



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-9911-2019 (O&M)

Date of decision: 05.04.2025

Sham Babu

...Petitioner

VERSUS

Union of India and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Dhiraj Chawla, Advocate for the petitioner(s).

Mr. Vijay Kumar Chaudhary, Advocate for respondents-UOI.

VINOD S. BHARDWAJ, J. (Oral)

1. Seeking quashing of the order dated 25.04.2016 as well as the subsequent dismissal of appeal preferred by the petitioner vide order dated 15.06.2017 to the extent of withholding 100% pension of the petitioner w.e.f. 09.02.2016, the present writ petition has been filed.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner was appointed as a Sanitary Supervisor on 29.01.1980 in the Cantonment Board, Ambala on adhoc basis and he was eventually regularized in the year 1984 as a Tax Collector, Grade-II. He was thereafter promoted to the post of Clerk in the year 1995 wherefrom he superannuated on 31.03.2015 after attaining the age of 60 years. While working as a Clerk in the Cantonment Board, Ambala, an FIR under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and



Section 120-B, IPC was registered at Police Station Ambala against the petitioner. He was placed under suspension vide DO part order No.135 dated 17.09.2011 after being arrested by the CBI team. Since the petitioner was due to retire during the pendency of the proceedings, he was reinstated and was directed to complete his pension papers well in time. It is submitted that vide judgment dated 09.02.2016, the Special Judge (CBI), Panchkula convicted the petitioner alongwith his co-accused u/s 120, IPC read with Sections 7 and 13(1)(d) r/w 13(2) of PC Act, 1988 and sentenced him to undergo imprisonment for a period of 3 years and it was also ordered that the sentence shall run concurrently. CRA-S-1021-SB of 2016 against the conviction was filed by the petitioner wherein the sentence awarded to the petitioner was suspended during the pendency of the said appeal. The said appeal admitted is currently pending.

3. Learned counsel appearing on behalf of the petitioner contends that a show cause notice was served upon the petitioner whereby he was required to show cause within 10 days of the receipt of this notice as to why the pension drawn by him be not stopped w.e.f. 09.02.2016 i.e. the date of conviction. He furnished his reply to the said Show Cause Notice apprising that an appeal against the judgment of conviction has already been filed and that the Hon'ble High Court had already ordered suspension of sentence. Notwithstanding, the said reply, the respondents directed withholding of 100% pension payable to the petitioner. He sent a representation dated 24.04.2017 and a reminder letter again to the Cantonment Board on 25.05.2017 apprising about the financial condition of his family and seeking



release of the pension, however, no heed was paid to that. The same was followed by subsequent reminders as well as multiple representations. The representation preferred by the petitioner was, however, rejected on account of his conviction in the criminal case. The petitioner was directed to inform the final outcome of the appeal pending before Court for further necessary action. Hence, the present writ petition.

4. Learned counsel appearing on behalf of the petitioner argues that the order passed by the respondents withholding the entire pensionary amount is illegal and is not based on correct interpretation of Rule 8 and Rule 69 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as '**the Pension Rules**'). He contends that provisional pension had been initially granted to him and that even though the appeal is still pending, there is no reason as to why the provisional pension be not assessed and released. It is further argued that once the provisions of Rule 8 of the Pension Rules mandate that the pension can be withheld even partly, hence, a conscious decision was hence required to be taken by the respondents as to what percentage of pension is to be withheld. He places reliance on the judgment of a Division Bench of Karnataka High Court titled as '**N.K. Suparna Vs. Union of India and others**' reported as **2005(1) SCT 502**. Relevant extract thereof reads thus:-

"8. In order to answer this point, it would be beneficial to first notice the provisions of Rule 69 of the Rules itself. Clause (b) of Sub-rule (1) of Rule 69 reads as follows:-

"69(1)(b):-



The provisional pension shall be authorised by the accounts officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority."

The provision of Clause (b) is quite clear, plain, unambiguous and does not admit more than one meaning. Clause (b) in unmistakable terms directs that a delinquent employee will be entitled to provisional pension from the date of retirement upto and including the date on which the final order that may be made by the competent authority, after the conclusion of the departmental or judicial proceedings. The key words for our purpose are 'after the conclusion of departmental or judicial proceedings'. The interpretation suggested by the learned CGSC for the department is not acceptable to us for more than one reason. It is well settled that the appeal is a continuation of the original proceedings. Since the petitioner being aggrieved by the judgment and order of the CBI Court has preferred appeal to this Court and the same is pending, we have to necessarily hold that the proceedings are pending. Undoubtedly, the pendency of the appeal in this Court is a judicial proceeding. It also needs to be noticed that the final order envisaged under Rule 9(1) of the Rules in terms of Clause



(b) of Sub-rule (1) of Rule 69 of the Rules is required to be passed by the President of India only after the conclusion of the departmental or judicial proceedings. In the instant case, since the judicial proceedings, we mean the launching of the prosecution against the petitioner have not been concluded so far in terms of finality, the President of India invoking the power conferred upon him under sub-rule (1) of Rule 9 would not arise. Therefore, the impugned order passed by the President of India in the purported exercise of power under Rule 9(1) of the Rules should be condemned as one without authority of law inasmuch as the necessary condition to invoke that power did not exist as on the date of the impugned order nor does it exist as on today also.

9. *This takes us to the next question whether the President of India is justified in forfeiting the gratuity payable to the petitioner? In terms of Clause (c) of Sub-rule (1) of Rule 69 of the Rules, the petitioner is not entitled to be paid gratuity inasmuch as judicial proceedings are pending and the petitioner has been convicted and sentenced by the original Court. However, we hasten to add that the President of India ought to have awaited the result of the appeal pending before this Court or in the event of further appeal to the Apex Court till the result of such appeal before passing final order in exercise of the power conferred upon him in Sub-rule (1) of*



Rule 9 of the Rules. Without awaiting for the finality of the proceedings, the President of India has issued the order forfeiting the gratuity also. The only thing he could have done under the circumstances is that he ought to have deferred the payment of gratuity. We clarify this position and direct accordingly.”

5. Learned counsel for the respondent(s)-UOI on the other hand contends that the factual aspect as regards the petitioner being convicted by the Special Judge, CBI Court, Panchkula, vide judgment of conviction dated 09.02.2016 and being sentenced to undergo imprisonment for a period of 03 years with fine of Rs.4,000/- alongwith his co-accused is not in dispute. The petitioner had preferred an appeal before the Hon'ble High Court wherein only his sentence was suspended while the conviction still stands as it is. He submits that the petitioner was struck off from the service on 31.03.2015 on attaining the age of superannuation and that the pension of the petitioner has been withheld in terms of Rule 8 (1) of the Pension Rules. He submits that the Pension Rules relied upon by the petitioner i.e. Rule 9 and Rule 69 would not be applicable to the case of the petitioner since the judicial proceedings have not yet attained finality and the appeal is still pending. The said rules could have come to the aid of the petitioner only in case the appeal proceedings would have culminated in his favour. He has placed reliance on a Division Bench's judgment of Jharkhand High Court in the matter of **Gour Chandra Mandal Vs. Union of India through O.S.D./Commissioner, Ministry of Coal, Dhanbad and others** reported as



2017(1) JLJR 696. The relevant extract thereof reads thus:-

“8. Rule-8 of the CCS [Pension] Rules, 1972 reads as follows:-

"8. Pension subject to future good conduct (1)

(a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The appointing authority, may by order in writing, withhold or withdraw pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

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9. A bare perusal of the aforesaid Rule clearly shows that if the petitioner is convicted for a 'serious crime', the appointing authority has the power to withhold or withdraw the pension, either permanently or for a specified period. In the present case, the appointing authority has exercised the power by withholding the pension of the petitioner permanently.

10. In our considered view, the offence, committed under the provisions of Prevention of Corruption Act comes within the purview of 'serious crime', irrespective of the amount involved in that crime.

11. In that view of the matter, we do not find any illegality in



withholding the pension of the petitioner, as the petitioner has been convicted for a 'serious crime', punishable under the Prevention of Corruption Act and IPC, and his conviction has been upheld up to the High Court .

12. We do not find any illegality in the impugned order dated 7.1.2013, passed by the Central Administrative Tribunal, in O.A. No. 65 of 2011(R).”

6. Learned counsel for the petitioner in rebuttal submits that the aforesaid judgment would not be applicable to the facts of the present case since in the said case, the appeal preferred by the employee against the judgment of his conviction had already been dismissed whereas in the present case, the appeal is still sub-judice.

7. I have heard the arguments advanced by the learned counsel for both the parties and have gone through the documents appended with their able assistance.

8. The undisputed facts which emerge from the above is that the petitioner already stands convicted in a serious case under the Prevention of Corruption Act, 1988. The judgment of conviction has so far not been stayed and only the sentence stands suspended by this Court. The appeal preferred by the petitioner is still pending and is sub-judice. The scope of the case would involve an inter-play between Rules 8 and 69 of the Pension Rules. The same are extracted as under:-

“8. Pension subject to future good conduct

(1)	(a)	<i>Future good conduct shall be an implied condition of</i>
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		<i>every grant of pension and its continuance under these rules.</i>
	<i>(b)</i>	<i>The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.</i> <i>Footnote 2. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6 (A), Pen.(A)/79, dated the 19th May, 1980.</i>

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of 4 [rupees three hundred and seventy-five] per mensem.

Footnote 3. Inserted by G.I., Dept. of Per. & A.R., Notification No. F. 38 (4) Pen. (A)/80, dated the 8th August, 1980.

4. Substituted by G.I., Dept. of P. P.W., Notification No. 2/18/87-P. & P.W. (PIC), dated the 20th July, 1988, published as S.O. No. 2388 in the Gazette of India, date the 6th August, 1988.

(2) Where a pensioner is convicted of a serious crime by a Court of Law, action under sub-rule (1) shall be taken in the



light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1)

<i>(a)</i>	<i>serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the [appointing authority] such representation as he may wish to make against the proposal; and</i> <i>Footnote : 1. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6 (A), Per. (A)/79, dated the 19th May, 1980.</i>
<i>(b)</i>	<i>take into consideration the representation, if any, submitted by the pensioner under Clause (a).”</i>

(4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the President, shall lie to the President and the President shall, in consultation with the Union Public

Service Commission, pass such orders on the appeal as he deems fit.

EXPLANATION. - In this rule, -

<i>(a)</i>	<i>the expression `serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);</i>
<i>(b)</i>	<i>the expression `grave misconduct' includes the communication or disclosure of any secret official code or password 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.</i>

(2) Intimation of cases of convicted pensioners. - Under Article 351, CSR [Rule 8, CCS (Pension) Rules, 1972] future good conduct is an implied condition of the grant of every pension and Government has the right to withhold or withdraw a pension or any part of it if the pensioner is convicted of a serious crime or found guilty of grave misconduct. It is, therefore, necessary to ensure that cases where pensioners are convicted by a Court of any crime are also brought to the notice of Government. The Government of India, Ministry of



Home Affairs, therefore, request that if the State Government have no objection, instructions may kindly be issued to prosecuting officers under the control of the State Government to ensure the prompt intimation of such cases to the administrative authorities concerned in future.

[G.I., M.H.A., O.M. No. 50/2/59-Ests. (A), dated the 7th October, 1959.]

Rule 69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.



(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Footnote : 1. Inserted by G.I., Dept. of Per. & A.R.,
Notification No. 30/2/80-Pension Unit, dated the 13th
February, 1981.

9. Counsel for the petitioner has placed emphasis on Rule 8(1)(b) of the Pension Rules which provides that the appointing authority is entitled to ‘withhold pension or a part thereof’, to contend that it is thus required to pass a reasoned order before directing the withholding of the pension in full



or part and since no such speaking order had been passed, hence, the petitioner becomes entitled to release of his pension. Reliance has also been placed on Rule 9 of the Pension Rules.

10. I am of the view that the aforesaid interpretation is misconceived and misplaced. Rule 8(1)(a) and (b) ought to be read in conjunction alongwith the provisions as enshrined in sub rule 2. A conjoint reading of the same prescribes that for an employee to claim pension, his future good conduct is an implied condition. The power under Rule 8(1) of the Pension Rules is vested with the appointing authority which is entitled to withhold or withdraw a pension or a part thereof. It is not a restricted power to the effect that only a part of the pension can be withdrawn or withheld rather, it is an enabling provision which authorizes the appointing authority to withhold the entire payable pension or any part thereof on the basis of the facts and circumstances of each case.

11. Rule 8(1)(2) mandates that where a pensioner is convicted of a serious crime by a Court of law, action under Sub-Rule 1 shall be taken in light of the judgment of the Court which relating to such conviction. As per Sub Rule (1) (3), in a case that is not falling under Sub-Rule (1) (2), the authority considers that the pensioner is *prima facie* guilty of grave misconduct, it is required to follow the procedure stipulated thereunder before passing an order under Sub-Rule 1 of Rule 8 of the Pension Rules. In the present case, the petitioner is convicted for a serious crime under the Prevention of Corruption Act, 1988 by a competent Court of law. It needs no re-iteration by this Court that corruption has been held to be a serious



offence by the Hon'ble Supreme Court in multitude of cases. Thus, the conviction remains for a serious crime and by a competent Court of law. The judgment of conviction has not been stayed by a competent Court of law and only the sentence has been suspended. Thus, the sting of conviction looms against the petitioner. Hence, one occurrence of an event of conviction, action is required to be taken under Rule 8(1).

12. The Government has further re-iterated the significance of the future good conduct under Sub-Rule 2 of Rule 8. The said power is vested in the appointing authority. The Rule provides for the power and the procedure provided for the appointing authority to withdraw or with-hold pension while Rule 9 confers similar powers and provides procedure for exercise thereof by the President and essentially applies to the employees for whom the President is the appointing authority.

13. In the statutory scheme, Rule 69 refers to the category of Government servants to whom Rule 9 is applicable and proceedings have been undertaken under the said Rule. Undisputedly, the petitioner herein does not fall in the category of employees whose's appointing authority is pleased to be the President. Rule 69 of the Pensions Rules not being extended to cases where an order has been passed under Rule 8, application of the said Rule by an extended interpretation would amount to carrying out an amendment to the statutory Rules. In exercise of powers of judicial review, the constitutional Court can not extend a statute to situation which is excluded by the legislature as in doing so, the Court makes an ingress into the legislative domain which is impermissible. The interpretation of the



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petitioner and his prayer for seeking the provisional pension by relying on Rule 69 is thus based upon misreading of the statutory scheme and the situation to which it is applicable. The legislature having not deemed it fit to provide for provisional pension for employees falling under Rule 8, the omission is deemed as conscious.

14. The case of *N.K. Suparna (supra)*, relied upon by the petitioner infact falls in the category of Rule 9 and the Court has not dealt with the provisions and scope of Rule 8. The said judgment would thus not applicable to the facts of the instant case.

15. The contention that the authority could have also withheld the pension in part, I am afraid that such a contention would not be applicable since the said enabling provision(s) has to balance equities. The same would ordinarily have been applicable in a scenario where an employee is guilty of having caused a financial loss which is yet to be recovered. It is to enable the authorities to take a just decision as to whether withholding of the entire pensionary benefits would be necessary or that the interest of the State can be best secured by the withholding a part of the pension as well. Where the interest of the State can be suitably protected, part of pension is thus released/withheld.

16. The judgment of Division Bench of the Jharkhand High Court in the matter of **Gour Chandra Mandal** (supra) would rather be apt and applicable to the facts of the present case.

17. Consequently, I find that the case is devoid of merits, hence the present case is **dismissed** at this juncture.



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18. Dismissal of this writ petition shall however not be a bar against the petitioner to submit a claim for release of his pension subject to final outcome of the pending criminal appeal.

(VINOD S. BHARDWAJ)
JUDGE

05.04.2025

Mangal Singh

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