

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.9339 of 2015 (O & M)

Date of Decision: July 13, 2018

Ashok Kumar Chopra

..... PETITIONER

VERSUS

Punjab State Power Corporation Limited & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Virinder Kumar Shukla, Advocate, for the petitioner.

Mr. Gursimranjit Singh, Advocate, for the respondents.

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Jaspal Singh, J

Through the instant petition preferred under Article 226 of the Constitution of India, petitioner – Ashok Kumar Chopra has sought issuance of a writ in the nature of certiorari, quashing order dated February 17, 2014 (Annexure P-3) imposing a cut in pension @ 33% from retrospective effect; order dated March 20, 2014 (Annexure P-4) ordering recovery from his Gratuity on account of giving alleged excess pension; order dated October 03, 2014 (Annexure P-5) effecting recovery from Gratuity; and order dated June 17, 2015 (Annexure P-6), same being illegal, unlawful, arbitrary, in violation of Rule 2.2(a) of

Punjab Civil Services Rules, Volume II and against the principles of natural justice having been passed without serving any show cause notice or affording any opportunity of being heard. Further, a prayer has been made for issuance of a writ in the nature of Mandamus, directing the respondents to restore the original pension of petitioner, without any cut as well as to refund the amount of Gratuity which has been recovered vide impugned order dated October 03, 2014 (Annexure P-5) alongwith interest @ 12% per annum.

Learned counsel for the petitioner has contended that petitioner retired from Punjab State Power Corporation Limited (for short, 'Corporation') on July 31, 2000 from the post of Divisional Draftsman. While in service, he was implicated in a criminal case FIR No.75 dated September 14, 1994 under Section 7, 13(2), 88 of Prevention of Corruption Act, 1988 (for short, 'PC Act'), wherein he was convicted and sentenced to undergo RI for a period of 1 year alongwith fine of ₹ 500/- under Section 7 of PC Act; and RI for a period of 3 years and fine ₹ 1,000/- under Section 13(2) of PC Act, vide judgment/order dated February 18, 2003 passed by the Special Judge, Faridkot. Petitioner preferred an appeal against the aforesaid judgment of conviction and order of sentence wherein this Court, vide judgment dated August 31, 2012, this Court modified the impugned judgment/order by reducing the sentence under Section 13(2) of PC Act from 3 years to 1 year and affirmed the sentence/fine under Section 7 of the PC Act. He, thereafter, approached the Hon'ble Supreme Court by

filing SLP which stands dismissed vide judgment dated November 23, 2012. In the meanwhile, petitioner was receiving provisional pension @ 100% in view of order dated January 03, 2002 (Annexure P-2). However, after the finality of his conviction/sentence, respondent No.3 passed an order dated February 17, 2014 imposing a cut of 33% from his pension, retrospectively w.e.f. August 01, 2000. Another order dated March 20, 2014 was also passed for making/effecting recovery from his Gratuity on account of excess payment of provisional pension. Consequently, entire Gratuity amount of ₹ 2,41,152/- as recovered vide order dated October 03, 2014.

Learned counsel for petitioner further contended that petitioner challenged order dated February 17, 2014 by filing an appeal before the Appellate Authority which was decided vide order dated June 17, 2015 whereby punishment was modified by reducing cut in pension from 33% to 11% retrospectively from the date of his retirement.

Learned counsel for the petitioner has contended that aforesaid impugned orders are not sustainable in the eyes of law as they have been passed without affording an opportunity of hearing to the petitioner. No show cause notice was ever issued to petitioner. As such, impugned orders are void abinitio; in violation of principles of natural justice and liable to be set aside and petitioner is entitled to restoration of his original pension as eligible at the time of retirement and refund of Gratuity amount alongwith interest on delayed payment @ 12% per annum.

Learned counsel for the respondents, on the other hand, submitted that petitioner was implicated in a criminal case under the provisions of PC Act. He remained suspended w.e.f. September 14, 1994 to December 14, 1994. Petitioner stood convicted and sentenced in aforesaid criminal case, which was affirmed upto the Hon'ble Apex Court. Pursuant to his conviction attaining finality, his suspension period from September 14, 1994 to December 1994 was treated as non-duty period and Corporation imposed 1/3rd cut from his pension from the date of retirement, in terms of instructions issued vide Secretary/ Legal Section, Patiala Letter No.18700/ 19400/LB-3(24)138/03 dated February 07, 2005, wherein there was a provision for imposing 1/3rd cut from pension of petitioner. Accordingly, learned counsel for the respondents has contended that impugned orders are absolutely in consonance with the legal proposition and rules/instructions and deserve to be upheld, and prayed for dismissal of the instant petition.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and scanned the record available but does not find any legal substance in the submissions made by learned counsel for the respondents.

Undisputably, petitioner retired on July 31, 2000 on attaining the age of superannuation and retiral benefits including pension were released to him. Subsequently, when conviction/sentence of petitioner was affirmed upto the Hon'ble Supreme Court, respondents imposed a cut @ 33% from his pension without holding any enquiry to determine whether the circumstances which led to his

conviction amount to “grave misconduct” which is the basic ingredient for passing any order of imposing cut in pension. The sentence imposed upon the petitioner was even reduced from RI of 3 years to 1 year, by this Court vide its judgment dated August 31, 2012 by modifying the order of sentence dated February 18, 2003. Mere fact that petitioner has been convicted and sentenced under the provisions of PC Act does not *ipso facto mean* that it amounts to grave misconduct. Infact, a departmental enquiry was required to be conducted in order to determine the misconduct of the petitioner before passing any order imposing a cut in pension of the retiree.

In this view of the matter, a question which requires to be adjudicated is as to whether on account of conviction after retirement of petitioner, his pension can be reduced, retrospectively, from the date of his retirement, without holding any enquiry?

Similar question came to be decided in Om Parkash Verma vs. State of Punjab & others’ 2017(4) SCT 805, wherein this Court, after referring various law propositions settled by a catena of judgments rendered by this Court as well as by Hon’ble Apex Court held that mere conviction cannot constitute the basis of imposing a cut in pension of a retiree unless the competent authority arrives at a finding of misconduct of the employee which led to his conviction.

The orders impugned in this petition do not reflect any consideration of conduct or misconduct of the petitioner which led to his conviction. The Punishing Authority is obliged to adhere the settled proposition of law and the principles of natural justice which appears to

have been omitted in this case. Moreover, no enquiry was conducted prior to passing of impugned orders of reduction of pension or effecting recovery from the Gratuity of the retiree. No show cause notice was served upon the petitioner and as such, he was deprived of his right to be heard. The action of the respondents can be said to result of non-application of mind by the competent authority which has failed to appreciate the relevant rules/law to the detriment of petitioner and has imposed a cut in pension of the retiree and effected recovery from his Gratuity, without determining the grave misconduct or negligence on his part.

As a net result of the aforesaid discussion, instant writ petition is allowed and impugned orders dated February 17, 2014 (Annexure P-3); March 20, 2014 (Annexure P-4); and October 03, 2014 (Annexure P-5) are set aside. Respondents are directed to restore the original pension of petitioner and to refund the amount of Gratuity recovered, alongwith interest @ 9% per annum. However, respondents shall be at liberty to conduct fresh enquiry if they so desire but any such action taken, shall operate prospectively from the date of passing of the order.

July 13, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No