2025:PHHC:008813
2025:PHHC:008814

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

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I. **CWP-19843-2016**

AVTAR SINGH

.... PETITIONER

Vs.

THE PUNJAB STATE POWER CORPORATION LTD & ORS

.... RESPONDENTS

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II. **CWP-5218-2020**

WARJINDER SINGH

.... PETITIONER

Vs.

THE PUNJAB STATE POWER CORPORATION LTD & ORS

.... RESPONDENTS

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Reserved on: 13.01.2025
Pronounced on: 22.01.2025

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. J.S. Jaidka, Advocate
and Mr. Abhishek Khullar, Advocate
for the petitioner (in both the cases)

Mr. H.S. Ghuman, Advocate
for respondents.

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DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, as facts and the issues involved in both the cases are similar. For the sake of convenience, the facts are being noticed from CWP No.19843 of 2016 titled "Avtar Singh vs. Punjab State Power Corporation Ltd.".

2. Petitioner retired from the services of the respondent on 31.01.2015. Prior to his retirement and during the service period, petitioner was served a charge-sheet *(Annexure P-3)* on 10.10.2014 under Regulation 8 of PSEB Employees (Punishment and Appeals) Regulations, 1971 for releasing connections by breaking seniority; for releasing connections despite objections in unauthorized colony and for not completing the record regarding GSC in time. The said charge-sheet was still pending, when the petitioner retired on 31.01.2015. Without holding any enquiry and after the retirement of the petitioner, order dated 10.09.2015 (Annexure P-1) was passed, whereby the punishing authority imposed 10% cut in the pension of the petitioner for a period of 05 years. The Appellate Authority vide order dated 26.06.2016 (Annexure P-2) modified the order to the extent that 10% cut in pension was reduced for the period of 03 years.

3. The abovesaid orders have been assailed by the petitioner by way of the present petition.

4. It is contended that charge-sheet proposed to impose major penalty; and that major penalty has been imposed after retirement of the petitioner without holding any enquiry, which is in violation of rules.

5. As per the reply of the respondents, their stand is as under:-

> "(a) That, the averments in the sub paragraph (a) of paragraph 8 of the writ petition is vehemently denied by the answering respondent. It is wrong and incorrect to aver that a major penalty has been imposed upon the petitioner. As per PSEB Employees Punishment and Appeal Regulation, 1971; Regulation 8(1) *"No order imposing any of the penalties specified in clause (v) to (ix) of the Regulation 5 Annexure-I shall be made except after an inquiry held, as far as may be in the manner provided in this regulation and regulation 9 or in the manner provided hereinafter"*. The copy of the PSEB Employees Punishment and Appeal Regulations, 1971 is annexed with the written statement as Annexure R-3/1. It is further amplified that clause (v) to (ix) of Regulation-5 are

regarding major penalties, whereas clause (i) to (iv) are for minor penalties. As per Secretary Regulation Section, PSEB Patiala's Circular No.25/2000 under Office Order No.851/REG17/V-5-A dated 11-09-2000, clause (iv) under minor penalties and clause (v) under major penalties has been amended. The relevant extracts of the circular are annexed with the written statement as Annexure R-3/2. Further, in the ibid-mentioned Office Order No 851/REG-17/V-5-A dated 11-09-2000, clause (iv) under minor penalties and (v) under major penalties has been amended. Under Clause (iv) withholding of increments of pay without cumulative effect is a minor penalty; whereas withholding of increments of pay with cumulative effect is a major penalty under Clause (v). In the instant case of the petitioner, who has retired on 31-01-2015 before the decision of the charge sheet, the punishing authority has imposed a cut of 10% in his pension for a limited period of three years, which is without cumulative effect. Hence, the punishment imposed on the petitioner is a minor penalty as per clause (iv). As per Regulation 8 (5) (a), *"on receipt of the reply from the delinquent employee, the punishing authority may consider the reply of the delinquent employee and after recording reasons for so doing, impose on the employee any of the penalties specified in clause (i) to (iv) of Regulation-5."* Therefore, as per Regulation 8 (1) and (5), it is not mandatory for the punishing authority to hold inquiry, before imposing any of the minor penalties specified in clause (i) to (iv) of Regulation 5."

Thus, as per respondents, only minor penalty has been imposed on the petitioner, for which it was not mandatory to hold inquiry.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. From the stand of the respondents, it is quite clear that no enquiry was held before passing the impugned order, making 10% cut in the pension of petitioner for a period of 05 years, which was modified to 03 years period. Since the petitioner had already retired from the service, when the impugned orders imposing the penalty of 10% cut in the pension was passed,

obviously neither the major nor the minor punishment under the Regulations, 1971 could be inflicted upon the petitioner. However at the same time, since the charge-sheet was issued to the petitioner, when he was in service, therefore, proceedings could continue but only as per Rule 2.2 of the Punjab Civil Service Rules, Volume-II.

7. The Rule 2.2 of the Punjab Civil Service Rules, Volume-II reads as under:-

> 2.2 (a) Future good conducts is an implied condition of every grant of a pension. The appointing authority reserves to itself the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or is guilty of grave misconduct. The decision of the appointing authority on any question of withholding or withdrawing the whole or any part of pension under this rule shall be final and conclusive.
>
> **Note 1.**– A claim against the Government employee may become known and the question of making recovery may arise–
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> > (a) When the calculation of pension is being made and before the pension is actually sanctioned; or
> >
> > (b) after the pension has been sanctioned. The claim and the recovery may be one or other of the following categories:-
> >
> > (1) Recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service.
> >
> > (2) Recovery of other Government dues such as over issues of pay, allowances or leave salary, or admitted and obvious dues such as house rent, postal life insurance premia, outstanding motor car, house building, travelling allowance or other advances.
> >
> > (3) Recovery of non-Government dues.
>
> I. In cases falling under:-

(a) above, none of the recoveries mentioned in (1) to (3) above may be effected by a reduction of the pension about to be sanctioned except in the following circumstances:-

(i) When an officer's service can be held to have been not thoroughly satisfactory, a reduction in the amount of pension may be made under rule 6.4 (b) of this Volume by a competent authority although no direct penal recovery from pension is permissible.

(ii) When the pensioner by request made or consent given has agreed that the recovery may be made. If such request is not made or consent is not given by the pensioner, even sums admittedly due to Government such as house rent, outstanding advances, etc., may not be recovered from pension. In such cases, however, the executive authorities concerned would have to consider whether they should not try to effect the recovery otherwise than from pension, for example, by going to a court of law, if necessary.

II. In cases falling under (b) above, none of the recoveries described in clauses (1) to (3) may be effected by the deduction from a pension already sanctioned except at the request or with the express consent of the pensioner. Under rule 2.2 (a) of this Volume, future good conduct is an implied condition of every grant of a pension and a pension can be withheld or withdrawn in whole or in part if the pensioner is convicted of serious crime or is guilty of grave misconduct. This, however, refers only to crime or misconduct occurring after the pensioner has retired from service, and the rule would not, therefore, cover a reduction of pension made for the purpose of retrieving loss caused to Government as a result of negligence or fraud on the part of the pensioner occurring before he had retired from service.

In cases where the pensioner does not agree to recovery being made even of sums admittedly due to Government, the concluding remarks under I (ii) above will also be applicable.

Heads of offices should see that the pay or leave salary prior to retirement shall not be paid until it is clear that a retiring Government employee has no outstanding dues to Government. Sometimes, it may not be practicable to ascertain in time all the outstanding dues, while sometimes dues may exceed the amount of last pay or leave salary. In such cases, it is the duty of the Heads of Offices (in consultation with Treasury Officers and Accountant General, Haryana in the case of Gazetted Officers) to bring promptly to the notice of the Accountant General, Haryana, all the outstanding amounts by a separate communication, stating in detail the nature of recovery and why it has not been possible to effect it from last pay or leave salary. The outstanding amounts should also be clearly and completely noted in the last pay certificates in sufficient detail with reference to the previous correspondence with the Accountant General, Haryana and if the recovery is to be effected from pension, it should be clearly recorded on the last pay certificate itself that the request or express consent of the pensioner in writing to the recovery from his pension has been obtained.

Note 2.– Although compassionate allowance is of the nature of an ex-gratia payment it is really a form of pension, therefore, recoveries from it, once it is sanctioned, should be governed by the above orders. Direct recovery of Government dues from compassionate allowance is not permissible under these orders, but recovery may be made indirectly (before the allowance is sanctioned) by reducing the allowance either permanently or as a temporary measure.

Note 3.– Strictly speaking under the orders no recovery of amount is permissible from pension but if final recovery has been made it need not be refunded to the pensioner concerned.

(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 the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on reemployment 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 rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service,

(2) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment–

(i) shall not be instituted save with the sanction of the Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places 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;

(3) such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his re-employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2); and

(4) The Public Service Commission shall be consulted before final orders are passed.

Explanation.– For the purpose of this rule:-

(1) Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been instituted–

(i) in the case of criminal proceeding, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court.

Note 1.– As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.

Note 2.– In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which may have been commuted."

8. The abovesaid Rule makes it clear that:

- Pension or a part of pension can be withheld by the Government, whether permanently or for a specified period.

- The right of the Government in ordering the recovery from the pension of the whole or part of any pecuniary loss caused to the Government can be done, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including the service rendered upon re-employment after retirement.

- The proviso to clause (b) of Rule 2.2 PCSR Volume II, further makes it clear that in case, the departmental proceedings are instituted while the officer was in service, whether before his retirement or during his re-employment, the same shall after the final retirement of the officer be deemed to be the proceedings under this rule and shall be continued and conducted by the authority by which it was commenced in the same manner, as if the officer had continued in service.

- Further the right of the Government to withhold or withdraw a pension or any part of it arises in case the pensioner is convicted of a serious crime or is found to be guilty of grave misconduct.

- In case pensioner is convicted of a serious crime, then action is to be taken in the light of the judgment of the Court relating to such conviction. However in case, the case is not covered under the earlier paragraph, and the Government considers the pensioner to be prima facie guilty of grave misconduct, then before passing any order, a notice is required to be served upon the petitioner 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 the specified time, the reply/representation and it is only after considering the same that necessary order is to be passed as per Rule 2.2.

9. In the present case, it is not the stand of the respondents that petitioner has been convicted of any serious crime.

10. Now the question is that as to whether the petitioner was found to be guilty of any grave misconduct. Even if it be assumed for the sake of arguments that he was found to be guilty of grave misconduct, then before imposing the penalty of withdrawing a part of pension i.e. cut in pension, the procedure as prescribed under Rule 2.2 is required to be followed by the respondents.

11. In view of the aforesaid discussion, the impugned orders as passed by the respondents, cannot be sustained in the eyes of law, as they are patently wrong and illegal and as such, these are set aside. However it is made clear that respondents will be at liberty to initiate proceedings as per Rule 2.2 of the PCSR, Volume-II, in case they intend to take action on the basis of

charge-sheet, which was served upon the petitioners before their retirement. Any such action is to be taken strictly in accordance with law.

Disposed of.

A photocopy of this order be placed on the file of connected case.

(DEEPAK GUPTA)
JUDGE

22.01.2025
Neetika Tuteja

Whether speaking/reasoned? Yes
Whether reportable? Yes