IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-2990-LPA-2017 in/and
LPA-1389-2017
Date of Decision:13.04.2023.

MAJOR SINGH SANDHU ...PETITIONER

VS

STATE OF PUNJAB AND ORS. ...RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Harinder Sharma, Advocate
for the applicant-appellant.

Mr. Gurpreet Singh, Additional A.G., Punjab.

Mr. Ritesh Kumar Bansal, Advocate
for respondent No.7.

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M.S. RAMACHANDRA RAO, J. (ORAL)

CM-2990-LPA-2017

This is an application under Section 5 of the Limitation Act for condonation of delay of 88 days in filing the present Appeal.

Learned State counsel submits that they have no objection for condonation of said period of delay.

Therefore, this application is allowed and the delay of 88 days in filing the Appeal is condoned.

<u>LPA-1389-2017</u>

This Letters Patent Appeal is preferred against judgment dated 01.02.2017 passed by learned Single Judge in CWP No-2779-2014.

The appellant had retired as a District Education Officer (DEO) from District Moga.

He was imposed a punishment on 22.10.2012 vide (P-7) of a 10% deduction from his pension on the basis of a report of an Inquiry Officer dt.15.11.2011, and the said punishment was imposed on 15.10.2012 by the Secretary to Government of Punjab, Education Department (Schools) after a consent was obtained from the Secretary, Punjab Public Service Commission, Patiala on 04.10.2012.

The appellant had challenged not only the inquiry report dt.15.11.2011, but also the order of punishment dt.22.10.2012, order passed in the review application dt.22.01.2013 on the grounds that they are violative of Punjab Civil Service (Punishment and Appeal) Rules, 1970 [hereinafter referred to as ‘the Rules’]. He also challenged the deduction directed to be made from his pension and sought refund of the said amount along with interest @ 12% per annum.

Learned Single Judge dismissed the Writ Petition on 01.02.2017 holding that inquiry was fairly conducted and a reasoned order is passed, and the punishment imposed cannot be said to be illegal.

Though, there was no finding in the inquiry report that any financial loss caused to the State, learned Single Judge in his order gave such a finding and justified the imposition of 10% cut in the pension.

When this appeal was filed by the appellant, notice was issued on the limited extent regarding the issue of excessive punishment and proportionality to the loss, and a direction was given to the respondents to file their response regarding financial loss caused to the Government vide order dt. 27.09.2017.

In response thereto, an affidavit was filed on 24.01.2019 in this appeal by the Assistant Director, Office of Director General, School Education Punjab stating categorically in para 4 as under:-

> *"That in response to the Specific query put by the Hon'ble Court vide order dated 27.09.2017 regarding financial loss caused to the department, it is submitted that as per report dated 18.01.2019 of Chief Accounts Officer of Director General School Education no direct financial loss has been caused to the Government."*

Thus, on affidavit, the State has gone on record saying that there was no direct financial loss caused to the State.

It is not in dispute that as per Rule 2.2 (b) of the Rules relating to grant of pension, any cut in pension can be ordered only if there is a peculiar loss caused to the Government.

When no peculiar loss has been caused to the State, as per the affidavit filed in the appeal on 24.01.2019 by the Assistant Director, there is no justification warranting imposition of 10% cutting pension on the appellant. The learned Single Judge, in our opinion, has erred in giving a finding that loss has been caused to the respondents, which was not warranted.

In *Gurcharan Singh Vs. State of Punjab and others* order dt.08.02.2023 in LPA-340-2017, in a similar situation, this Court has taken a view that only if there is finding of financial loss caused to the State, Rule 2.2 (b) of the Pension Rules can be invoked, and no recovery from pension can be ordered as a penalty measure by the State in the absence of any loss caused to the Government.

In this view of the matter, the Letters Patent Appeal is allowed; order of the learned Single Judge dt.01.02.2017 in CWP-2779-2014 to the extent the learned Judge held that the 10% cut in pension made by the respondents from the Pension payable to the appellant is set aside, and the respondents are directed to refund to the appellant the amount of such deduction made from his pension from the date from which it was made till date within *08 weeks* from the receipt of a copy of this order with interest @ 6% per annum from respective to the dates of deduction till the date of actual payment, and respondents are directed to refund 10% deduction from pension made for the period of 3 years pursuant to the orders dt.15.10.2012 (P-7) and 22.01.2013 (P-9) within *<u>08 weeks</u>* with interest @ 6% per annum.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

13.04.2023
priyanka

Whether speaking/reasoned Yes/No
Whether reportable Yes/No