

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:102504



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CWP No. 19781 of 2017 (O&M)

DECIDED ON: 8th August, 2024

Harbans Singh

.....PETITIONER

VERSUS

State of Punjab and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Sekhon, Advocate for petitioner.
Mr. Arun Gupta, DAG Punjab.

HARSIMRAN SINGH SETHI, J (ORAL)

In the present petition, the grievance being raised by the petitioner is that by the impugned order dated 21.1.2013 (Annexure P-2) the petitioner has been dismissed after his retirement, which act on the part of the respondents is totally arbitrary and illegal and without jurisdiction and therefore, the impugned order dated 21.1.2013 (Annexure P2) is liable to be set aside.

2. Learned counsel for the petitioner has argued that while the petitioner was in service, FIR No. 9 dated 19.1.2002 under Sections 419/420/468/471/465 of Indian Penal Code was registered against the petitioner. Before, the said criminal proceedings could attain finality, the petitioner attained the age of superannuation and retired on 31.12.2010 (Annexure P-1). Thereafter, the petitioner was granted the pensionary benefits which were admissible.

3. In the criminal proceedings, after the petitioner retired, the petitioner was convicted in FIR No. 9 dated 19.1.2002 vide order dated 1.8.2011 passed by learned Judicial Magistrate Ist Class, Zira. The appeal was also preferred by the petitioner before the learned Sessions Court against the said conviction which was also dismissed vide order passed on 25.4.2014.

4. Learned counsel for the petitioner fairly admits that the conviction of the petitioner, was also upheld upto the Hon'ble Supreme Court of India.

5. After the conviction of the petitioner, the respondent has passed an order dated 21.1.2013, copy of which has been appended as Annexure P-2, holding that once the petitioner has been held guilty of a criminal charge which reflected upon his moral, the petitioner cannot be treated in service and petitioner has been dismissed with retrospective effect from the date of his conviction i.e. 01.08.2011. The said order is under challenge in the present petition.

6. Learned counsel for respondents submits that even if the petitioner has retired from service but once he was convicted by a competent Court of law in the criminal proceedings, the action taken by the respondents is perfectly valid and legal.

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

8. It may be noticed that the petitioner retired from service on 31.12.2010. On the said date, the petitioner was not a convicted employee, though the criminal proceedings were pending against him. That being so, the question which arise is whether under the Rule governing the service, there is any jurisdiction with respondent/State to dismiss an employee, who has

9. Learned counsel for respondents has not been able to show any rules governing the service, according to which, the service of a retired employee can be terminated by the respondents. In the absence of any such rules shown to this Court it cannot be said that the order passed by the respondents terminating the services of the petitioner after his retirement is with any jurisdiction of respondents/State to pass such kind of order.

10. Even otherwise, a bare perusal of the impugned order 21.01.2013 (Annexure-P2) would show that the petitioner has been dismissed from the service from the date he has been convicted. It may be noticed that the petitioner was convicted on 01.08.2011 and on the said date also, the petitioner was a retired employee as he has already retired on 31.12.2010. This shows that what kind of application of mind was done by the authorities concerned while passing the impugned order dated 21.01.2013 (Annexure-P2). An employee who was not in service on 01.08.2011, is being dismissed by the respondents, which is totally arbitrary and illegal and without any jurisdiction.

11. At this stage, learned counsel for respondents submits that under Rule 2.2(a) of the Punjab Civil Services Rule, Vol-II, any employee who has been held guilty in a criminal case, action can be taken by the State and therefore, liberty be given to pass appropriate order under Rule 2.2(a) of the Punjab Civil Services Rules, Vol-II.

12. Learned counsel for the petitioner has not been able to rebut that under said Rule 2.2, the State can pass appropriate order with regard to the grant of pension after the conviction which reflect upon his moral.

13. Accordingly, the impugned order 21.01.2013 (Annexure P-2) is set aside. The respondents are directed to release all the benefits which have

been withheld after the passing of the impugned order dated 21.01.2013 (Annexure-P2) and arrears of pension be released to petitioner.

14. As the impugned order (Annexure-P2) was passed without any jurisdiction and the same is to be treated as nonest in the eyes of law and the petitioner will be eligible for the arrears of the pension and will also be entitled for interest at the rate of 6% per annum. However, the liberty is given to the respondents to pass appropriate order under the rule governing the service, in case the respondent intend to pass any order under rule 2.2 (a) of Punjab Civil Services Rules Vol.II, which will operate prospectively .
15. The writ petition is allowed in the above terms.

8th August, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes