

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 24736 of 2017
Date of Decision : 01.12.2018

Prem Chand Dhand

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sarthak Gupta, Advocate for
Mr. Animesh Sharma, Advocate for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present case, the petitioner is challenging order dated 11.02.2016 (Annexure P-1) by which 100% pension of the petitioner has been stopped.

In the writ petition, the petitioner has averred that he joined as a Clerk in the office of District Election Officer, Patiala on 15.05.1965. In the year 1977 he was promoted as Kanungo and thereafter as Naib Tehsildar and Tehsildar (Election) in the year 1993. On attaining the age of superannuation, the petitioner retired from service on 30.04.1999. After the retirement, the petitioner was sanctioned pension, which he had started receiving but his other pensionary benefits such as GPF and leave encashment were not paid for the reason that an FIR No. 29 dated 23.05.2001, under Sections 409, 420 IPC and Section 13(1) of the

Prevention of Corruption Act, 1988 (in short 'the Act of 1988) was registered against him. The allegations in the FIR were that the petitioner continued to operate the bank account, which was under his charge prior to the retirement and there was an embezzlement of ₹5,44,844/-. After the trial, the petitioner was convicted on 29.09.2005 and was sentenced to undergo imprisonment for six years with a fine of ₹5000/-. Further under the Prevention of Corruption Act, 1988 also, the petitioner was convicted and sentenced to undergo imprisonment for six years with a fine of ₹5,50,000/-.

It has been alleged that the petitioner has filed an appeal which has been admitted by this Court and the sentence of the petitioner has been suspended. After the conviction, the respondents started proceeding against the petitioner under Rule 2.2 of the Punjab Civil Services Rules, 1970 (Vol-II) by passing appropriate order. After affording an opportunity of hearing to the petitioner, the Chief Electoral Officer-cum-Principal Secretary to Govt. of Punjab, Department of Election passed an order dated 11.02.2016 (Annexure P-1) by which 100% pension of the petitioner was stopped. This order has been impugned by the petitioner in the present writ petition.

Notice of motion was issued upon which the respondents appeared and have filed a reply defining the action of stopping the pension of the petitioner exercising power under Rule 2.2 of the Punjab Civil Services Rules, Vol. II. It has been contended by the respondents-State in the reply that once the petitioner has been convicted under the Act of 1988, as for continuation of the pension the good conduct is must, after conviction, stopping of the pension by the competent authority is perfectly valid.

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 interpretation, which is being put forward by the counsel for the petitioner is incorrect hence cannot be accepted.

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

The facts which have been mentioned above are not in dispute. After the retirement of the petitioner in the year 1999, on the basis of an FIR No. 29 dated 23.05.2001, the petitioner was convicted under the 1988 Act as well as under Section 409, 420 IPC. In an appeal, suspension of sentence has been granted in favour of the petitioner but petitioner remains a convicted employee even as of now. The argument which has been raised by learned counsel for the petitioner to challenge the order dated 11.02.2016 (Annexure P-1) by which pension of the petitioner has been stopped is that there is no power with the respondents-State by which whole of the pension can be stopped and, therefore, order dated 11.02.2016 (Annexure P-1) by which 100% pension of the petitioner has been stopped, is contrary not only to the rule itself but also settled proposition of law, wherein the said Rule Rule 2.2 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 Vol. II has been interpreted by this Court.

In order to appreciate the argument, Rule 2.2 of the Punjab

Civil Services Rules, Vol. II is reproduced herein for the ready reference:-

“2.1. Every pension shall be held to have been granted subject to the conditions contained in chapter VII of these rules.

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 above Rule would show that no doubt, view 'good conduct' is an employee's condition for the grant of pension but when a pensioner is convicted of serious crime or is guilty of grave misconduct, the Government has power to reconsider the grant of pension and pass appropriate orders in that regard. As per Rule 2.2 of the Punjab Civil Services Rules, Vol. II reproduced above, the Government does not have the jurisdiction to withdraw 100% pension. The same can be 1/3rd of the total pension which a pensioner was getting.

Further, 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 found 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 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 then 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).

Learned counsel for the respondents states that as the petitioner was held guilty of corruption, no leniency can be shown in his favour and the action of the department was perfectly valid in withdrawing 100% pension.

Argument which has been raised by learned counsel for the respondents that the petitioner was convicted under the Prevention of Corruption Act, 1988 and, therefore, no leniency can be shown to the petitioner, cannot be pressed for denying the relief to the petitioner. There is no exception carved out in Rule 2.2 in respect of the nature of crime for which an employee has been convicted. Therefore, once there is no power

with the competent authority to withhold 100% pension, the same cannot be done and the present order passed by the respondents withholding 100% pension is beyond the competence of the authorities and hence cannot be sustained.

A bare reading of the impugned order in the present case would show that the authority while passing the impugned order, has not at all gone through the provisions of Rule under which the powers were being exercised. It can be very well said that the impugned order has been passed without any application of mind and, hence, needs to be set-aside.

Further, Rule 2.2 of the Punjab Civil Services Rules, Vol. II has already been interpreted by this Court to mean that the Government has power to withhold only 1/3rd of the pension which a pensioner was getting and not beyond that.

In the case of ***Sardara Singh Vs. State of Punjab and others, 2016 (3) PLR 341***, this Court while interpreting Rule 2.2 of the Punjab Civil Services Rules, Vol. II held that entire pension cannot be withheld. The relevant paragraphs 4 and 5 of the said judgment are as under :-

“4. 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.

5. 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.

Learned 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.

Keeping in view the above, it is clear that order dated 11.02.2016 (Annexure P-1) as far as it stops 100% pension of the petitioner is not only contrary to the Rule under which the power has been exercised but is also against the settled principle of law mentioned here in before and hence, the impugned order dated 11.02.2016 (Annexure P-1) is set-aside.

However, liberty is given to the respondents to pass appropriate orders within a period of three months after reconsidering the case of the petitioner by taking into consideration the law laid down by this Court mentioned in the preceding paragraph of the judgment interpreting Rule 2.2 of the Punjab Civil Services Rules, Vol. II

After the order is passed by the competent authority in pursuance to the direction given today, whatever the difference of pension, which the petitioner will be found entitled for, from the date the same was stopped, shall be released to the petitioner within a period of next two months.

The writ petition is allowed in above terms.

December 01, 2018
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*