
(2002) 10 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10604 of 2000

Gian Singh Naib Tehsildar (Retired) Colonisation Department	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Punjab Civil Services Rules — Rule 2.2

Citation : (2003) 133 PLR 262

Hon'ble Judges : S.S. Grewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Gurcharan Singh, for the Appellant; D.V. Sharma, Addl. A.G. Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner retired from service as a Naib Tehsildar on June 30, 1991, while he was in service, the petitioner had been served with a charge-sheet. It was inter-alia alleged that he had supplied a wrong copy of Jamabandi. An enquiry was held. The allegation was found to be correct, Vide letter dated July 28, 1975, the petitioner was served with a Show Cause Notice to explain as to why the punishment of dismissal be not awarded to him. The final order was passed on November 20, 1998. A cut of 5% in the pension was imposed. A copy of this order has been produced as Annexure P.5 with the writ petition. Aggrieved by the order, the petitioner has filed the present writ petition. He prays that the order be quashed.

2. The respondents contest the petitioner's claim. It has been submitted that the delay had occurred as the government file had been misplaced by an "interested person to avoid final decision against him on the basis of the findings of the Enquiry Officer. Later on the government file was reconstructed and the matter was referred to the Punjab Public Service Commission for its concurrence for awarding the penalty of dismissal upon the petitioner." The Commission had asked for a copy of the reply submitted by the petitioner to the Show Cause

Notice. Since the file had been misplaced the petitioner was asked to furnish a duplicate copy. He "evaded by intimating that no copy of the reply given to the show cause notice was available with him....Due to non-supply of the copy of the show cause notice, the case could not be finalized." It has been further alleged that the petitioner "himself deliberately delayed the finalization of action on the findings of the Enquiry Officer's report." It has also been pointed out that the action is in conformity with the rule.

3. Learned counsel for the parties have been heard.

4. The solitary contention raised by Mr. Gurcharan Singh, counsel for the petitioner is that the action of the respondents in imposing a cut is illegal as no pecuniary loss had been caused to the State Government. Reliance has been placed on the provision of Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II. The counsel has also referred to the decision of a learned Single Judge of this Court in *Wasdev Singh v. State of Punjab* 1997(1) R.S.J. 740. The claim made on behalf of the petitioner has been controverted by Mr. D.V. Sharma, Additional Advocate General, Punjab.

5. The short question that arises for consideration is- Have the respondents acted illegally in imposing a cut of 5% in the petitioner's pension?

6. Admittedly, a departmental enquiry was held against the petitioner. It was found that the allegation of supplying a false copy of revenue record had been established against the petitioner. As far back as the year 1975, the petitioner was served with a notice to show cause as to why he be not dismissed from service. The respondents allege that he had managed to get the government file misplaced. Resultantly, the proceedings had got delayed. In the meantime, the petitioner had retired from service on attaining the age of superannuation on June 30, 1991. The matter had also remained under correspondence with the Punjab Public Service Commission. Ultimately, the Government found that the charge against the petitioner having been established, a cut of 5% should be imposed. The order was accordingly passed. It has not even been suggested that the procedure as adopted by the authority was not in conformity with the rules. Thus, it is clear that the petitioner had a reasonable opportunity.

7. Mr. Gurcharan Singh contends that under Rule 2.2(b), the Government can impose a cut only when it has suffered a pecuniary loss. Otherwise, no cut can be imposed. Is it so?

8. The relevant portion of the rule may be noticed. It reads as under:-

"(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:"

9. A perusal of the above provision shows that the Government has clearly reserved a right to with-hold or withdraw the pension or a part of it. The order can have permanent effect or it can be operative for a specified period. The Government has also reserved the right to order recovery from the pension of an employee. Such an order can be passed if in a proceeding, the employee is found guilty of grave mis-conduct or negligence during he period of the service.

10. Mr. Gurcharan Singh contends that no cut can be imposed unless pecuniary loss is caused to the Government.

11. The contention is misconceived. The rule clearly stipulates that the Government has a right to order "the recovery from a pension of the whole or part of any pecuniary loss." In other words, the clear intent is to safe-guard the public funds. However, the rule also authorises the Government to with-hold a part of the pension when misconduct or negligence is proved. By way of illustration, it may be mentioned that a civil servant may take a bribe one day before his retirement. The evidence may not be adequate to resort to his prosecution. However, the departmental proceedings may be initiated. When the charge of accepting illegal gratification is proved, surely, the Government has a right to with-hold a part or whole of the pension. It cannot be said that since the Government had not suffered any pecuniary loss, not cut can be imposed in the pension admissible to the employee.

12. Mr. Gurcharan Singh places reliance upon the decision of a learned Single Judge of this of this Court in Wasdev Singh's case (supra). We have perused the judgment. Wasdev Singh was found to have accepted an illegal gratification of Rs. 500/-. A cut of 10% in the pension was imposed. The learned Judge had taken the view that "recovery from the pension can be made if there is any pecuniary loss caused to Government. If there is no pecuniary loss caused to Government then there cannot be any recovery from the pension of the government servant." Thus, the writ petition was allowed. We are unable to persuade ourselves to uphold the view taken by the learned Judge, It is patently contrary to the plain language of the statutory provision, The cut of 10% means withholding of a part of the pension. It is not an order for the recovery on account of the loss caused to the Government. The decision in Wasdev Singh 's case does not embody a correct statement of law. Consequently, it is over-ruled.

13. No other point has been raised.

14. In view of the above, we find no merit in this writ petition. It is, consequently, dismissed. In the circumstances, we make no order as to costs.

Sd/- S.S. Grewal, J.