

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

243

CWP-22435-2018
Date of Decision :25.05.2022

Triloki Nath Sharma**..Petitioner**

Versus

State of Punjab and others**...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Puneet K. Sharma, Advocate for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to order dated 30.01.2018 (Annexure P/9) by which, the provisional pension, which was being given to the petitioner after retirement has been stopped on the ground that the petitioner has been convicted by the competent Court of law. Learned counsel for the petitioner argues that in the present petition, the impugned order has been passed under Rule 2.2 (a)(i) of the Punjab Civil Services Rules, Vol.II, Part-II, stopping 100% pension of the petitioner, which is not permissible from the plane reading of the said rule, which rule has already been interpreted more than once by this Court.

Learned counsel for the petitioner submits that this Court while passing order in CWP-24736-2017 decided on 01.12.2018 **Prem Chand Dhand vs. State of Punjab and another** has held that 100% pension cannot be stopped after the retirement on the basis of conviction of an

employee, which has been suffered after the retirement.

Learned counsel appearing for the respondents concedes the fact that upto the date of retirement only criminal proceedings were pending against the petitioner and he was not convicted therefore, provisional pension was being extended to the petitioner but, after the petitioner was convicted in FIR No.37 dated 29.05.2003 as well as FIR No.40 dated 04.06.2003 registered under Section 7(13)(2) of Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Patiala, provisional pension of the petitioner was stopped keeping in view Rule 2.2 (a)(i) of the Punjab Civil Services Rules, Vol.II, Part-II.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question whether 100% pension can be stopped upon conviction suffered by an employee after retirement or not, has been considered by this Court while passing order in **Prem Chand Dhand's case (Supra)** in the light of Rule 2.2 (a)(i) of the Punjab Civil Services Rules, Vol.II, Part-II. As per the said rule, at the maximum 1/3rd of the pension can be stopped and not the whole of the pension. Relevant paragraphs of the judgment is as under:-

“In order to appreciate the argument, 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 onethird 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 Rule would show that no doubt, view 'good conduct' is an employee's condition for the grant of pension but when a pensioner is convicted of serious crime or is guilty of grave misconduct, the Government has power to reconsider the grant of pension and pass appropriate orders in that regard. As per Rule 2.2 of the Punjab Civil Services Rules, Vol. II reproduced above, the Government does not have the jurisdiction to withdraw 100% pension. The same can be 1/3rd of the total pension which a pensioner was getting.

Further, 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 found 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

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 then 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 Rs.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).

Learned counsel for the respondents states that as the petitioner was held guilty of corruption, no leniency can be shown in his favour and the action of the department was perfectly valid in withdrawing 100% pension.

Argument which has been raised by learned counsel for the respondents that the petitioner was convicted under the Prevention of Corruption Act, 1988 and, therefore, no leniency can be shown to the petitioner, cannot be pressed for denying the relief to the petitioner. There is no exception carved out in Rule 2.2 in respect of the nature of crime for which an employee has been convicted. Therefore, once there is no power with the competent authority to withhold 100% pension, the same cannot be done and the present order passed by the respondents withholding 100% pension is beyond the competence of the authorities and hence cannot be sustained.”

Learned counsel for the respondents has not been able to rebut

the interpretation of Rule 2.2 (a)(i) of the Punjab Civil Services Rules,

Vol.II, Part-II by this Court in **Prem Chand Dhand's case (Supra)** that only 1/3rd of pension can be stooped in case employee gets convicted after retirement. That being so, case of the petitioner is covered by the judgment passed by this Court in **Prem Chand Dhand's case (Supra)**.

As far as the judgment in **K.C. Sareen vs. CBI, Chandigarh 2001 (3) R.C.R. (Criminal) 718** is concerned, the same is not applicable in the present case as the same is on different aspect and not on the aspect of withholding of pension by the respondents keeping in view the rule governing the service. As the interpretation of Rule 2.2 (a)(i) of the Punjab Civil Services Rules, Vol.II, Part-II was not the subject matter in **K.C. Sareen's case (Supra)**, the same is not applicable in the facts and circumstances of the present case.

In view of the above, the present petition is disposed off in terms of the judgement passed in **Prem Chand Dhand's case (Supra)** by this Court.

May 25, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No