

CWP-456 of 2016

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

CWP-456 of 2016

Reserved on: 21.11.2024

Pronounced on: 02.12.2024

Gurdeep Singh Bhullar

.....Petitioner

Versus

Punjab State Power Corporation Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Karan Singla, Advocate,
for the petitioner.

Mr. Pankaj Bhardwaj, Advocate, and
Ms. Vardhani Gupta, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. Petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Article 226 of the Constitution of India, seeking quashing of the order dated 03.11.2014 (Annexure P-4) whereby respondent-Corporation has imposed a 1/3rd cut in pension of the petitioner. Further, a writ of *mandamus* has been sought for directing the respondent to restore the original pension to which the petitioner was entitled before the cut was imposed on his pension as also to refund the deducted amount of pension.

2. Brief facts of the case, as have been pleaded in the petition, are that petitioner joined the respondent-Corporation as Junior

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Engineer on 08.12.1965 and retired as Assistant Executive Engineer on 31.12.2002.

3. While, the petitioner was in service, FIR No.83 dated 15.05.1991 under Sections 7/13/14/88 of the Prevention of Corruption Act, 1988 was registered against the petitioner at Police Station Nurmahal, Jalandhar. He was convicted and sentenced to undergo rigorous imprisonment for one year along with fine of Rs.10,000/- under Section 13(2) read with Section 7 of the Prevention of Corruption Act, 1988 and in default of payment of fine to further undergo rigorous imprisonment for two months by the learned Special Court-cum-Additional Sessions Judge, Jalandhar, vide judgment of conviction and order of sentence dated 22.01.2014. The said judgment has been challenged by the petitioner in Criminal Appeal No.S-688-SB of 2014, which has been admitted on 17.02.2014 and the sentence of imprisonment of the petitioner has been suspended during the pendency of the appeal vide order dated 21.02.2014. It has further been averred that in view of his conviction, respondent-Corporation passed impugned order dated 03.11.2014 (Annexure P-4), imposing 1/3rd cut in his pension w.e.f. 03.11.2014 for ever. Against the impugned order, petitioner moved representations dated 15.07.2015 and 09.09.2015, requesting therein to restore his pension, but to no avail. Hence, the present writ petition.

4. Pursuant to notice of motion, respondent-Corporation has filed its reply justifying the 1/3rd cut in the pension of the petitioner.

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5. Learned counsel for the petitioner has argued that the action of the respondent-Corporation in withholding 1/3rd pension of the petitioner w.e.f. 03.11.2014 for ever, due to his conviction in the criminal case, is illegal, arbitrary and against Rule 2.2 of the Punjab Civil Services Rules, (Volume II) as before imposing such cut, no notice was issued to him. He further contended that the impugned order being illegal and against the principles of natural justice is liable to be set aside. In support of his contention, learned counsel has placed reliance on the judgments of this Court in ***Mukesh Gambhir v. State of Haryana. 2018(4) SCT 127; CWP-21541 of 2014 – Ramesh Kumar v. State of Punjab and others decided on 21.05.2015; CWP-21231 of 2016 – Uggar Sain Bansal v. State of Punjab and others decided on 03.08.2017; CWP-20812 of 2016 – Om Parkash Verma v. State of Punjab and others decided on 03.08.2017; Dr. Inderjit Singh Wasu v. State of Punjab and others, 2007(3) SCT 788 and Sukhdev Singh v. State of Punjab and others, 2012(1) SCT 779.***

6. *Per contra*, learned counsel for the respondent has submitted that since the petitioner has been convicted in criminal case , therefore, the impugned order dated 03.11.2014 imposing 1/3rd cut in his pension is in consonance with Rule 2.2(a) of the Punjab Civil Service Rules Vol.-II Part I.

7. I have heard learned counsel for the parties and perused the record.

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8. Before proceeding further, it would be apt to reproduce relevant provisions of Rule 2.2. of the Punjab Civil Services Rules, which reads 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

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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.

x x x x

(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

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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.

9. Perusal of Rule 2.2(a)(i) of the Punjab Civil Services Rules shows that where the pensioner is prima facie found guilty of grave misconduct, before passing an order, 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 a representation within fifteen days of the receipt of such notice. In the present case, while passing the impugned order, respondent-Corporation has not issued any notice to the petitioner and no representation/explanation has been called from the petitioner before imposing 1/3rd cut in his pension.

10. In ***Mukesh Gambhir's*** case (supra), this Court while considering a similar issue has held as under: -

*“8. Recently a Division Bench of this Court in **Shankar Lal Vs. State of Haryana and others, LPA No.427 of 2013 (decided on 12.11.2014)** has examined a case of Junior Engineer who was working in Haryana State*

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Electricity Board. In that case, an FIR was registered against him under the Prevention of Corruption Act, 1988 and during the pendency of trial, the employee had retired. Thereafter, he was convicted and sentenced to undergo rigorous imprisonment for three years. After giving notice to the employee, his entire pension was withheld under Rule 2.2 (a) of the Punjab Civil Services Rules, Vol-II, Part-I (for short 'Rules'). The writ petition against this order was dismissed. However, the Division Bench in LPA while referring to Rule 2.2 (a) of the Rules, held that cut in pension would not exceed one-third of the total pension. The order withholding of pension was set aside and the authorities were directed to reconsider the case in the light of aforesaid Rule.

9. *In the facts of the present case, after conviction of the plaintiff-appellant, his provisional pension, which was granted vide order No. PPO 157006-S/HR w.e.f 01.10.2008, has been stopped without issuing any notice, which as per the judgment passed by the Division Bench of this Court in Shankar Lal's case (supra), was mandatory. Moreover, as per the aforesaid judgment, cut in the pension could not be more than one-third of the total pension.*

10. *Keeping in view the judgment delivered in Shankar Lal's case (supra), the present appeal is allowed and the impugned judgments dated 25.04.2011 and 09.04.2012 passed by the Courts below are set aside. However, liberty is granted to the defendant-respondent to give prior notice to the plaintiff-appellant and thereafter, pass an appropriate order with regard to cut in the pension as per Rule 2.2 (a) of the Punjab Civil Services Rules.*

11. *In the meantime, the defendant-respondent will release pension to the plaintiff-appellant, which was*

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stopped vide order dated 01.06.2010, within four months from the date of receipt of certified copy of this order.”

11. To the same effect is the judgment in **Ramesh Kumar’s** case (supra), wherein this Court held as under: -

“13. In Mohan Singh's case (supra), the petitioner was convicted in a criminal case under the PC Act and during trial, he got retired from service but he was granted provisional pension. There was cut of 25% in the provisional pension under Rule 2.2(a) of the Punjab Civil Services Rules. The cut imposed was without issuing any Show Cause Notice and as such, the impugned order of cut in pension was quashed and the writ petition filed by him was allowed. However, the liberty was granted to the respondents to pass appropriate order in accordance with law.”

12. In view of the above, the present petition is allowed and impugned order dated 03.11.2014 (Annexure P-4) is hereby set aside. However, liberty is given to the respondents to pass appropriate orders within a period of three months, after reconsidering the case of the petitioner in accordance with law.

02.12.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No