

**CWP-16813-2018****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****(212)****CWP-16813-2018****Date of Decision : September 13, 2024****Paramjit****.. Petitioner****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sunny Singla, Advocate, for the petitioner.

Mr. Arun Gupta, Deputy Advocate General, Punjab.

Mr. Sriansh, Advocate, for respondent No.6.

Mr. Surmukh Singh, Advocate, for respondent No.7.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 20.04.2018 (Annexure P-13) by which, 5 % cut was imposed in the pension for a period of one year.

2. Learned counsel for the petitioner argues that even if it is assumed for the sake of argument that allegations alleged against the petitioner were proved then also, keeping in view the judgment of the Division Bench of this Court in *LPA No.340 of 2017 titled as Gurcharan Singh and others vs. State of Punjab and others, decided on 08.02.2023*, where there is no charge which has been proved causing loss to the State exchequer, the cut in pension cannot be imposed hence, keeping in view the said judgment, the order imposing cut in pension for a period of one year is arbitrary and illegal.



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3. Learned counsel for the respondents submits that the petitioner did not perform the duties assigned to him for which an enquiry was conducted in the Department and consequently the charges were proved and by the time, the action was to be taken against him he had retired hence, as the final resort, the cut in pension has been imposed and that too only for a period of one year especially when the petitioner admitted his fault before the authorities concerned.

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

5. It is a conceded case between the parties that as per the allegations alleged in the charge-sheet, on the basis of which the impugned order of punishment has been passed (Annexure P-13), there is no allegation of causing any loss to the State exchequer and the charge is only with regard to the not performing of the particular duties assigned to him.

6. As per the judgment of the Division Bench of this Court in **Gurcharan Singh's case (supra)**, where there is no loss caused to the State exchequer, the cut in pension cannot be imposed. The relevant paragraph of the said judgment is as under:-

“Counsel for the appellant, inter alia, contended that as per Rule 2.2 of the Rules, recovery from pension can be made as a punitive measure in order to make good loss caused to the Government as a result of negligence or fraud on the part of the person concerned while he was in service. Admittedly, the enquiry officer, who conducted the enquiry against the appellant in the instant case categorically recorded that no financial loss has been caused to the Municipal Council in spite of the deviation in the procedure for execution of the works done under his supervision by the Municipal Council. The enquiry officer even noted that the appellant had issued certain audit requisitions in



audit report of 2009-2010 protesting against the procedure of execution of work through quotations instead of inviting tenders. But inspite of the same, the officials of the Municipal Council ignored his protest and continued to get the works executed by inviting quotations instead of calling for tenders. Since the work pertained to manholes and was claimed to be of urgent nature by Executive officer of the Municipal Council, who claimed to have been authorized through Government letter dt.24.08.2008 to spend Rs. 20,000/- on immediate expenses if there is an urgency or immediate need to get the work done, and the appellant had protested, he cannot be prima facie accused of being negligent merely because he did not take further instructions from the Head Office as was held by the enquiry officer. Counsel contended that even respondent No.1, who passed the impugned order, gave no categorical finding that there was loss caused to the Municipal Council though he doubted the correctness of the finding of the enquiry officer that there was only procedural lapses and no financial loss.

We find force in the above contentions.

In the absence of any finding against the appellant that he was responsible for causing financial loss to the Municipal Council either by the enquiry officer or by respondent No.1, it was not open to the learned Single Judge to give a finding that financial loss was caused to the Municipal Council on the basis of assumptions and presumptions without any material on record.

Only if there is a finding of financial loss caused to Government by the enquiry office or respondent no.1, Rule 2.2(b) of the Rules can be invoked. It permits recovery of pension after it has been sanctioned as a punitive measure in order to make good loss to the Government on account of negligence on the part of an employee.

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.



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Therefore, this Appeal is allowed; the judgment dt.18.11.2016 passed by the learned Single Judge in CWP-3418-2014 and the impugned order dt.21.05.2013 (P6) passed by respondent No.1 are set aside; and the respondents are directed to pay back to the appellant the amounts deducted from his pension from 21.05.2013 till date with interest @ 6% per annum from the date of such deduction till the date of repayment.”

7. Learned State counsel has not been able to rebut the contention that as in the present case, there is no allegation with regard to the embezzlement or causing loss to the State exchequer, the judgment in ***Gurcharan Singh’s case (supra)*** will be applicable.

8. Keeping in view the above, the present writ petition is allowed. The impugned order dated 20.04.2018 (Annexure P-13) is set aside. The respondents are directed to pass a fresh order of punishment upon the petitioner, which is commensurate to the Rules governing the service as well as the judgment of the Division Bench of this Court in ***Gurcharan Singh’s case (supra)***.

9. Any recovery which has been done from the petitioner in pursuance to the impugned order dated 20.04.2018 (Annexure P-13), which has now been set aside, be refunded back to the petitioner within a period of eight weeks of the receipt of copy of this order.

September 13, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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