` IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14327 of 2018
Reserved on : 08.03.2021
Pronounced on : 24.03.2021

Ajit Singh (deceased) through his L.R. Jasveer Kaur

... Petitioner

Versus

Accountant General (A&E), Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Tejinder Pal Singh, Advocate
for the petitioner.

Ms. Simran Grewal, AAG, Punjab.

G.S. Sandhawalia, J.

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the order dated 27.02.2017 (Annexure P-3) whereby the provisional pension of the deceased employee had been stopped on account of his conviction by the Trial Court. Resultantly, quashing of the said order is sought alongwith prayer for issuing a writ in the nature of mandamus directing the respondent-authority to release the payment of gratuity and leave encashment. Reliance has been placed upon Rule 2.2 (b) of Punjab Civil Services Rules, Vol.II, Part-1 (for short 'Rules'), apart from the fact that the action was done without issuing any show cause notice.

The deceased employee was serving as an Assistant Sub-Inspector in the Punjab Police and on account of FIR No.28 dated 18.11.2014 registered under Section 7 & 13 (2) of the Prevention of Corruption Act, 1988, which had been registered against him, his pension case was not sent to the Accountant General for finalization at the time of his retirement on 31.10.2015. Accordingly, provisional pension of Rs.11,440/- was released to him, subject to the final decision of the criminal proceedings, vide order dated 03.12.2015 (Annexure P-1). He was convicted by the Special Judge, Sangrur on 08.12.2016 (Annexure P-2) for demanding illegal gratification of Rs.3,000/- in case FIR No.01 dated 02.01.2014, which was registered under Section 420, 411, 120-B IPC registered at Police Station, Cheema. Resultantly, he was sentenced to undergo 4 years rigorous imprisonment alongwith fine of Rs.5,000/- each under Section 7 and 13 (2) of the Prevention of Corruption Act.

On account of conviction, respondent No.2 stopped his provisional pension under Rule 2.2 read with Rule 2.5 of the Rules with immediate effect. Resultantly, the present writ petition was filed challenging the said action.

It has been pleaded that the departmental proceedings had also been initiated and the inquiry officer had held that charges against the employee stood proved, however, the same had been kept pending, subject to the outcome of the criminal case. It was further averred that **CRA-S-4515-2016** against the conviction dated 08.12.2016 is also pending before this Court.

The State in its response justified the action on the strength of Rule 2.2, as the pensioner is convicted of serious crime, the action has to be taken in the light of the judgment of the Court. The image of the police department had been lowered by demanding bribe of Rs.3,000/- and the departmental proceedings had also been finalized, in view of the impugned order dated 27.02.2017. It was further averred that gratuity and leave encashment was also withheld on account of sentence of 4 years.

During the pendency of the proceedings on account of the death of petitioner-Ajit Singh, his wife was brought on record as his legal heir, vide order dated 10.11.2020. On 21.12.2020, Counsel for the State had taken time to file an additional affidavit regarding the departmental action taken.

As per the affidavit, the inquiry had been kept pending, subject to the final decision of the criminal case and further order was passed on 30.10.2017 (Annexure R-1/T) that pension of the employee be stopped and the absent period of 14 days on account of additional custody was treated as earned leave. For two days, the employee was stated to be absent and order was passed for these two days as 'no duty no pay'.

Rule 2.1 and 2.2 read as under:-

> "2.1. Every pension shall be held to have been granted subject to the conditions contained in chapter VII of these rules.
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> 2.2. (a) 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.
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> 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,–
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> > (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).
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> 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.
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> 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 perusal of the above said rules would go on to show that the right as such to stop the pension on account of the conviction of a serious crime, action had to be taken in the light of the judgment of the Court relating to such conviction. In case of pensioner to be held guilty of grave misconduct, then notice is to be served upon him satisfying the action, which is to be proposed and ask him to submit reply and after taking into consideration the representation, pension can be reduced partly, which is not to exceed 1/3rd of the pension originally sanctioned. Similarly, the amount of pension left to the pensioner shall not be reduced to less than Rs.3,500/-, in any case, so that it is adequate for his maintenance. Thus, it is apparent that recovery from pension cannot be made of the amount exceeding 1/3rd of the pension originally sanctioned and the amount of pension left to the pensioner be reduced to less than Rs.3,500/-.

As noticed in the present case, provisional pension as such initially had been sanctioned in favour of the employee to the tune of Rs.11,440/-. In view the above reproduced rules, it was incumbent upon the concerned authority to have taken these factors into mind before passing the impugned order, whereby the pension was totally stopped against the provisions of rules as such.

In similar circumstances, the Division Bench of this Court in **LPA No.427 of 2013 'Shankar Lal Vs. State of Haryana and others'** decided on 12.11.2014, held that the entire pension cannot be withheld under the said rules. In the said case, the employee was convicted for a period of 3 years. The learned Single Judge had refused to interfere in the impugned order and the intra-court appeal was carried before the Division Bench, which noticed that the cut in pension could not exceed one-third of the gross pension and accordingly, the impugned order was set aside for reconsideration of the issue. The relevant part of the aforesaid judgment reads as under:-

> "Clause (ii) of the aforesaid Rule clearly stipulates that the entire pension of an employee under the said Rule cannot be withheld or withdrawn and only a part of pension is to be withheld or withdrawn and the amount of such part of pension shall not ordinarily exceed one-third of the total pension.
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> In our opinion, the Authority while passing the order dated 22.3.2012 has not considered this aspect of the matter and in an arbitrary manner has withheld the entire pension of the appellant. Thus, the impugned order dated 22.3.2012 passed by the Authority is liable to be quashed.
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> Accordingly, this appeal is allowed and order dated 22.3.2012 passed by the Authority is set aside and the matter is remitted to the Authority to re-consider the issue in the light of the aforesaid aspect and then pass the order in accordance with law after hearing the appellant within a period of three months from today. In case, the Appellate Authority withholds part of the pension according to the aforesaid Rule, the remaining amount of pension is directed to be paid to the appellant immediately within a period of one month of the decision of the authority failing which the appellant shall also be held entitled to interest on the said amount in accordance with law."

A similar view is also taken in the case of **Prem Chand Dhand vs. State of Punjab and another,** 2019(2) Service Cases Today 662, wherein also there was a conviction under the Prevention of Corruption Act, 1988 for six years. The payment of the pension was stopped, which was challenged and the said order was set aside and a direction was issued to pass an appropriate order within a period of three months, after reconsidering the case.

Similar view was taken in the case of **Darshan Singh vs. State of Punjab and others,** 2019(1) Service Cases Today 703, wherein an employee had been sentenced for nine months under Section 324 IPC. His provisional pension was stopped on account of Rule 2.2(a) of the Punjab Civil Services Rules but the said order was set aside on the ground that a person should be left with adequate amount for his/her maintenance and it was held that the pension of a person, held guilty of grave misconduct in the department inquiry or by a Criminal Court, could not be stopped to the extent of 100%. Resultantly, the said principle is also to be applied in the present case as, by the impugned order, 100% cut in pension has been imposed.

The purpose of the rule is salutary in the manner, since conviction as such would not render the Government employee without any support for his and his family's maintenance and the right to withhold full pension is not made out on the plain reading of the rule. Resultantly, the said order cannot be sustained on this account and is liable to be quashed.

Another factor, which is now liable to be taken into consideration apart from the pension which was to be payable to the deceased employee from the date of his retirement, is his wife's entitlement for family pension which would also arise, since he has expired on 27.02.2020. It has also to be decided by the respondents regarding her entitlement of family pension after the death of her husband. It is also a matter of record that a criminal appeal is also pending against the order of the conviction, which would also determine the fate of the right of the charges as such, after the decision of the said appeal, in case the same succeeds.

Resultantly, the present writ petition is partly allowed. The order dated 27.02.2017 (Annexure P-3) is quashed. The respondent No.2 shall pass a fresh order regarding the cut in pension, which was imposed upon Ajit Singh on account of his conviction. Similarly, the said authority shall take a decision on the right of the family pension of the wife of the deceased, which fact arises for consideration after the death of the employee. The necessary exercise be carried out within a period of 2 months from the date of receipt of certified copy of this order.

(G.S. SANDHAWALIA)
JUDGE

24.03.2021
Naveen

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes