257

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

CWP-20173-2018
Date of Decision: 24.04.2023

Kanwaljit Singh
..... Petitioner

Versus

State of Punjab and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Surmukh Singh, Advocate with
Mr. Bachan Singh, Advocate,
for the petitioner.

Ms. Akshita Chauhan, D.A.G., Punjab.

Mr. J.K. Khetarpal, Advocate,
for respondent No.5.

Mr. Vivek Sharma, Advocate,
for respondent No.6.

****

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a petition filed under Articles 226/227 of the Constitution of India praying for issuance of a writ, order or direction especially in the nature of *certiorari* for setting aside/quashing the impugned order dated 25.05.2018 (Annexure P-17) whereby 5% cut on pension for 5 years has been imposed upon the petitioner even though there was no financial loss to the State or any kind of grave misconduct.

Factual Matrix:-

2. The brief facts of the present case are that the petitioner joined

the Department of Education in the Master Cadre and thereafter, he was promoted as Lecturer. The petitioner belongs to the Scheduled Caste Category and he was also thereafter promoted as Principal w.e.f. 15.02.2010 and he joined his duty as Principal at the Government Senior Secondary School Rampur, Ludhiana from where he was transferred to Government Model Senior Secondary School Dadhour, Ludhiana and thereafter he joined as Principal in the Government Model Senior Secondary School, Mangat on 05.03.2014, which was the School from where the controversy arose.

3. Before the petitioner joined as Principal in the aforesaid School at Mangat on 05.03.2014, the duties of Principal were being performed by two acting Principals whose details have been mentioned in the Para No.7 of the petition. Gurpreet Kaur-respondent No.5 performed the duties of Principal from 23.10.2012 to 04.06.2013 and Harpal Singh Randhawa-respondent No.6 performed the duties of Principal from 05.06.2013 to 05.03.2014 and from there onwards since the petitioner was appointed as Principal, he performed the duties of Principal. The aforesaid two persons were although working in the cadre of Lecturer but were not permanent Principals of the School as there was no Principal working at that point of time when they had performed their duties. During the aforesaid tenure of the aforesaid two persons i.e. respondents Nos.5 & 6 and before the petitioner was appointed as Principal, there was a shortage of 21 Teachers in the School and the School Management Committee decided to collect money from the parents/children for appointing some of the Teachers so that education does not suffer. In this regard, a Resolution was passed by the

School Management Committee vide Annexure P-1 on 23.10.2012. In the aforesaid Resolution vide Item No.5, for shortage of three Teachers the matter regarding the recruitment was discussed and the collection of funds from the students was also discussed and it was decided that from 6th to 8th Class, Rs.10/-, from 9th to 10th Class, Rs.15/- and from 11th to 12th Class, Rs.20/- be collected from the students and also resolved to appoint three Teachers, namely, Ms. Ramanjeet Kaur, Ms.Sonia and Ms. Vandana from Village Mangat. The aforesaid portion of the Resolution is reproduced as under:-

> "*Today dated 23.10.2012, a meeting of School Management Committee held of Govt. Sr. Sec. School, Mangat, held wherein matter regarding the grant received from the Govt. under the Sarb Sikhya Abhiyan, it has been observed that for the smooth working of the school there is a need of CHOWKIDAR and teachers. The following items were discussed.*
>
> *1. The grant of Rs. 10,000/- received for the repair and maintenance of the school and same will be spent on the above said purpose.*
>
> *2. The grant of Rs. 7,000/- for furniture received and same will also be utilized for the above said purpose.*
>
> *3. Rs. 3,000-TLM, the same will be used for the TLM purpose.*
>
> *4. That Rs. 15,950/- received for the Bartan for Mid a Mile. The same will be utilized for the original purpose.*
>
> *5. For the compilation of shortage of three teachers, the matter regarding of recruitment also discussed and for the appointment of teachers collection of funds from the students has been also discussed. The SMC agreed with the item no. 3 and resolution put- up from the from 6th*

> *class to 8th class Rs.10/-, 9th to 10th Rs. 15/- and 11th to 12 class students Rs. 20/- from the students will be collected. The three teachers namely Smt. Ramanjit Kaur, Ms. Sonia and Ms. Vandana village Mangat has been appointed.*
>
> *All members note please."*

4. So far as the constitution of the School Management Committee is concerned, there was a direction issued by the Office of the Director General School Education, Punjab-cum-State Project Director, Sarve Siksha Abhiyan Authority, Punjab on 13.12.2011 vide Annexure P-2 that School Management Committee be constituted and it also discussed the total numbers of members of the School Management Committee in this regard. Prior to the aforesaid directions issued in the year 2011 for constitution of School Management Committee, one Resolution was passed in the year 2010 vide Annexure P-3 dated 12.04.2010 whereby the meeting of Parent-Teacher Association (PTA) Committee was held and in that Resolution as well, the issue with regard to collection of the aforesaid amount from 6th to 12th Class students to the extent of Rs.10/-, Rs.15/- and Rs.20/- was also discussed and it was also resolved that the aforesaid amount shall be spent. This Resolution was signed by six persons out of which one person was one teacher of the School, namely, Gurmeet Singh, who also signed the Resolution Annexure P-3 dated 12.04.2010. The aforesaid Gurmeet Singh is the person who later on filed a complaint against the petitioner by alleging that the petitioner has wrongfully collected money from the students whereas he himself was the signatory of the aforesaid Resolution passed way-back in the year 2010 vide Annexure P-3.

5. On the complaint filed by the aforesaid Teacher, namely, Gurmeet Singh, a preliminary inquiry was held by Deputy District Education Officer (S.E.), Ludhiana vide Annexure P-4, who concluded that the fee could not be charged from the students up to 8th Class in view of the instructions from the Government dated 21.06.2010 since primary education is free and Government of Punjab had issued the instructions in the year 2010. It was also noted that one account was opened in the Punjab National Bank on 01.12.2014. At the time of opening of the account in the aforesaid Bank, the petitioner was the Principal of the School.

6. The petitioner had joined as a Principal on 05.03.2014 and before that two other persons were collecting the money from the students in pursuance of earlier Resolution and the petitioner continued with the same. But thereafter when he was the Principal, he called the meeting of the School Management Committee in which a Resolution was passed on 20.04.2015 vide Annexure P-5 in which it was decided that the collection of the above said amount has been stopped and the Teachers recruited from the above said amount have been relieved.

7. However, a charge-sheet was issued to the petitioner vide Annexure P-6 dated 26.05.2016 along with three statements of charges on the ground that the petitioner had collected funds from the students of 6th to 12th Class for paying remuneration to the privately appointed Teachers in violation of the instructions issued by the Government of Punjab and incurring non-academic expenses apart from paying salary to the Teachers with the so collected funds and also keeping School closed on 28.07.2015

without declaring any official holiday. The aforesaid statement of charge is reproduced as under:-

"Charge-Sheet against
Sh. Kanwaljit Singh Rataul, Principal,
Govt. Senior Secondary School,
Mangat, District Ludhiana.

1. Collecting funds apart from prescribed fees & funds, from students in 6th to 12th class from 5.3.2014 till date, for paying remuneration to privately appointed teachers, in violation of instruction issued by government.

2. Incurring other non-academic expenses apart from paying salary to teachers with the so collected funds.

3. Keeping school closed on 28.07.2015 without having declared any official holiday.

Hence by committing the above noted grave misconducts, you have held yourself liable for any of major punishments covered by Rule 8, Punjab Civil Services (Punishment and Appeal) Regulation, 1970.

Sd/-
Special Secretary,
School Education."

8. However, in the meantime, another preliminary enquiry was conducted against the petitioner on the asking of the Circle Education Officer, Nabha and the same was in the nature of a fact finding enquiry which was conducted by a Senior Lecturer vide Annexure P-8 who came to the conclusion that the charges against the petitioner are baseless. However, so far as the regular Department inquiry against the petitioner is concerned, on the basis of the charges as stated above, the same was continued and an Inquiry Officer was appointed who conducted the departmental inquiry and

submitted an inquiry report vide Annexure P-10. The Inquiry Officer came to the conclusion that so far as the allegations No.1 & 2 against the petitioner are concerned, the same are true, but the allegation against charge No.3 was not proved. Thereafter, the matter was sent to the Punjab Public Service Commission seeking consultation in accordance with Rule 2.2(a) & (b) of the Punjab Civil Services Rules, Volume-II with a proposal of cut of 5% of pension for a period of five years. However, the Punjab Public Service Commission recommended that instead of cut of pension for five years, it should be for one year. Thereafter, the matter was sent to the Department of Personnel for approval, but the Department of Personnel disagreed with the recommendations of the Punjab Public Service Commission and recommended that the cut of pension should be for five years, and therefore, the recommendations of the Punjab Public Service Commission were not accepted. Thereafter, the Punishing Authority, who was an Officer of the rank of Secretary, Government of Punjab, Department of School Education, imposed a punishment of 5% cut on pension for five years upon the petitioner vide impugned order Annexure P-17. The aforesaid order is challenged in the present petition.

Submissions by the learned counsel for the petitioner:-

9. Mr. Surmukh Singh, learned counsel for the petitioner has submitted that the impugned order of punishment by which a cut of 5% on pension was imposed for a period of five years, is totally illegal, arbitrary, discriminatory and without the authority of law. He further submitted that a perusal of the inquiry report itself would show that there was no proof of any

charge with regard to any financial loss being caused to the State. Furthermore, there was no proof of any charge that the petitioner had embezzled any amount. He also submitted that in fact nothing was proved against the petitioner, but the Inquiry Officer submitted the report pertaining to charges No.1 & 2 having been proved only because according to him, the petitioner had violated the instructions issued by the Government of Punjab by which it was directed that no fee is to be collected. He further submitted that there was no occasion for the Department of Personnel, to disagree with the recommendation of the Punjab Public Service Commission and there is no reason with regard to the same.

10. He further submitted that it is a case of not only arbitrariness and illegality committed by the respondent officials, but it was also a case of clear-cut discrimination. He submitted that so far as the collection of fee from the students for the purpose of paying salary to the Teachers is concerned, this decision was not taken by the petitioner admittedly, but it was taken by two other persons i.e. respondents No.5 & 6 which has been so explained above, while they were although Lecturers but they were discharging the duties of acting Principals and which was done much prior to the joining of the petitioner as Principal on 05.03.2014 and in fact during their tenure, the Resolution of the PTA and School Managing Committee was passed and which was implemented by them. When the petitioner joined as a Principal on 05.03.2014, he for the time-being continued with the same, but thereafter when an objection was raised by him that the same cannot be done, since it is in violation of the instructions of Government that the

complainant-Gurmeet Singh who himself was a signatory in the earlier Resolution, made a complaint to the Government because he was personally interested in giving the salary to the three Teachers deputed from the fee collected from the students. Rather the petitioner while he was the Principal of the School, took up the matter with the School Management Committee and Resolution was passed whereby it was decided that no such fee is to be collected and recruited Teachers will be relieved. Not only this, the petitioner rather opened the account of the Committee in the Punjab National Bank and which has not been disputed in the present case and on the other hand when the aforesaid two persons were working as Acting Principals, they did not even care to open an account and they had carried on cash transactions. He further submitted that separate disciplinary proceedings were undertaken against those aforesaid persons afterwords and no punishment has been awarded to them and they were only censured whereas, in fact, if at all some illegality was committed, it was committed by the aforesaid two persons i.e. respondent Nos.5 & 6. It was, therefore, a clear-cut case of discrimination against the petitioner. He further submitted that when the Inquiry Officer considered this aspect, he only observed that it is the prerogative of the State to proceed against any person. The learned counsel submitted that although it is the prerogative of the State or the competent authority, but the power cannot be exercised in an arbitrary and discriminatory manner by which one employee is victimized, and therefore, the action of the respondents was totally illegal and discriminatory and also in violation of Article 14 of the Constitution of India.

11. Learned counsel for the petitioner further submitted that it is a settled law that pension is not a bounty of the State and in case any amount of pension is to be withheld or forfeited, then the same can be done only under the authority of law. The petitioner had retired on 31.07.2016 and the charge-sheet was issued to the petitioner on 26.05.2015 which, therefore, continued after his retirement and ultimately the punishment order has been passed on 21.05.2018 which was after the retirement. He further submitted that in this way it appears that the State has invoked the provision of Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II, for the purpose of continuation of disciplinary proceedings after the retirement of an employee. He also submitted that for the purpose of imposing any cut in the pension as per Rule 2.2 (a) & (b) of the aforesaid Rules, there has to be a finding that a financial loss is caused to the State and also there has to be a finding that grave misconduct has been conducted and only thereafter the competent authority can impose a cut upon the pension. He further submitted that it is not a case where the petitioner is still in service at the time of passing of the impugned orders, but it is a case where the cut has been imposed upon his pension and for that purpose the only provision applicable was under Rule 2.2 of the Punjab Civil Services Rules but there had been a wholesale violation of the aforesaid provisions, since there is no observation or finding either by the Inquiry Officer or by the punishing authority with regard to the financial loss to the State or with regard to any grave misconduct, and therefore, on the face of it, the impugned order by which the punishment was imposed is liable to be set aside.

<u>Submissions by the learned Deputy Advocate General, Punjab</u>:-

12. On the other hand, Ms. Akshita Chauhan, learned Deputy Advocate, Punjab submitted that the punishment order has been passed on the basis of the inquiry report in which charges No.1 & 2 were proved and charge No.3 was not proved and as per charges No.1 & 2, the petitioner collected some amount of money from students of Class 6th to 12th in order to make remuneration to the private teachers and the balance amount was spent unauthorizedly, and therefore, the impugned order has been rightly passed. She further submitted that the petitioner has violated the instructions dated 21.06.2010 issued by the Government of Punjab whereby it was directed that no fee can be charged from the students up to 8th Class and, therefore, it was a case of violation of the instructions as well.

<u>Analysis of submissions</u>:-

13. I have heard the learned counsel for the parties.

14. The petitioner was working as a Principal and he joined at the Government Senior Secondary School, Mangat, on 05.03.2014 and prior to that, the School Management Committee had already passed two Resolutions for charging of extra-fee from the students for the purpose of giving remuneration to the three additional teachers appointed. When the petitioner joined, he continued with the same, but thereafter vide Annexure P-5, a Resolution was passed by the School Management Committee that such fee could not be charged and the Teachers so recruited were relieved. The petitioner also opened an account in the Punjab National Bank which was not done by the earlier Acting Principals i.e. respondents No.5 & 6. The

petitioner ultimately retired on 31.07.2016, but prior to his retirement, a charge-sheet was issued to him which continued after his retirement and which culminated into the order of punishment, which is the impugned order (Annexure P-17).

15. The issue involved in the present case is as to whether the order of punishment which has been passed pertaining to cut of 5 % for five years from the pension is legally sustainable or not. A perusal of the inquiry report (Annexure P-10) would show that Inquiry Officer based the charges against the petitioner on the basis of complaint made by one Gurmeet Singh who was a person who himself was a signatory of the earlier Resolution but was not satisfied with the petitioner and on his complaint the inquiry was conducted and vide Para No.7 of the Inquiry report, the petitioner had taken a defence that whatever the amount which was collected from the students during his term, has been returned to the students and receipts were also given by the students in this regard. The Inquiry Officer observed that a perusal of these receipts would show that the amount collected from the March, 2014 to March, 2015 from the students was returned against signatures and verified by the Incharge of the class and the Presiding Officer also has not disputed the same in his reply. On the objection taken by the petitioner that the aforesaid two Teachers, who were the earlier persons in whose presence the earlier Resolution was passed i.e. respondents No.5 & 6, they should have also been charged, the Inquiry Officer observed that the petitioner cannot dictate to the Government as it is a prerogative of the Government to initiate action and since the petitioner only has been charge-

sheeted, he is required to save his skin instead of finding fault in the orders of the Government. Thereafter, in Para No.9 of the inquiry report, it was rather observed by the Inquiry Officer that it is true that the petitioner returned the amount so collected during his term to the students and that can be a mitigating circumstance against him, but since he also continued to collect the amount from the students and the salary was paid to the three Teachers, the action of the petitioner was against instructions of the Government and accordingly proved against him. The Inquiry Officer also discussed the conduct of the complainant-Gurmeet Singh in Para No.10, whereby it was so stated that the complainant-Gurmeet Singh managed to remain in the School for 18 years and this can be one of the reasons for making a complaint against the petitioner because the petitioner might not be working under his directions and the aforesaid complainant-Gurmeet Singh did not make a complaint against Gurpreet Kaur and Harpal Singh Randhawa (Respondent Nos.5 & 6) for same irregularities committed by them, and thereafter, on the intervention of the Education Minister, Punjab that the complainant-Gurmeet Singh was transferred on 15.09.2015. The Inquiry Officer also noted that the aforesaid Gurmeet Singh was a member when the Resolution was passed to collect sum of Rs.10/-, Rs.15/- & Rs.20/- from the students per month whereas he was duty-bound to oppose the Resolution, but when the present petitioner took over as a Principal then the complainant filed the complaint with some ulterior motive. The Inquiry Officer also discussed the statement of one Ram Lal PW-1 who was a member of the School Management Committee who rather stated that the petitioner is a responsible officer and the Inquiry Officer observed that he does not dispute the statement of the aforesaid Ram Lal, but some material irregularities has been committed which cannot be condoned merely on the ground that one person is an honest or responsible person or not. Thereafter, in Para No.13 of the report, the Inquiry Officer only observed that charges No.1 & 2 were proved against the petitioner and charge No.3 was not proved against the petitioner. A perusal of the aforesaid inquiry report would show that the charges of financial irregularities or embezzlement have not been proved against the petitioner and rather it has been disproved during the inquiry report. The honesty and responsibility of the petitioner was also rather believed on the basis of the statement of one Ram Lal. The inquiry officer only confined himself to the material irregularity pertaining to the violation of the instructions of the Government and on that basis, he observed that the charges No.1 & 2 have been proved. The charges No.1 & 2 pertained to collection of money and spending of the balance amount unauthorizedly whereas in the entire inquiry report, there is no such finding against the petitioner, and therefore, the conclusion made by the Inquiry Officer is contrary to his own findings.

16. So far as the action of the respondent-State through its Secretary by passing of the impugned order (Annexure P-17) is concerned, the same also needs to be considered in detail. Although nothing has come up in the impugned order that under which provision of law and under which authority of law, the impugned order has been passed, but the same can be presumed that the Secretary, Department of School Education has invoked

the powers under Rule 2.2 of the Punjab Services Rules, Volume-II, whereby an action can be taken against a retired employee as well.

17. When the Punjab Public Service Commission was **consulted** then the Commission reported to the Secretary, Department of Education of Punjab, vide Annexure P-14 dated 15.12.2017 whereby it conveyed that the Commission is not agreeing with the proposal of 5% of cut on pension for five years but it can be done for one year. Thereafter, vide Annexure P-15 when the matter was sent to the Department of Personnel then it was so observed by the Department that because the charges against the petitioner are grave in nature, in which embezzlement of funds is also included, therefore, they agree for 5% cut on pension for the five years. Thereafter, the Secretary, Department of Education, Punjab vide impugned order imposed cut of 5% on pension for five years. The aforesaid communication made by the Department of Personnel was based upon his opinion that since the charges against the petitioner were grave in nature in which embezzlement of funds have been involved, there should be imposition of cut of 5% on pension for five years whereas neither the embezzlement of funds has been proved in the inquiry report nor the same has been so observed by passing the punishment order. Another reason was given by the Department of Personnel that the charges were grave in nature whereas there is no finding of fact pertaining to the aforesaid allegation that there was any gross misconduct either by the Inquiry Officer or in a subsequent punishment order. Therefore, it is not understandable as to how the Department of Personnel after disagreeing with the recommendation of the Punjab Public

Service Commission approved for 5% cut on pension for five years. The provisions of Rule 2.2 (a) & (b) of the Punjab Civil Services Rules, Volume-II, which are relevant in the present case are reproduced as under:-

> *"**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 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.

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.

The decision of the Government on any question of withholding or withdrawing the whole or any part of the pension under this rule shall be final and conclusive.

***Explanation**.–In this rule, the expression "serious crime" includes crime involving, an offence under the Official Secrets Act, 1923 (19 of 1923); and the expression "grave misconduct" includes the communication or disclosure of any secret, official code or pass-word or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.*

***Note**.–A claim against the Government employee may become known and the question of making recovery may arise:–*

(a) when the calculation of pension is being made and before the pension is actually sanctioned; or

(b) after the pension has been sanctioned.

The claim and the recovery may be one or other of the following categories:–

(1) Recovery as a punitive measure in order to

make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service.

(2) Recovery of other Government dues such as over issues of pay, allowances or leave salary, or admitted and obvious dues such as house-rent, Postal Life Insurance premia, outstanding motor car, house building, travelling allowance or other advances.

(3) Recovery of non-Government dues.

1. In cases falling under (a) above, none of the recoveries mentioned in (1) to (3) above may be effected by a reduction of the pension about to be sanctioned except in the following circumstances:–

(i) Omitted.

(ii) When the pensioner by request made or consent given has agreed that the recovery may be made. If such request is not made or consent is not given by the pensioner, even sums admittedly due to Government such as houserent, outstanding advances, etc., may not be recovered from pension. In such cases, however, the executive authorities concerned would have to consider whether they should not try to effect the recovery otherwise than from pension, for example, by going to a court of law, if necessary.

2. In cases falling under (b) above, none of the recoveries described in clauses (1) to (3), may be effected by the deduction from a pension already sanctioned except at the request or with the express consent of the pensioner. Under rule 2.2(a), of this Volume, future good conduct is an implied condition of every grant of a *pension and a pension can be withheld or withdrawn in whole or in part if the pensioner is convicted of serious crime or is guilty of grave misconduct. This, however, refers only to crime or misconduct occurring after the pensioner has retired from service, and the rule would not, therefore, cover a reduction of pension made for the purpose of retrieving loss caused to Government as a result of negligence or fraud on the part of the pensioner occurring before he had retired from service.*

In cases where the pensioner does not agree to recovery being made even of sums admittedly due to Government, the concluding remarks made under 1(ii) above, will also be applicable.

Heads of offices should see that the last pay or leave salary prior to retirement shall not be paid until it is clear that a retiring Government employee has no outstanding dues to Government. Sometimes, it may not be practicable to ascertain in time all the outstanding dues, while sometimes dues may exceed the amount of last pay or leave salary. In such cases, it is the duty of the heads of offices (in consultation with Treasury officers and Accountant-General, Punjab in the case of Group "A" or Group "B" officers), to bring promptly to the notice of the Accountant-General, Punjab, all the outstanding amounts by a separate communication, stating in detail the nature of recovery and why it has not been possible to effect it from last pay or leave salary. The outstanding amounts should also be clearly and completely noted in the last pay certificates in sufficient detail with reference to the previous correspondence with the Accountant-General, Punjab, and if the recovery is to be effected from pension, it should be clearly recorded on *the last pay certificate itself that the request or express consent of the pensioner in writing to the recovery from his pension has been obtained.*

***Note** 1.–Although compassionate allowance is of the nature of an ex-gratia payment it is really a form of pension and, therefore, recoveries from it, once it is sanctioned, should be governed by the above orders.*

Direct recovery of Government dues from Compassionate Allowance is not permissible, under these orders, but recovery may be made indirectly (before the allowance is sanctioned) by reducing the allowance either permanently or as a temporary measure.

***Note 2**.–Strictly speaking under the orders no recovery of amount is permissible from pension but if final recovery has been made it need not be refunded to the pensioner concerned.*

***(b)** The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:-*

Provided that–

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same

manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment–

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

***Explanation**.–For the purpose of this rule–*

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted–

(i) in the case of a criminal proceeding, on the date on which the complaint or report of the police

officer on which the Magistrate takes cognizance, is made; and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.

***Note**:–As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.*

18. A perusal of Rule 2.2 of the Punjab Civil Services Rules would show that it deals with the recoveries from pension. Vide Clause (a) of the aforesaid Rule, it has been so provided that future good conduct is an implied condition of every grant of pension. The government reserves to themselves the right to withholding or withdrawing a pension or any part of it if the pensioner is convicted of serious crime or is guilty of grave misconduct. In the case where the pensioner is convicted of a serious crime then action is to be taken in the light of the judgment of the Court relating to such conviction and in the cases which are not covered by the aforesaid conviction, if any, then if the Government considers that the pensioner is *prima facie* guilty of grave misconduct, then it shall before passing of an order issue notice to the pensioner and give adequate opportunity of hearing. It further provides that the Punjab Public Service Commission shall also be consulted before passing of the final order. Under Clause (b) of the Rule 2.2

of the Punjab Civil Serices Rules, Volume-II, the Government further reserves to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering of recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

19. Therefore, under both the provisions i.e. Rule 2.2 (a) and (b) when the punishment is not pertaining to a consequence of conviction but due to departmental proceeding etc. then as per Rule 2.2(a), the Government has to satisfy itself that the pensioner is *prima facie* guilty of grave misconduct and as per Rule 2.2(b), recovery from pension can be effected only when the pensioner is found to be guilty of grave misconduct or negligence. Apart from the above, there is another condition under Rule 2.2(b) that recovery from the pension can be effected when there is pecuniary loss to the Government. In the present case, the effect of punishment order (Annexure P-17) was effecting recovery from the pension, and therefore, the conditions contained under Rule 2.2(b) which are conditions precedent and *sine qua non* must be satisfied. For the sake of repetition, the twin conditions are that there has to be some pecuniary loss to the Government and the pensioner is found guilty of grave misconduct or negligence. In other words, both the conditions must co-exist and must be satisfied before inflicting any punishment of recovery from the pension.

However, in the present case, a perusal of the inquiry report itself would show that there is no proof of any charge pertaining to embezzlement or loss to the Government and rather it has been disproved wherein the Inquiry Officer has observed that the petitioner may be an honest and responsible man but he has violated the instructions of the Government dated 21.06.2010. However, the instructions only state that fee is not to be charged from the students upto 8th Class, but the charges which were framed against the petitioner even at Sr. Nos.1 & 2 were never proved, although in the concluding part of the inquiry report, the Inquiry Officer has stated that they stand proved and the concluding part of the inquiry report was totally contrary to the record and the order itself. When the punishing authority was to exercise its discretion and its power, then a perusal of the punishment order would show that even the punishing authority did not exercise its power in a legal and lawful manner and in accordance with Rules. A perusal of the impugned order would show that the history of facts has been so stated in the order and in the last concluding para, the punishment has been inflicted for 5% cut on pension for five years. No doubt the punishing authority has the power to exercise his power under any law, but here is a case where the exercise of power was totally bad in law. There is nothing in the order passed by the punishing authority to even remotely suggest that the petitioner is guilty of grave misconduct or even misconduct. Neither the inquiry report nor the punishment order suggest proving of any misconduct or grave misconduct. Similarly, neither the inquiry report nor the punishment order suggest anything that any pecuniary loss was caused to the

State. On the top of it, the respondent Nos.5 & 6 have been only censured whereas they were the persons in whose tenure, prior to the joining of the petitioner, the Resolutions were passed and they started collecting money from the students. Therefore, even the action of the respondent No.1 was discriminatory in nature.

20. Hon'ble Supreme Court way back in the year 1971, in a Constitution Bench judgment in "***Deokinandan Prasad Vs. State of Bihar***", ***1971(2) SCC 330***, observed that pension and pensionary benefits are not the bounty of the State and it belongs to the petitioner and is rather a Fundamental Right under Article 31(1) of the Constitution of India. However, later on by virtue of 44th Amendment of the Constitution of India, Right to Property became a Constitutional Right under Article 300-A of the Constitution of India instead of a Fundamental Right. The relevant portion portion of the aforesaid judgment is reproduced as under:-

> "31. *The matter again came up before a Full Bench of the Punjab and Haryana High Court in* ***K.R. Erry v. The State of Punjab, ILR (1967)1 Punj and Har 278 (FB)****. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on*

an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

> *32. This Court in State of **Madhya Pradesh v. Ranojirao Shinde and another, 1968-3 SCR 489** had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".*

21. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in "***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another***", ***2013(12) SCC 210*** again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits. Para Nos.8 and 16 of the aforesaid judgment is reproduced as under:-

> *"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:*
>
> > *"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?*
> >
> > *19. 20.What is a pension? What are the goals of*

pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors. [1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh(6)".

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of

> *law as per the provisions of Article 300-A of the Constitution of India.*
>
> *16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:*
>
> ***"300-A Persons not to be deprived of property save by authority of law****.- No person shall be deprived of his property save by authority of law."*
>
> *Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

22. In a recent judgment passed by a Division Bench of this Court in **LPA No.340 of 2017** titled as "***Gurcharan Singh Vs. State of Punjab***", decided on 08.02.2023, it was observed that in the absence of any pecuniary loss, no recovery can be effected from the pensioner. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"In the absence of any finding of loss caused to the Government either by the enquiry officer or by respondent No.1, no recovery from pension could have been ordered as a punitive measure by the respondents.*"

23. Therefore, this Court is of the view that it is a settled law that

pension and pensionary benefits are Constitutional Rights guaranteed under Article 300-A of the Constitution of India. Article 300-A provides for Right to Property that no body can be divested of Right to Property except with the authority of law. The Hon'ble Supreme Court in "***Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others***", ***2013(1) SCC 353***, observed that Right to Property is now considered to be not only a Constitutional or a Statutory Right, but also a Human Right. Para 9 of the aforesaid judgment is reproduced as under:-

> "9. *The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide:* ***Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448; Amarjit Singh v. State of Punjab, (2010)10 SCC 43; (2010)4 SCC (Civ) 29, State of Madhya Pradesh v. Narmada Bachao Andolan, (2011)7 SCC 875: AIR 2011 SC 1989, State of Haryana v. Mukesh Kumar, (2011)10 SCC 404: (2012)3 SCC (Civ) 769: AIR 2012 SC 559 and Delhi Airtech Services (P) Ltd. v. State of U.P., (2011)9 SCC 354: (2011)4 SCC (Civ) 673: AIR 2012 SC 573***)."

Conclusion:-

24. In the present case, there had been a wholesale violation of Rule 2.2 of the Punjab Civil Services Rules, Volume-II. Whenever an Officer is to

exercise his power either on the administrative side or as a *quasi judicial power,* then he has to exercise his power in a diligent manner and adhering to the Rules which are applicable. The Rules specifically provide that the twin conditions of pecuniary loss to the Government and grave misconduct or negligence are to be established whereas in the present case there is not even a reference made by the punishing authority in the impugned order with regard to the same nor the same has been proved in the inquiry report. Therefore, the impugned order Annexure P-17 is absolutely illegal, perverse, arbitrary and discriminatory.

25. Consequently, the present petition is allowed. The impugned order dated 25.05.2018 (Annexure P-17) is hereby set aside. The respondent-State is directed to refund the amount already recovered from the petitioner along with interest @ 6% p.a. from the date of deduction till the date of disbursal. The aforesaid calculation be made forthwith and payment be made to the petitioner within a period of three months from today. In case, the aforesaid amount is not paid to the petitioner within a period of 3 months from today, then the petitioner shall be entitled for future interest @ 9% per annum instead of 6% per annum.

26. In view of the aforesaid peculiar facts and circumstances, this Court is of the view that the petitioner is also entitled for costs which are assessed at Rs.25,000/-, which shall be paid to the petitioner within the aforesaid period of three months.

24.04.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No