

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.20349 of 2015 (O & M)

Date of Decision: August 01, 2018

Nasib Singh

..... PETITIONER

VERSUS

State through Secretary, Department of Revenue, Punjab & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. H.K. Brinda, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General,
Punjab.

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Jaspal Singh, J

By virtue of the instant petition, petitioner has sought issuance of a writ in the nature of certiorari, quashing order dated August 26, 2015 (Annexure P-7) for ordering recovery from him for a sum of ₹ 97,294/- and directed to deposit the same in Government Treasury which is against mandate and violative of Rule 2.2(b)(2)(ii) of Punjab Civil Services Rules, Volume II.

Brief facts of the case are that land measuring 35 Bigha, 19 Biswa and 10 Biswasi was acquired by the Government in the year 2005, for construction of road from Morinda City to Railway Station, Morinda. A sum of ₹ 71,52,012/- being 80% of the total amount of acquired land was paid to the land owner(s) on March 28, 2005 and possession was taken. Further, a

draft award was required to be prepared and paid on account of interest from March 28, 2005 to April 30, 2005, which could not be done. As a result, an amount of ₹ 5,06,287/- for the period of about 2 years 3 months was paid by the Government. Enquiry was conducted against Smt. Balwinder Kaur, who was posted as ASDA in the office of respondent No.3 w.e.f. March 28, 2005 to May 08, 2006, for not preparing the draft in time. The enquiry officer in his report concluded that draft award was prepared on March 28, 2006 and it was hand over to petitioner on May 09, 2006 at the time of handing over the charge. On the basis of comments received from SDM, Rupnagar, vide order dated January 28, 2015 re-enquiry was ordered to be conducted to found the negligence of employees – Balwinder Kaur, Nasib Singh (petitioner herein) and Nirmal Kumar. As per enquiry report, petitioner alongwith other employees remained posted before and after him has been held responsible and recovery of ₹ 97,294/- was ordered to be effected from him.

While issuing notice of motion on September 23, 2015, following order was passed after considering the contentions of learned counsel for the petitioner:-

“Counsel inter alia contends that the petitioner retired on 31.10.2006 (Annexure P-1) and a show cause notice was issued on 27.06.2014 (Annexure P-4) pertaining to the allegations of May, 2006. The Deputy Commissioner, vide impugned order dated 26.08.2015 (Annexure P7), has directed recovery of ₹ 97,294/- on the basis of an inquiry conducted by the Additional Deputy Commissioner. It is submitted that the said order is violative of Rule 2.2(b)(2)(ii) of the Punjab Civil Services Rules since the incident was

more than 4 years before the institution of such proceedings.

Reliance is placed upon judgment of this Court in ***Baldhir Singh vs. State of Punjab and others, 2008 (4) SCT 652.***

Notice of motion.

Mr. R.S. Sidhu, AAG, Punjab accepts notice on behalf of the respondents and prays for time. Requisite number of copies of writ petition be supplied to him during the course of the day.

Adjourned to 17.11.2015.

In the meantime, recovery shall remain stayed.”

Undisputably, petitioner retired on October 31, 2006 after attaining the age of superannuation, from the post of Senior Assistant, Office of respondent No.3 - Sub Divisional Magistrate, Rupnagar and retiral benefits including pension were released to him. Subsequently, on June 27, 2014 a show cause notice was served upon him by respondent No.2 – Deputy Commissioner, Rupnagar under Rule 2.2.(b)(2)(ii) of Punjab Civil Service Rules, Volume II Part II (for short, ‘Rules’) i.e. after more than 8 years of his retirement. Enquiry officer was appointed and vide order dated August 26, 2015, a penalty of recovery of ₹ 97,294/- was imposed upon the petitioner.

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.”

A perusal of Rule 2.2(a) of the Rules depicts that for taking an action against the pensioner, it is necessary to determine, by holding a departmental enquiry that whether 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.

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 of 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. In the case in hand, petitioner stood retired on October 31, 2006 whereas show cause notice was served upon him on June 27, 2014 i.e. after more than 8 years of his retirement.

In the present case, charges are of the year 2006 and show cause notice was served in the year 2014. It manifest that alleged event took place much more than 4 years before serving the show cause notice and after 8 years of petitioner's retirement. Moreover, at the time of retirement

of petitioner, neither any enquiry was pending against him nor he was chargesheeted. Thus, he cannot be made liable to impugned recovery.

In the light of what has been discussed above, instant petition is allowed. Consequently, impugned order dated August 26, 2015 (Annexure P-7) is set aside.

August 01, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No