

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

(226)

CWP-20364-2016

Date of Decision: March 01, 2019

Gurcharan Singh Hunjan

.. Petitioner

Versus

State of Punjab & ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajaivir Singh, Advocate, for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the prayer made by the petitioner is that vide order dated 22.08.2016, 100% cut has been imposed upon the pension of the petitioner on the ground that the petitioner has been convicted in a criminal case relating to the Prevention of Corruption Act, by applying Rule 2.2. of the Punjab Civil Services Rules. 100% cut has been imposed on the provisional pension which is challenged in the present writ petition.

Learned counsel for the petitioner states that his case is squarely covered by the decision rendered by this Court in **CWP No.22174 of 2015, titled as Darshan Singh Vs. State of Punjab and others decided on 19.12.2018** wherein, after interpreting Rule 2.2 of the Punjab Civil Services Rules, this Court has come to the conclusion that keeping in view the proviso, not more than 1/3rd of the pension can be stopped by the department. Relevant portion of the judgment is as under:-

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.

Learned counsel for the respondents, after going through the judgment, concedes that the present case is also covered by the decision mentioned above and the present writ petition can be disposed of in the same terms as in **CWP No.22174 of 2015, titled as Darshan Singh Vs. State of Punjab and others decided on 19.12.2018.**

In view of the above, the impugned order dated 22.08.2016 (Annexure P-7) is set aside and the present writ petition is disposed of in terms of **CWP No.22174 of 2015, titled as Darshan Singh Vs. State of Punjab and others decided on 19.12.2018.**

The respondents shall pass a fresh order in consonance with the law as held in the above case. The grant of other benefits will depend upon the fresh order to be passed by the respondents in pursuance to this order.

Let a fresh order be passed, after giving opportunity of hearing to the petitioner, within a period of three months from the receipt of copy of this order.

March 01, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: No