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

CWP No. 600 of 2018 (O&M)

Date of decision: 18.04.2022

Satbir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram : Hon'ble Mr. Justice Arun Monga

Present : Mr. Ramesh Hooda, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Arun Monga, J. (oral)

Through this petition the petitioner is seeking quashing of order dated 17.09.2015 (Annexure P-11) vide which his claim for pension has been rejected by the Government.

2. Brief facts first. An appointment letter was issued in the name of Satbir Singh son of Hazari Lal resident of village and Post office Baroda, Tehsil Gohana, District Sonapat, who had applied for the post of Clerk under Backward Class category. The petitioner, who incidentally has the same name, same father's name, and the same residence, received the appointment letter and on the basis thereof, he joined service. When the mistake came to light, an enquiry was conducted. Show cause notice was issued to him. He was removed from service after a long period of 26 years. The order of removal from service was unsuccessfully challenged upto the Supreme Court.

3. Before advertizing any further, it would first be appropriate to note here that what is recited as the impugned order in the petition is in fact merely an advice by way of an internal communication from the Legal Remembrancer-cum-Administrative Secretary to Government, Haryana, Law and Legislative Department to the Engineer-in-Chief, Haryana, Public Health Engineering Department of the State, same is inter alia in the following terms:-

“Kindly refer your letter No. 8024, dated 31.08.2015, on the subject noted above.

Hon’ble Punjab & Haryana High Court in Prem Singh & another Vs. State of Punjab & others reported in 2014 (1) PLR 477 held that no pension is admissible to a Government employee, dismissed or removed from service for misconduct, insolvency or inefficiency. Further, D. B. of Hon’ble Punjab & Haryana High Court in State of Haryana Vs. Rajinder Kumar reported in 2013 LIC 4619 held that rule 19(a) provide that dismissal/ removal from public service for misconduct entails forfeiture of past service and no pension can be granted in such circumstances. Case of the petitioner squarely falls within the ambit of rule 4.19(a) of Pb. CSR, thus, he cannot be said to be entitled to the pensionary benefits in view of said rule. In another judgment, Hon’ble Punjab & Haryana High Court, titled Gurbax Singh vs. State of Punjab & others reported in 2005 (3) SCT 573 also held that Government has a right to withhold or withdraw the payment of pension to a Government servant who is convicted of a serious crime or is guilty of grave misconduct. Further, the employer has the authority to deprive the petitioner of his retiral benefits even after he had attained the age of superannuation. Hon’ble Delhi High Court in N. K. Tripathi Vs. Government of NCT of Delhi & others reported in 2009 (158) DLT 505 has also held that dismissal carries with it not only a stigma to take up further employment but also results in forfeiture of pensionary & other benefits.

Thus, in view of above, pensionary and other retiral benefits can safely be withheld by the Government in the eventuality of dismissal of an employee. However, it is clarified that amount of GRP and GIS cannot be withheld being personal earned funds of an employee in view of protection available to the employee under section 3 of the Provident Fund Act 1925 and Clause B of the Haryana Civil Services (Group Insurance) Rules, 1985.”

A perusal of the above leaves no manner of doubt that the same cannot be termed as an administrative order qua the denial of claim of the petitioner seeking pension.

4. Being confronted with the aforesaid, learned counsel for the petitioner submits that no formal order for forfeiture of the pension of the petitioner has been passed by the competent authority. The same also appears to be factually incorrect as the services of the petitioner were dispensed with vide an office order dated 25.08.2008 (Annexure P-4) giving detailed reasons therein by invoking Article 311(2)(b) of the Constitution of India without holding any enquiry.

5. Petitioner was in fact removed from service within the meaning of Rule 4.19 of Punjab Civil Services Rules which are for ready reference are reproduced herein blow:-

“4.19 (a) Resignation from public service, dismissal or removal from it, either under proviso (c) to Article 311(2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination, entails forfeiture of past service and no pension shall be granted in the aforementioned circumstances:

Provided that in the cases of those Government employees whose removal or dismissal results from participation in other objectionable activities affecting or endangering the security of the State, such proportionate pension may be granted as may be recommended by the Committee of the Advisors constituted under the Haryana Civil Services (Safe-guarding of National Security) Rules, 1971.”

A perusal of the above Rule clearly reflects that in fact where the powers by the competent authority has been invoked under Article 311 (2) then the delinquent employee is not entitled to seek pension and/ or compensate allowance as a matter of right as the same is at the sole discretion of the employer /State.

6. As regards the order of removal of the petitioner from service under Article 311(2) of the Constitution, the petitioner had earlier unsuccessfully approached this Court vide CWP No. 3812 of 2014. The same was disposed of vide order dated 28.02.2014 (Annexure P-9). This Court though declined to interfere but permitted the petitioner to file a detailed representation. Pursuant where to, the petitioner filed a representation. It appears that till date the same had not been adverted to. Be that as it may, merely because this Court observed that the petitioner wants to file a representation did not vest the petitioner with a statutory right to re-open the case as the order of his removal from service had already attained finality.

7. For the aforesaid reasons, the present writ petition is dismissed.

18.04.2022

vs

(Arun Monga)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No