



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

229

CWP-7764-2020 (O&M)
Date of decision: 22.01.2025

Kulwant Singh

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. V.K. Sandhir, Advocate for the petitioner

Mr. Swapan Shorey, DAG Punjab

AMAN CHAUDHARY, J. (ORAL)

1. The prayer made in the present petition is for setting aside the order dated 09.10.2019, whereby the payment of gratuity to the petitioner has been stopped.

2. Learned counsel on instructions from the petitioner restricts his prayer only to the restoration of the pension, stopped vide order dated 10.12.2019, Annexure P-7, which could not have been in wake of the judgment passed by this Court in **Prem Chand Dhand vs. State of Punjab and Another**, CWP-24736-2017, decided on 01.12.2018, against which there was no LPA filed, to learned State counsel despite best efforts has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any



contrary law, relevant extract whereof read thus:

“ After noticing the above two situations, there is a power which has been given to the competent authority to pass an appropriate order of withholding or withdrawing the amount of such part of pension which shall not ordinarily exceed 1/3rd of the pension originally sanctioned nor shall the amount of pension left to the pensioner shall be ordinarily reduced to less than `3500/- per month. This is done so that a pensioner in any case has an adequate amount for his/her maintenance.

The interpretation which the State counsel has forwarded that in case of conviction, the Government has right to withhold full pension, is not borne out of the plain reading of the Rules. The proviso where the power has been given to withhold and a sealing has been fixed, is duly applicable in the case of conviction by the competent Court of Law as well as in the case of grave misconduct on which decisions the department has to arrive at after due opportunity to the concerned pensioner (departmental inquiry). Therefore, the distinction which is being sought to create by the State counsel, is not borne out of the reading of the Rule 2.2 (a).

Learned counsel for the respondents states that as the petitioner was held guilty of corruption, no leniency can be shown in his favour and the action of the department was perfectly valid in withdrawing 100% pension.

Argument which has been raised by learned counsel for the respondents that the petitioner was convicted under the Prevention of Corruption Act, 1988 and, therefore, no leniency can be shown to the petitioner, cannot be pressed for denying the relief to the petitioner. There is no exception carved out in Rule 2.2 in respect of the nature of crime for which an employee has been convicted. Therefore, once there is no power with the competent authority to withhold 100% pension, the same cannot be done and the present order passed by the respondents withholding 100% pension is beyond the competence of the authorities and hence cannot be sustained.

A bare reading of the impugned order in the present case would show that the authority while passing the impugned order, has not at all gone through the provisions of Rule under which the powers were being exercised. It can be very well said that the impugned order has been passed without any application of mind and, hence, needs to be set-aside.

Further, Rule 2.2 of the Punjab Civil Services Rules, Vol. II has already been interpreted by this Court to mean that the Government has power to withhold only 1/3rd of the pension which a pensioner was getting and not beyond that.

In the case of **Sardara Singh Vs. State of Punjab and others**, 2016 (3) PLR 341, this Court while interpreting Rule 2.2 of the Punjab Civil Services Rules, Vol. II held that entire



pension cannot be withheld. The relevant paragraphs 4 and 5 of the said judgment are as under :-

“4. In the written statement filed, a plea has been taken that on account of Rule 2.2(a) of the Punjab Civil Services Rules Vol-II Part-I [in short “Rule 2.2(a)”], person who has been convicted by Court has no right to pension and, therefore, his pension has rightly been stopped. Rule 2.2(a) reads thus:-

“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.

5. The above provision would go on to show that future conduct of the government servant is to be taken into consideration. On account of conviction on serious crime, action can be taken. However, safe guards have been prescribed for ensuring that the person can maintain himself and part of the pension can be withheld which cannot normally exceed 1/3rd of the pension originally sanctioned nor shall the amount of pension left to the pensioner be ordinarily reduced to less than `40



per month.”

Therefore, it is clear that a coordinate Bench has already held that as per 2.2(a) of Punjab Civil Services Rule, not more than 1/3rd of the pension granted can be withheld.

Learned counsel for the respondents states that while deciding **Sardara Singh's** case (supra), the Court took into consideration the order passed by the Division Bench in LPA No. 427 of 2013 dated 12.11.2014 vide which while interpreting Rule 2.2(a) of Punjab Civil Services Rule, the Division Bench had come to the conclusion that 100% pension cannot be withheld. Counsel for the respondents states that the said order was recalled by the Division Bench and, thereafter, while deciding the same LPA, the Division Bench vide order dated 05.10.2016 allowed the LPA holding that 100% pension can be stopped. In order to verify the facts, the case file of the above mentioned LPA was summoned from where it transpires that the Division Bench allowed the LPA while interpreting Rule 2.2(a) as applicable to Punjab, which is being interpreted in the present case as well on 12.11.2014. As **Shankar Lal's** case was relating to the State of Haryana, a review petition was filed on the ground that Rule 2.2 as applicable in the State of Haryana is different and there is no 1/3rd sealing provided in the said Rule and, therefore, the order dated 12.11.2014 is liable to be recalled. It was under these circumstances that the order dated 12.11.2014 was recalled by the Division Bench and, thereafter, while interpreting the Rule 2.2 as applicable to the State of Haryana, the LPA was dismissed on 05.10.2016. Even though the order dated 12.11.2014 passed in LPA No. 427 of 2013 was recalled but it is a matter of fact that the Division Bench while interpreting the Rule 2.2(a) as applicable in the State of Punjab, also held that 100% pension cannot be stopped. Therefore, this argument that the learned Single Judge while deciding **Sardara Singh's** case inadvertently relied upon the order dated 12.11.2014 cannot be accepted.

Keeping in view the above, it is clear that order dated 11.02.2016 (Annexure P-1) as far as it stops 100% pension of the petitioner is not only contrary to the Rule under which the power has been exercised but is also against the settled principle of law mentioned here in before and hence, the impugned order dated 11.02.2016 (Annexure P-1) is 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 by taking into consideration the law laid down by this Court mentioned in the preceding paragraph of the judgment interpreting Rule 2.2 of the Punjab Civil Services Rules, Vol. II.

After the order is passed by the competent authority in pursuance to the direction given today, whatever the difference of pension, which the petitioner will be found entitled for, from



the date the same was stopped, shall be released to the petitioner within a period of next two months.
The writ petition is allowed in above terms.”

3. The petition is disposed of in terms of **Prem Chand Dhand** (supra).

(AMAN CHAUDHARY)
JUDGE

22.01.2025
M.Kamra

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