

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6187 of 2016
DATE OF DECISION:25.02.2019

Kaushalaya Devi

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr.Sarju Puri, Advocate
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General,
Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which has been raised by the petitioner is that the petitioner has not been given any benefit in respect of the service rendered by her late husband, who was allowed pre-mature retirement w.e.f. 31.03.2014.

As per the facts stated in the writ petition, husband of the petitioner Sh. Gurmail Singh was working as Junior Scale

Stenographer with the department of Co-operation. While working as such, husband of the petitioner had applied for the voluntary retirement on 17.12.2013 after giving three months advance notice. The said request of the petitioner's husband was accepted and he was allowed to retire prematurely w.e.f. 31.03.2014. An order in this regard was passed by the respondents on 25.03.2014, which is as under:

“Sh. Gurmail Singh, Junior Scale Stenographer, who is working in the office of Deputy Registrar, Cooperative Societies, Nawanshahar, is hereby retired from the government service on 31.03.2014 (afternoon) as per rule 3(2) of the Punjab Civil Services (Premature Retirement) Rules, 1975.

Dated: 25.03.2014 Registrar, Cooperative Societies
Punjab, Chandigarh.”

During the service, an FIR was registered against the husband of the petitioner being FIR No.141 dated 02.06.2005, registered at Police Station Banga, under Sections 307,326,324,323,148 and 149 of the Indian Penal Code. Husband of the petitioner was found guilty in the said FIR vide judgment dated 19.03.2014. He was found guilty under Sections 323, 324, 326 read with Section 149 of the Indian Penal Code and was sentenced to undergo three years imprisonment. Against the said conviction, an appeal was preferred by him, which is stated to be pending before this Court. After the retirement, husband of the petitioner started making requests for the release of the pensionary benefits, which were being withheld. The Accountant General, Punjab declined to release the benefits to the petitioner on the ground that the petitioner's husband was a convicted employee and the release of the

pensionary benefits will only be considered after the decision of the appeal which the late husband of the petitioner had filed against the conviction. An order to this effect was passed by the respondents. The said order dated 02.12.2014 has been attached as Annexure R-1 with this petition. The same was conveyed to the husband of the petitioner on 16.03.2015 as well.

The husband of the petitioner unfortunately died on 05.09.2015 after which, the present writ petition has been filed by the petitioner for the release of the pensionary benefits, available to the husband of the petitioner for the service rendered by him with the respondent department.

Upon notice of motion, a short reply has been filed by the respondents in which, again the same stand has been taken that as the husband of the petitioner was convicted on 19.03.2014 and the appeal against the said conviction is pending before this Court, hence no action for the release of the pensionary benefits can be undertaken till the decision of the appeal.

I have heard the counsel for the parties and have gone through the record of the case.

Counsel for the petitioner states that once the petitioner has already been allowed the retirement w.e.f. 31.03.2014, the respondents can only take action in respect of the late husband of the petitioner under Rule 2.2 of the Punjab Civil Services Rules in respect of the grant of pensionary benefits.

Counsel further states that no order has been passed so far

withholding the benefits by the competent authority and, therefore, withholding the pensionary benefits only on the asking of the department of the Accountant General is totally arbitrary, illegal and without jurisdiction. Once there is no order qua stopping of pension by the competent authority, the petitioner is entitled for the release of the pensionary benefits.

Counsel for the respondents is unable to rebut the said averment. No order by the competent authority purported to have been passed under Rule 2.2, has been produced by the counsel for the respondents to support the contention that the action withholding the pensionary benefits is valid or is supported by a written order.

Under Punjab Civil Services Rules, the Government has an authority to pass an appropriate order in case a retiree is convicted. 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 would show that the procedure has been prescribed as to how the action is to be taken in respect of an employee, who has been convicted by the competent Court of Law. Rule requires passing of an appropriate order taking

action in pursuance to the judgment holding an employee guilty. Admittedly, in the present case, no order has been passed so far by the respondents under Rule 2.2 in respect of withholding of the pension, for which the late husband of the petitioner was entitled for. In the absence of any order, the action of the respondents withholding the pension is without jurisdiction and cannot be upheld.

Further, a bare perusal of the Rule 2.2 (a) would show that the maximum $1/3^{\text{rd}}$ of the pension can be stopped if an employee is convicted. Once convicted employee is entitled for pension and only $1/3^{\text{rd}}$ of the pension can be withheld, withholding of 100% pension by the respondents to await the decision of the appeal, is contrary to the law. No Rule gives the power to the respondents department to withhold the 100% pension of a retiree and that too for awaiting the decision of criminal appeal, which the convicted employee has filed. As per the Rule, the convicted employee has also been made eligible for the pension. In the present case, the appeal filed by the late husband of the petitioner against his conviction is still pending.

This Court has already interpreted Rule 2.2 to mean that not more than $1/3^{\text{rd}}$ pension convicted employee can be withheld while deciding CWP No.22174 of 2015 on 19.12.2018, titled as Darshan Singh Vs. State of Punjab and others. The relevant portion of the said order 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.

In these circumstances, the present writ petition is disposed of with the directions to decide the entitlement of the husband of the petitioner for the grant of the pensionary benefits keeping in view Rule 2.2. The respondents shall pass appropriate orders under Rule 2.2 of the Punjab Civil Services Rules within two months from the date of receipt of certified copy of this order and whatever the petitioner is found entitled for, in respect of the benefits for the service, which the late husband of the petitioner had served, shall be released within a period of two months thereafter.

The writ petition stands disposed of accordingly.

February 25, 2019

jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No