in accordance with law.

14. The Full Bench judgment of this Court in Dr. Ishar Singh v. State of Punjab and another, 1994(1) SCT 563, is relevant for resolving the controversy, in hand, wherein, it has been held that the State is liable to pay pension and it cannot escape its liability. The retiree would be entitled to 100% provisional pension till the Government finally sanctions pension or imposes any cut in pension. It has also been held that merely on pendency of enquiry, the pension cannot be withheld.

15. The observations of the Full Bench of this Court as made in Dr. Ishar Singh's case (supra) in para Nos.31, 34, 53 and 59 are reproduced as under:-

“31. The pension can be affected for the reasons provided by statutory rules. The pensionary or retiral benefits could not be refused solely on the ground of initiation or intending initiation of disciplinary proceedings. The finding of misconduct envisaged by rules is a pre-condition for withholding or withdrawing pension. Pension can be affected but the reduction has to be commensurate with the correlation to the gravity of the charge attributed. Pension can only be adversely affected after show-cause notice is served and finding returned in accordance with the procedure laid down by the statutory rules as well as keeping in view the principles of natural justice.

The pension cannot be withheld retrospectively though it can be done prospectively. Concept of grant of provisional pension is provided under two contingencies viz. (i) when grant of gratuity or pension is still under consideration of the authority before it finally sanctioned the pension. The Government was unable to finalise the pension and finally determine the admissible pension for some reasonable cause and (ii) where some disciplinary proceedings are pending on the date of superannuation and they are continued after retirement.

32 and 33. xxx xxx xxx xxx

34. While interpreting pension rules one has to keep in mind that justice is constant. Its object and purpose is to render each one his due. The prime consideration of pension is its social welfare nature. Attempts must be made not to negate what the pension rules intend to achieve. Though sympathy may be irrelevant in the interpretation of the rules yet the fact of an interpretation resulting in depriving a person of his pension, and thereby rendering the purpose of pension rules as *non-est* cannot be lost sight of. Since the pension rules provide for alleviating hardship to the retiree, rule of interpretation according to spirit and not to the letters should be adhered to as far as possible. Law is for deviating hardship and not to result in hardship. It would be misplaced (sic) to mention that it is a serious matter to deprive a person his source of livelihood when one's physical and mental faculties have grown weak because of age and he cannot withstand strenuous work to earn his bread.

35 to 52. xxx xxx xxx xxx

53. On comprehensive reading of Rules 2.2(a), 2.2(b) and 2.2(c), it emerges that the State preserves to itself the right to withhold or withdraw pension or any part of it on the happenings of circumstances imbibed in the statutory rules. Further on carefully and assiduously examining the arguments, it is quite clear that by providing Rule 2.2 Govt. has preserved its right to adversely affect the pension after the person has retired and pension has been granted to him. It provides that the pension can only be withheld or withdrawn if the pensioner after his retirement is found to be guilty of grave misconduct or has been convicted of a serious

crime. Summary procedure for affecting the pension adversely has been provided by this subrule. The legislature has designedly desired by enacting statutory provisions that ordinarily where part of pension is withheld or withdrawn, it should not exceed 1/3 of the pension of originally sanctioned with a further limit that the pension cannot be reduced to less than Rs.40/- per month. Rules make it incumbent and impose a statutory duty on the authorities that while applying cut to pension, it should be kept in view, that the pensioner is left with an adequate pension for his maintenance.

54 to 58. xxx xxx xxx xxx]

59. I may venture to put plainly the conditions imposed by Rule 2.2(b). The proceeding can only be instituted with the sanction of the Government. The event relating to which proceedings are proposed to be instituted should not be more than four years only on the date of institution of the proceedings. The authorities are required to proceed in the manner and follow the procedure provided for passing an order of dismissal from service. When judicial proceedings are required to be initiated, it is further enjoined that the Public Service Commission should be consulted. It may be pertinent to notice that the State has provided by statutory rules in the form of notes which would be deemed to be part of the rules (as observed in earlier part of the judgment and as laid down by the Hon'ble Supreme Court) that ordinarily affected pension shall not exceed 1/3rd of the pension sanctioned. Further emphasis has been laid down that adequacy for maintenance of the retiree would be considered.”

17. Adverting to the facts of instant case, perusal of the petition reveals that petitioner earlier challenged orders dated January 01, 2013 and May 20, 2014 before this Court by filing CWP No.21204 of 2014, wherein this Court set aside the impugned orders vide judgment dated December 15, 2015. However, liberty was given to respondent No.1 to decide the issue afresh after affording the opportunity of hearing to the petitioner. Petitioner was called for hearing on February 11, 2016 vide memo dated February 01,

him. Petitioner preferred COCP No.959 of 2016 whereafter respondent No.1 passed impugned order dated July 09, 2016 thereby declining his request and 100% cut in pension was imposed with immediate effect. Since no enquiry was conducted prior to stoppage/withdrawal of entire pension of petitioner, it can be said to be result of non-application of mind by the competent authority. The competent authority has failed to appreciate the relevant rules to the detriment of the petitioner and has withdrawn his pension without determining the grave misconduct or negligence on his part.

18. In the light of what has been discussed above, instant writ petition is allowed and impugned order dated July 09, 2016 is set aside. The respondents are directed to make the payment of arrears of pension from the date it was stopped alongwith interest @ 9% per annum till the date it is actually paid, within a period of two months from the date of receipt of a certified copy of this judgment.

August 03, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No