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

231 **CWP-12547 of 2017**
Date of Decision:13.02.2023

Sarb Dayal Singh

....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Mr. Malkeet Singh, Advocate,
for petitioner.

Mr. M.K. Dogra, Advocate,
for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Artilces 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of the office order dated 09.06.2015 (Annexure P-3) passed by respondent No. 3 whereby imposing penalty of 10% cut on the pension of the petitioner for a period of 5 years as well as the order dated 05.05.2016 (Annexure P-4) passed by respondent No.4 whereby the appeal against the order dated 09.06.2015 has been dismissed by respondent No. 2 on 11.04.2016 upholding the order of the punishing authority after the retirement of the petitioner with effect from 30.06.2013.

Learned counsel for the petitioner has submitted that it is a case where the petitioner retired as Assistant Engineer from the respondent Corporation on 30.06.2013 and after his retirement a show cause notice dated 02.12.2014 was issued to him vide Annexure P-2 which was after his retirement that when he was working in the respondent Corporation, he had transferred electric connection AP-247 to a person which was wrongly transferred and he should file his reply within a period of seven days. Thereafter, the petitioner replied the same but vide impugned Annexure P-3 dated 09.06.2015, the Joint Secretary/Technical-3, Punjab State Power Corporation Limited, on the basis of show cause notice itself and without conducting any enquiry etc. passed a punishment order by imposing 10% cut in his pension. Thereafter, appeal filed against the aforesaid order dated 09.06.2015 has also been dismissed on 05.05.2016 vide Annexure P-4.

Learned counsel for the petitioner has submitted that the action of the respondents was totally contrary to the Punjab State Electricity Board Employees Punishment & Appeal Regulation, 1971 (hereinafter referred to as the Regulations of 1971), wherein different kinds of penalties have been provided. He submitted that even as per the Corporation, the present 10% cut in the pension of the petitioner was minor penalty but no enquiry was held. He submitted that admittedly it was not a case of the major penalty because no enquiry has been held and it was only on the basis of show cause notice that the punishment of 10% cut in the pension has been imposed. He submitted that a perusal of the Regulations of 1971 would show that the present punishment of 10% cut in the pension is not a minor penalty as under the aforesaid regulations. He submitted that in this way since there is no specific provision for imposing a cut of 10% in the pension for a period of five years, no such penalty could have been imposed. He further submitted that after the retirement of the petitioner on 30.06.2013, the employer-employee relationships has ceased to operate and thereafter the passing of the penalty order against the petitioner was without jurisdiction and without the authority of law. He further submitted that the provisions of Rule 2.2 of the Punjab Civil Services Rules, Vol.II were not applied in the present case because they are specific regulations pertaining to imposing of minor penalty in which 10% cut from the pension is not permissible and does not fall in any of the categories of the aforesaid punishments.

Learned counsel for the petitioner also referred to judgment passed by this Court with regard to the present petitioner vide Annexure P-5 wherein similar circumstances few months prior to his retirement, 15% cut in the pension was imposed, which was set aside by this Court in view of the fact that there was no provision under the Regulations for imposing 15% cut in the pension. He submitted that in view of the above, the impugned orders Annexures P-3 and P-4 are liable to be quashed.

On the other hand, Mr. M.K. Dogra, learned counsel appearing on behalf of the respondents Corporation submitted that it is correct that there is no specific provision in the Regulation of 1971 pertaining to cut from the pension. It is neither a part of the minor penalty nor a part of the major penalty but he referred to some instructions issued by the respondents Corporation vide Annexure R-1, whereby it was so decided that the provision Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II will apply and guidelines were issued in this regard that since no punishment of dismissal or removal can be imposed upon a retired employee but only pension can be withhled under Rule 2.2(b) of the Punjab Civil Services Rules, Vol. II and therefore instead of withholding the total pension, only some portion thereof ordinarily not exceed 1/3rd of the whole admissible pension should be withheld. He submitted that in view of these instructions, the 10% cut was imposed upon the petitioner.

I have heard the learned counsel for the parties.

Admittedly, it is a case where the petitioner had retired on 30.06.2013. Annexure P-2 dated 02.12.2014 is a show cause notice which has been issued to the petitioner after his retirement. Even as per the learned counsels for the parties, there is no specific provision with regard to imposition of any cut from the pension. It is a settled law that after the retirement of an employee, the employer-employee relationship cease to operate. The applicability of Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II by way of issuance of guidelines would not have any effect upon the present case in view of the fact that even for the purpose of imposition of any punishment, the punishment has to be specifically categorised in any of the provisions under the Regulations which according to the learned counsel for the petitioner is not categorised anywhere. Pension is a Constitutional Right under Article 300-A of the Constitution of India which cannot be deprived of without authority of law. Administrative instructions cannot take away aforesaid right. Hence, the aforesaid instructions would therefore be liable to be ignored in view of the Regulations of 1971 which do not provide any punishment for cut in pension.

Apart from the above, the other case referred to by learned counsel for the petitioner vide Annexure P-5 would show that in that case also qua the petitioner of that case, 15% cut from the pension was imposed and in that case show cause notice was issued to the petitioner prior to his retirement and this Court had quashed the action of the respondent in imposing the cut on the pension on the ground that there is no such provision in the Regulations.

As per the learned counsels for the parties, the aforesaid judgment (Annexure P-5) has since attained finality. The facts of the present case suggest that the present case is rather on a better footing than that of the aforesaid Annexure P-5 because here the show cause notice was isused in the present case after his retirement. In the absence of any provision for cut in the pension as per Regulations of 1971, no such order of punishment could have been passed against the petitioner.

In view of the aforesaid position, the present petition is allowed and the impugned orders Annexures P-3 and P-4 are hereby set aside. However, the respondents shall always be at liberty to follow the proper procedure subject to Statutory Rules applicable to the petitioner, if they so desire.

The amount, if any, already deducted from the pension of the petitioner in pursuance of the impugned order, shall be refunded back to the petitioner alongwith interest @6% per annum within 4 months from today.

(JASGURPREET SINGH PURI)
JUDGE

February 13, 2023
dinesh

Whether speaking : Yes/No
Whether reportable : Yes/No