

Cwp No.12977 of 2014 Vs. Union of

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Court : Punjab and Haryana

Decided On : Jul-09-2014

Appellant : Cwp No.12977 of 2014

Respondent : Union of

Judgement :

CWP No.12977 of 2014 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.12977 of 2014 Date of Decision : 9.7.

2014 Chetan SinghPetitioner versus State of Punjab and others
.....Respondents ..CORAM : HON'BLE Mr.JUSTICE RAMESHWAR SINGH
MALIK ..Present : Mr.Shailendra Sharma, Advocate for the petitioner..1.

To be referred to the Reporter or not ?.

2.

Whether the judgement should be reported in Digest ?.

RAMESHWAR SINGH MALIK, J Feeling aggrieved against the alleged inaction on the part of respondent authorities, petitioner has approached this court by way of instant petition, under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari.

Learned counsel for the petitioner, while placing reliance on Rule 2.2(a) of the Punjab Civil Service Rules Vol.II and a Division Bench judgement of the Karnataka High Court in N.K.Suparna versus Union of India and otheRs.2005(1) RSJ707 submits that the petitioner had already superannuated and he was not convicted for any offence given in the explanation to Rule 2.2, the impugned order was wholly without jurisdiction.

He further submits that despite the fact that the department was Sahni Greesh competent and entitled to conduct a departmental enquiry simultaneously
2014.07.16 16:09 I attest to the accuracy and integrity of this document High Court, Chandigarh CWP No.12977 of 2014 2 when the criminal trial was going on, however, no such departmental enquiry was conducted because of which respondent no.2 was not having any competence to pass the impugned order, whereby the provisional pension already released in favour of the petitioner has been stopped only on the ground that he has been convicted for the offences under Sections 13 (1) D read with Section 13(2) of Prevention of Corruption Act and Sections 409/419/467/468/471 and 120-B IPC, vide judgement of conviction dated 30.3.2013, whereby petitioner was awarded the sentence of five years imprisonment.

Learned counsel for the petitioner concluded by submitting that since the appeal of the petitioner is pending against the judgment of conviction, his conviction is not final so far and respondent no.2 ought not to have passed the impugned order during the pendency of the appeal.

He prays for setting aside the impugned order by allowing the present writ petition.

Having heard learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the given fact situation of the present case, instant one is not a fit case for exercising writ jurisdiction under Articles 226/227 of the Constitution of India at the hands of this court.

To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that petitioner was involved in FIR No.37 dated 8.6.1996 under Sections 13(1) D read with Section 13(2) 88 PC Act and Sections 409/419/467/468/471 and 120-B IPC registered by the Vigilance Department.

During the pendency of the criminal trial, petitioner reached at the age of superannuation and retired from service with effect Sahni Greesh 2014.07.16 16:09 I attest to the accuracy and integrity of this document High Court, Chandigarh CWP No.12977 of 2014 3 from 31.1.2009.

Provisional pension was released in favour of the petitioner.

However, it is also a matter of record and not in dispute that after his retirement, petitioner came to be acquitted by the court of competent jurisdiction, vide judgement of acquittal dated 30.3.2013.

Respondent no.2 issued show cause notice to the petitioner vide Annexure P-1.

Petitioner submitted his reply vide Annexure P-2.

After considering the reply of the petitioner to the show cause notice and also the direction issued by this court, vide order dated 18.11.2008 in CWP No.18552 of 2007, respondent no.2 came to the conclusion that the provisional pension already released in favour of the petitioner was liable to be stopped.

Accordingly, he passed the impugned order dated 17.12.2013 (Annexure P-3).After careful perusal of the impugned order, relevant provisions of law and the peculiar fact situation of the present case, this court is of the considered view that the present writ petition is misconceived and the same is liable to be dismissed.

It is so said, because the impugned order has neither been found to be arbitrary nor discriminatory and the same deserves to be upheld.

Rule 2.2 (a) of the Punjab Service Rules Vol.II gives right to the Government to withhold or withdraw the pension or any part of it, if the pensioner is found involved in a serious crime or guilty of grave misconduct.

Relevant part of Rule 2.2 (a) and explanation thereto, reads as under :- 2.2 (a) Recoveries from Pensions Future good conduct is an implied condition of every grant of pension.

The Government, however, reserves to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner is Sahni Greesh 2014.07.16 16:09 I attest to the accuracy and integrity of this document High Court, Chandigarh CWP No.12977 of 2014 4 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 judgement of the court relating to such conviction.

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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.

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So far as the judgement relied upon by learned counsel for the petitioner is concerned, there is no dispute about the law laid down therein.

However, after a careful perusal of the cited judgement, the same has not been found to be of any help to the petitioner, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated fiRs.before applying any codified or judgemade law thereto.

Sometimes, difference of one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in Padmausundrao Rao and another versus State of Tamil Nadu and otheRs.2002 (3) SCC533 The argument raised by learned counsel for the petitioner that Sahni Greesh 2014.07.16 16:09 I attest to the accuracy and integrity of this document High Court, Chandigarh CWP No.12977 of 2014 5 since petitioner was not convicted for a serious crime, the impugned order was illegal, has been found to be wholly misconceived and fallacious for the reason that the petitioner has been convicted for an offence under the Prevention of Corruption Act.

Nothing could have been more serious for a civil servant.

The respondent authorities i.e.respondent no.2 was very much competent to pass the impugned order and he has not exceeded his jurisdiction, while passing the impugned order, which deserves to be upheld for this reason also.

So far as the issue raised regarding non holding of departmental enquiry is concerned, it was not imperative on the respondent department to conduct the departmental enquiry during the pendency of criminal trial.

Had the departmental enquiry been conducted, petitioner must have been found guilty of grave misconduct and he would have faced the punishment at the hands of the respondent department also at earlier point of time.

Thus non conducting of any departmental enquiry will not cause any prejudice to the petitioner.

He continued in service till attaining the age of superannuation.

However, after having been convicted by the court of competent jurisdiction for a serious crime under the Prevention of Corruption Act, the provisional pension which had already been released in favour of the petitioner has been stopped by the competent authority by passing an impugned order, which does not suffer from any arbitrariness, hence deserves to be upheld for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered opinion that the present writ petition is misconceived, bereft of Sahni Greesh 2014.07.16 16:09 I attest to the accuracy and integrity of this document High Court, Chandigarh CWP No.12977 of 2014 6 merit and without any substance, thus, it must fail.

No case for interference has been made out.

Resultantly, the present writ petition stands dismissed, however, with no order as to costs.

9.7.2014 (RAMESHWAR SINGH MALIK) GS JUDGE Sahni Greesh 2014.07.16 16:09 I attest to the accuracy and integrity of this document High Court, Chandigarh

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