

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP No.22174 of 2015
DATE OF DECISION:19.12.2018

Darshan Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Jasneet Kaur, Advocate for
Mr. Navkiran Singh, Advocate
for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

Present is the case where the petitioner has approached this Court challenging the order dated 24.04.2015 (Annexure P-10) passed by the Director, Education by which, the 100% provisional pension being paid to the petitioner, has been ordered to be withheld by applying Rule 2.2 (a) of the Punjab Civil Services Rules on the ground that the petitioner was not having good conduct being a convicted person and, therefore, his total pension has been stopped.

In order to appreciate the controversy in hand, certain facts need to be enumerated here. The petitioner was appointed as Senior Lab Assistant in the Government High School, Deep Singh Wala, Faridkot on 24.09.1987. Thereafter, the petitioner was

transferred to another school namely Government High School,

Janerian, District Faridkot in the year 1992.

While working there, an FIR No.36 was registered against the petitioner on 23.05.1994 under Section 324 IPC. Not only this, another FIR was registered against the petitioner being FIR No.14 under Section 302 IPC at Police Station, Kotwali Faridkot on 17.02.1995. After the registration of the said FIR, the petitioner was suspended from service on 28.11.1995.

In FIR No.36 registered against the petitioner under Section 324 IPC on 23.05.1994, the petitioner was found guilty of the crime vide judgment dated 03.12.1997 and he was ordered to undergo sentence of 09 months imprisonment. Later on, on an appeal filed by the petitioner, the said judgment dated 03.12.1997 was reversed and the petitioner was acquitted of the charge in the year 2002.

In case of FIR No.14 dated 17.02.1995, which was registered against the petitioner under Section 302 IPC, the Additional Sessions Judge, Faridkot acquitted the petitioner vide judgment dated 26.03.1998. However, in an appeal preferred by the State being Criminal Appeal No.568-DBA/1998 titled as **State of Punjab Vs. Darshan Singh**, this Court found the petitioner guilty of the offence committed under Section 302 IPC vide order dated 02.09.2008 and the petitioner was sentenced to undergo life imprisonment. The petitioner has already preferred an appeal before Hon'ble Supreme Court of India against the decision rendered by this Court on 02.09.2008 by which he was found guilty

said appeal has also been decided and the conviction of the petitioner has been upheld.

That even though, the petitioner was convicted by this Court on 02.09.2008 and he was serving the sentence awarded to him of life imprisonment and was behind the bars, the respondents-State did not take any action under Article 311 of the Constitution of India and allowed the petitioner to reach the age of superannuation which the petitioner attained on 31.01.2012 though on 05.10.2009, after the conviction on 02.09.2008, a charge-sheet was issued to him for remaining absent from duty. District Education Officer, Faridkot was appointed as inquiry officer on 25.01.2011. Even though he was asked to complete the inquiry within a period of one month, nothing came out of the said inquiry, which was only relating to the allegations of absent from duty till petitioner superannuated on 31.01.2012. It is an admitted case by the respondents that after the petitioner superannuated, the petitioner was given provisional pension by the respondents to the tune of 100%.

The petitioner kept on getting the provisional pension, till the same was stopped by the respondents by passing an order dated 24.04.2015 (Annexure P-10), which has been impugned in the present writ petition. In the impugned order, the respondents have recorded this factum about conviction of the petitioner by this Court under Section 302 IPC in respect of FIR No.14 dated 17.02.1995 and by relying upon Rule 2.2 (a) of the Punjab Civil Services Rules, according to which, a good conduct is must for the payment of pension. The total pension of the petitioner was stopped.

This order is being impugned by the petitioner in the present writ petition.

Counsel for the petitioner states that admittedly, the respondents have passed an order under Rule 2.2 (a) of the Punjab Civil Services Rules and under Rule 2.2 (a), the total pension of a convicted employee cannot be stopped and, therefore, the order dated 24.04.2015 (Annexure P-10) is contrary to the law and the respondents have gone beyond their jurisdiction to withhold the 100% provisional pension, which the petitioner was getting after his retirement on 31.01.2012. In order to support the arguments, counsel for the petitioner is also relying upon the order passed by this Court in CWP No.16316 of 2012 decided on 05.04.2016 to contend that Rule 2.2 (a) has been interpreted by a coordinate Bench of this Court to hold that only 1/3rd pension which the employee was getting can be stopped and not 100% pension.

Counsel for the respondents have rebutted the arguments raised on behalf of the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab has submitted that the Rule as has been interpreted by the counsel for the petitioner is not correct. As per the interpretation of the State counsel, where there is a conviction by the competent Court of Law, the State has full authority to withhold even 100% pension and it is only in the case where in the departmental inquiry an employee is found guilty of grave misconduct, the limit of withholding the pension not more than 1/3rd has been imposed and, therefore, the

petitioner is incorrect hence cannot be accepted.

The argument which has been raised by the counsel for the respondents has already been considered by this Court while deciding CWP No.24736 of 2017 decided on 01.12.2018. In the said case also, 100% pension was stopped after the conviction of an employee and the same argument, as raised by the counsel for the State that it is only in the case of departmental inquiry, the sealing of not withholding more than 1/3rd pension has been imposed, has been considered and negatived. Relevant para of the judgment is as under:

“In order to appreciate the contention which has been raised by the respective counsel, Rule 2.2 (a) of the Punjab Civil Services Rules, Vol.II needs to be reproduced herein:-

2.2 Recoveries from pensions.-(a) Future good conduct is an implied condition of every grant of a pension. The Government reserve 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 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 three thousand five hundred 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.

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.”

A bare perusal of the Rule 2.2 (a), which gives the power to the competent authority to withhold the pension states that a future good conduct is an implied condition of every grant of a pension and the government reserve to themselves the right to withhold or withdraw the pension or any part of it if the pensioner is convicted of a serious crime or to be guilty of a grave misconduct. After noticing the said, the Rule 2.2 (a) states that where a pensioner is convicted of a serious crime, the action is to be taken in the light of the judgment of the Court relating to such conviction.

In the next paragraph, it has been mentioned in the Rule

2.2 (a) that in case a pensioner is not covered by the conviction then the Government is to consider as to whether a pensioner is guilty of a prima facie misconduct or not. In case authorities find that pensioner is guilty of grave misconduct after granting due opportunity of hearing to the concerned pensioner and after considering the reply, if any filed, the decision can be arrived at as to what action needs to be taken against the pensioner.

After noticing the above two situations, there is a power which has been given to the competent authority to pass an appropriate order of withholding or withdrawing the amount of such part of pension which shall not ordinarily exceed 1/3rd of the pension originally sanctioned nor shall the amount of pension left to the pensioner shall be ordinarily reduced to less than ₹3500/- per month. This is done so that a pensioner in any case has an adequate amount for his/her maintenance.

The interpretation which the State counsel has forwarded that in case of conviction, the Government has right to withhold full pension, is not borne out of the plain reading of the Rules. The proviso where the power has been given to withhold and a sealing has been fixed, is duly applicable in the case of conviction by the competent Court of Law as well as in the case of grave misconduct on which decisions the department has to arrive at after due opportunity to the concerned pensioner (departmental inquiry). Therefore,

the distinction which is being sought to create by the State counsel, is not borne out of the reading of the Rule 2.2 (a). "

Once the same argument raised by the respondent-State has already been considered and rejected, the same cannot be accepted in the present case as well and hence the argument raised by the State that the State has power to withhold 100 % pension in case of conviction is rejected.

Furthermore, in the present case, the order (Annexure P-10) has been passed on the basis of the charge-sheet, which was issued to the petitioner on 05.10.2009, which is clear from order (Annexure P-10). After noticing the said charge-sheet, which was issued for remaining absent from duty, the officer passing the order i.e. the Director, Education Punjab notices the conviction of the petitioner in respect of FIR No.14 dated 17.02.1995 as well as the FIR No.36 dated 23.05.1994. Though the officer has passed an order in respect of the charge-sheet but the actual pension is being withheld on the basis of the conviction.

At this stage, the counsel for the petitioner points out that even if the interpretation, which is being given by the State counsel is to be accepted, though not accepted, that where the order is passed on the basis of grave misconduct then only 1/3rd of the pension can be withheld, the respondents in reply to paragraph 14 of the writ petition has mentioned that impugned order is not passed on the basis of conviction. Relevant reply of para 14 is as under:

"14. That in reply to para No.14 of the writ petition it is submitted that the contents of this para are wrong hence

denied. However, it is submitted that a perusal of Annexure P-10 clearly shows that the pension of the petitioner had not been withdrawn on account of his conviction and sentence under Section 302/324 IPC. In fact the pension of the petitioner has been withdrawn on the basis of grave misconduct as future good conduct is an essential ingredient for getting pension.”

A bare perusal of same would show that as per the stand taken by the respondents before this Court, the order (Annexure P-10) was passed not on account of conviction but due to the grave misconduct of remaining absent, for which the petitioner was issued charge-sheet on 05.10.2009. Therefore, even as per the interpretation of the State counsel, as the order was passed in the case of the petitioner on the basis of grave misconduct, the respondents could not withhold more than 1/3rd of the pension in any case. Counsel for the respondents has no satisfactorily reply in view of the stand taken, the respondents before this Court, reproduced hereinbefore.

Even otherwise, Rule 2.2 (a) has been interpreted by a coordinate Bench of this Court in CWP No.16316 of 2012 titled as **Sardara Singh Vs. State of Punjab and others**. Vide order dated 05.04.2016, this Court after reproducing the Rule 2.2 (a) in paragraph 7, a finding has been recorded by the coordinate Bench that pension more than 1/3rd cannot be withheld in any case. The relevant paragraphs 7 and 8 of the said judgment are as under:

“7. In the written statement filed, a plea has been taken that on account of Rule 2.2(a) of the Punjab Civil Services Rules Vol-II Part-I [in short “Rule 2.2(a)”], person who has

been convicted by Court has no right to pension and, therefore, his pension has rightly been stopped. Rule 2.2(a) reads thus:-

“2.2. Recoveries from pensions.–(a) Future good conduct is an implied condition of every grant of a pension. The Government reserve 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 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 three thousand five hundred 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.

8. *The above provision would go on to show that future conduct of the government servant is to be taken into consideration. On account of conviction on serious crime, action can be taken. However, safe guards have been prescribed for ensuring that the person can maintain himself and part of the pension can be withheld which cannot normally exceed 1/3rd of the pension originally sanctioned nor shall the amount of pension left to the pensioner be ordinarily reduced to less than ₹40 per month.”*

Therefore, it is clear that a coordinate Bench has already held that as per 2.2(a) of Punjab Civil Services Rule, not more than 1/3rd of the pension granted can be withheld.

Counsel for the respondents states that while deciding **Sardara Singh's case (supra)**, the Court took into consideration the order passed by the Division Bench in LPA No.427 of 2013 dated 12.11.2014 vide which while interpreting Rule 2.2 (a) of Punjab Civil Services Rule, the Division Bench had come to the conclusion that 100% pension cannot be withheld. Counsel for the respondents states that the said order was recalled by the Division Bench and, thereafter, while deciding the same LPA, the Division Bench vide order dated 05.10.2016 allowed the LPA holding that 100% pension can be stopped. In order to verify the facts, the case file of the above mentioned LPA was summoned from where it transpires that the Division Bench allowed the LPA while interpreting Rule 2.2(a) as applicable to Punjab, which is being interpreted in the present case as well on 12.11.2014. As **Shankar Lal's case** was relating to the State of Haryana, a review petition was filed on the ground that Rule

2.2 as applicable in the State of Haryana is different and there is no 1/3rd sealing provided in the said Rule and, therefore, the order dated 12.11.2014 is liable to be recalled. It was under these circumstances that the order dated 12.11.2014 was recalled by the Division Bench and, thereafter, while interpreting the Rule 2.2 as applicable to the State of Haryana, the LPA was dismissed on 05.10.2016. Even though the order dated 12.11.2014 passed in LPA No.427 of 2013 was recalled but it is a matter of fact that the Division Bench while interpreting the Rule 2.2 (a) as applicable in the State of Punjab, also held that 100% pension cannot be stopped. Therefore, this argument that the learned Single Judge while deciding **Sardara Singh's case** inadvertently relied upon the order dated 12.11.2014 cannot be accepted.

Further more, withholding of the pension not exceeding 1/3rd is for a reason which has been enumerated in Rule 2.2(a) itself. As per Rule 2.2(a) a person should be left with adequate amount for his/her maintenance. It cannot be said that the said clause will only be applicable in case a person is found guilty of grave misconduct in the departmental inquiry but not where a person is convicted by a competent Court of Law. Maintenance of a pensioner cannot be differentiated by a judgment of a competent Court of Law in case relating to criminal activity or a finding given by the competent authority about a grave misconduct in the departmental proceedings.

Therefore, the sealing which has been put by Rule 2.2 (a)

to not withhold more than 1/3rd of pension originally sanctioned, will

be duly applicable in case of both i.e. where a person has been held guilty by the Criminal Court of Law and where a person has been held guilty of a grave misconduct in the departmental inquiry and, therefore, the interpretation being extended by the counsel for the respondents cannot be accepted.

In view of the above, the order (Annexure P-10) is set aside. The opportunity is given to the respondents to pass fresh order in consonance with the provisions of Rule 2.2 (a), as interpreted by this Court on earlier occasion as noticed hereinbefore. The present writ petition is allowed in the above terms.

After the order is passed, the fresh order is passed by the respondents authority, in pursuance to the direction given above, whatever the difference of the pension the petitioner is found entitled for, the same will be released to him from the date it was stopped. Let the above mentioned exercise be carried out of passing the fresh order within a period of three months.

December 19, 2018

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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No