

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

CWP No. 8390 of 2015

Date of Decision: 06.03.2017

MOHAN SINGH

... Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. G.P. Vashisht, Advocate
for the petitioner.

Mr. Nikhil Chopra, Addl. A.G., Punjab.

KULDIP SINGH, J. (ORAL)

The petitioner has preferred the present writ petition filed under Articles 226 and 227 of the Constitution of India for issuance of writ of certiorari for quashing the impugned order dated 04.04.2014 endorsed on 07.04.2014 (*Annexure P-8*) passed by respondent No. 1 vide which the pension and gratuity of the petitioner was stopped under Rule 2.2 (a) of the Punjab Civil Service Rules, Vol-II. Further prayer of the petitioner is for issuance of writ of mandamus directing the respondents to release the pension of the petitioner w.e.f. 07.04.2014 as sanctioned in order dated 27.02.2012 endorsed on 02.03.2012 (*Annexure P-3*) and gratuity w.e.f. 30.09.2007 i.e. date of retirement of the petitioner alongwith interest.

The admitted facts of this case are that the petitioner, who was working as Superintendent with the respondent No. 2 department, was booked in an FIR No. 08 dated 05.05.2001 registered under Section 7, 13 (1) (d) read with Section 13 (2) 88 of the Prevention of Corruption Act, 1988 at Police Station Phase-I, Mohali, Punjab. The trial was conducted by the

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learned Special Judge, Rupnagar. In the meanwhile, the petitioner superannuated from service on 30.09.2007 vide order dated 25.09.2007 endorsed on 27.09.2007 (*Annexure P-1*). The learned Special Judge, Rupnagar, vide judgment of conviction and order of sentence dated 15.02.2011, petitioner was convicted and sentenced to rigorous imprisonment for two and a half years in addition to fine of ₹ 4,000/-. Against the said judgment of learned Special Judge, Rupnagar, the petitioner has preferred an appeal bearing No. CRA-680-SB of 2011 before this Court which has been admitted vide order dated 11.07.2011 (*Annexure P-2*) and the sentence of imprisonment was suspended during the pendency of the appeal. Thereafter, the Government passed an order dated 27.02.2012 endorsed on 02.03.2012 (*Annexure P-3*) whereby on the basis of the conviction, invoking powers under Rule 2.2 (a) of the Punjab Civil Service Rules, Vol-II, 25% of the provisional pension of the petitioner has been withheld during the pendency of the appeal before this Court. Subsequently, the Government vide another order dated 06.07.2012 endorsed on 11.07.2012 (*Annexure P-4*), has reviewed the said order whereby in place of withholding of 25% of the provisional pension of the petitioner, 100% of the provisional pension was withheld. This order was challenged by the petitioner by way of CWP No. 13786 of 2012 before this Court and the same was allowed vide order dated 15.05.2013 whereby the said order dated 06.07.2012 endorsed on 11.07.2012 withholding 100% of the provisional pension of the petitioner was struck down while observing that under the said Rules there is a provision of grant of personal hearing which has been clearly violated in this Case. The Government was granted liberty to pass appropriate order in accordance with

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law. Thereafter, the petitioner was granted personal hearing and now, the impugned order dated 04.04.2014 endorsed on 07.04.2014 (Annexure P-8) has been passed whereby 100% provisional pension of the petitioner alongwith gratuity have been withheld with a rider that the claim would be taken up for consideration in the point of time when the petitioner is acquitted if at all. It is this order, the petitioner has impugned in the present case.

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

The respondents have not disputed the factual position.

Rule 2.2 (a) of the Punjab Civil Service Rules, Vol-II 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, reserves to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner 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 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*

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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 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 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 pass-word 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.”*

The perusal of the said Rule shows that it is divided in two parts; one is regarding serious crimes; second is regarding grave misconduct. In case of

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serious crime, the action is to be taken in the light of the judgement of the Court regarding such conviction. Whereas, in case of grave misconduct, certain formalities of serving show cause notice is required. However, it is further laid down that in the order wherein part of the 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 petitioner be ordinarily reduced to less than ₹ 40.00 per month.

In the present case, after the retirement, the petitioner was allowed 100% provisional pension. After his conviction in the criminal case under the Prevention of Corruption Act, 1988, order dated 27.02.2012 endorsed on 02.03.2012 (*Annexure P-3*) was passed initially whereby only part of pension to the extent of 25% was withheld. Thereafter, the said order was reviewed vide order dated 06.07.2012 endorsed on 11.07.2012 (*Annexure P-4*) which was quashed by this Court and now order dated 04.04.2014 (*Annexure P-8*), which is on the similar footing with that of order dated 06.07.2012 endorsed on 11.07.2012 (*Annexure P-4*), has been passed whereby, 100% of the provisional pension is ordered to be withheld.

The question for consideration before this Court is that as to whether the Government could review its earlier order dated 27.02.2012 endorsed on 02.03.2012 (*Annexure P-3*) or not?

I am of the view that when the petitioner was convicted and sentenced, the Government exercised the powers vested under Rule 2.2 (a) of the Punjab Civil Service Rules, Vol-II to withhold the part of his provisional pension. That order had become final and was not challenged by the petitioner. Now, the question would arise whether subsequently, after few

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months the Government could reconsider and review the said order or not? Certainly, the Government can reconsider and review the order but only if fresh material is available against the retired employee.

In the present case, there is nothing on file to show that after passing of the order dated 27.02.2012 endorsed on 02.03.2012 (*Annexure P-3*), some fresh material had come to the notice of the Government which necessitated the passing of a harsher order of withholding 100% of the provisional pension of the petitioner in place of order of withholding 25% of provisional pension.

The impugned order shows that merely the concerned officer thought that the order should review and the same was reviewed.

I am further of the opinion that the criminal appeal of the petitioner is pending and is unlikely to be decided in the near future, it would be harsh on the petitioner if entire provisional pension is withheld. The petitioner cannot be allowed to be starved pending the decision of the appeal which may in some cases result in acquittal of the accused.

Therefore, in view of the foregoing discussion, impugned order dated 04.04.2014 endorsed on 07.04.2014 (*Annexure P-8*) is hereby quashed and earlier order dated 27.02.2012 endorsed on 02.03.2012 (*Annexure P-3*) withholding 25% of the provisional pension is restored. Needless to say that the arrears of pension shall also be released after withholding 25% of the

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provisional pension within three months from the date of receipt of certified copy of this order.

In view of the above, the present petition is allowed to the above noted extent.

March 6, 2017
Suresh Kumar

[KULDIP SINGH]
JUDGE

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