

211

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

**CWP No.19650 of 2018 (O&M)
Date of Decision: 28.02.2023**

RAMA NAND

.....Petitioner

Vs

STATE OF HARYANA AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Ravi Verma, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. In the present petition, challenge has been laid to the order dated 23/24.05.2018 passed by the respondent No.2 thereby dismissing the petitioner from the service after his retirement.

[2]. The petitioner stood retired on 31.03.2016 and the impugned order came to be passed on 23/24.05.2018. The petitioner was working as Section Officer in the office of District Education Officer, Rewari. A criminal case bearing FIR No.18 was registered against the petitioner on 16.08.2013 for the offence under Section 7/13(2) of the Prevention of Corruption

Act (for short 'the P.C. Act') with the allegations that the petitioner was caught red handed by the Vigilance Bureau, Gurugram in taking bribe of Rs.15,000/-.

[3]. The petitioner was charged accordingly and tried in the competent Court of criminal jurisdiction. The petitioner was ultimately convicted and sentenced for the offences under Section 7/13(2) of the P.C. Act. He was sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of Rs.10,000/- under Section 7 of the P.C. Act and to undergo rigorous imprisonment for four years and to pay fine of Rs.10,000/- under Section 13(2) of the P.C. Act along with default mechanism in both the offences. Both the sentences were ordered to run concurrently.

[4]. Against the order of conviction and order of sentence, the petitioner filed CRA-S No.3638-SB of 2016 in which the petitioner has been granted benefit of suspension of sentence vide order dated 17.02.2017 by the High Court.

[5]. On the basis of conviction which was recorded after the retirement of the petitioner in the year 2016, a show cause notice was issued to the petitioner on 09.08.2017 requiring the petitioner to show cause as to why his provisional pension and retiral benefits be not stopped. The petitioner was granted 15 days' time to respond to the aforesaid show cause notice.

[6]. The petitioner replied to the show cause notice on

16.08.2017 and thereafter the respondent No.2 proceeded to pass the impugned order dated 23/24.05.2018 thereby dismissing the petitioner from service on the ground that he has been convicted in a criminal charge. While passing the order of dismissal, the respondent No.2 has observed that the offence committed by the petitioner involves moral turpitude. It is not desirable to retain him in the service.

[7]. It appears that the competent authority was not alive to the situation that the petitioner had already retired on 31.03.2016 and thereafter there was no question of retaining the petitioner in service at the time when the impugned order was passed on 23/24.05.2018.

[8]. Learned counsel for the petitioner submits that after retirement of the petitioner and on conviction at the most retiral dues of the petitioner could have been adversely commented upon by the competent authority and the dismissal from service after retirement is not permissible in law. Learned counsel refers to the general provisions for grant of pension provided under the Haryana Civil Services (Pension) Rules, 2016. The Rule 10 of the aforesaid Rules prescribes that the appointing authority reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, if the pensioner is convicted of serious crime or is found guilty of grave misconduct. The decision of the appointing authority on

any question of withholding or withdrawing the whole or any part of pension under these rules shall be final and conclusive. Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount fixed as minimum pension. Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the Court relating to such conviction. Perusal of the judgment rendered by the criminal Court does not provide for imposition of punishment of dismissal against the petitioner.

[9]. Per contra, learned State counsel submits that the impugned order has been passed as the misconduct of the petitioner involves moral turpitude and the same is sufficient to hold defect in the character of the petitioner and the conviction would likely to embarrass the petitioner in discharge of his public duty in future as well.

[10]. Having considered the arguments, I am of the view that the petitioner stood retired on 31.03.2016. In the judgment of conviction and order of sentence, no such embargo has been given that the conviction of the petitioner would result in order of dismissal after retirement of the petitioner, which would further disentitle the petitioner any consequence of future contingency. Rule 10 of the Haryana Civil Services (Pension) Rules, 2016 also provides for a right which the competent authority reserves

on conviction of a person, who is guilty of grave misconduct. Such a right is not intended to dismiss the employee rather to punish him by withholding or withdrawing the retiral dues.

[11]. No such penalty has been prescribed in the relevant rule after retirement of the employee/petitioner on attaining the age of superannuation. Therefore, the order of punishment imposed upon the petitioner in the form of dismissal from service after retirement is found to be *ex facie* illegal and without jurisdiction. Reference can be made to para no.16 of the **UCO Bank & Ors. vs. Rajendra Shankar Shukla, 2018(2) S.C.T. 70;**, **S.K. Bhargava, Assistant Superintendent vs. State of Haryana, 2003(4) SLR 792;**, **Punjab State Electricity Board vs. Presiding Officer, Labour Court, Bathinda, 1992(3) SCT 709 (P&H)** and **High Court of Punjab and Haryana vs. Amrik Singh, 1995(2) SCT 613 (SC).**

[12]. For the reasons recorded hereinabove, I deem it appropriate to quash the impugned order dated 23/24.05.2018 (Annexure P-6), however with a liberty to the respondent No.2/competent authority to pass fresh order in accordance with law in the light of Rule 10 of the Haryana Civil Services (Pension) Rules, 2016 and the precedents on the subject. With this modification, this writ petition is disposed of. Normal consequences to follow.

[13]. Let the needful in the aforesaid context be done with the a period of two months from the date of receipt of certified copy of this order.

February 28, 2023	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No