

(2010) 11 RAJ CK 0052
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6164 of 1998

Shri Bhanwar Lal Agarwal

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 465, 471
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)
Rajasthan Civil Services (Pension) Rules, 1996 — Rule 6, 6(1), 6(2)

Citation : (2010) 11 RAJ CK 0052

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Petitioner, by way of filing present writ petition, has challenged order dated 05.08.1998 by which his pension was ordered to be stopped. Competent authority has passed that order under Rule 6(1)(b) of Rajasthan Civil Services (Pension) Rules, 1996 (for short, "Rules of 1996") read with Rule 19 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, on premise that since he, after his retirement, was convicted by court of Special Judge, Anti-Corruption Cases, Jaipur, vide judgment dated 13.09.1994 for offence under Sections 120B, 420, 471 read with Section 465 of IPC and Section 5(1)(d)(2) of Prevention of Corruption Act, 1947, therefore that rule would have no application to his case.

2. Contention of learned Counsel for Petitioner is that incident on the basis of which Petitioner was involved in criminal case pertain to year 1978 of which first information report was lodged in 1981 and that even as per Rules 170 of Rajasthan Service Rules, for incident which is older than four years, powers under Rule 19 of the CCA Rules cannot be exercised. It is contended that Petitioner has filed appeal against conviction order and his sentence has been suspended by this Court. There is every likelihood of Petitioner being acquitted.

His pension cannot be withheld. It is contended that Rule 6 of Rules of 1996 inter alia provides that maintenance of future good conduct shall be an implied condition of every grant of pension. Conviction of Petitioner was made by judgment dated 13.09.1994 whereas retirement of Petitioner took place on 31.10.1991; thus said rule has wrongly been invoked in Petitioner's case because he already stood retired much prior to passing of conviction order and conduct on the basis of which Petitioner was convicted pertained to 1978.

3. Learned Counsel appearing on behalf of Respondents opposed writ petition and argued that words "future good conduct", cannot be so narrowly construed to say that even if order of conviction has been passed subsequent to date of retirement, its effect would be realized on concerned government servant only when incident on the basis of which he was convicted pertains to subsequent to date of retirement. Learned Counsel argued that mere filing of appeal and suspension of sentence would not be a reason not to withhold pension because Rule 6 of Rules of 1996 specifically gives an authority to employer in that behalf. Learned Counsel for Respondents relied on judgment of Supreme Court in Union of India and Others Vs. Shri B. Dev, wherein it was held that Government was entitled to withhold or withdraw pension or part thereof for any misconduct which might have been committed by pensioner during his service with government and on which basis he was convicted. Rule 6 of Rules of 1996 was therefore rightly invoked in Petitioner's case. Further argument of Respondents is that impugned order was passed after show-cause notice served upon Petitioner and to which he filed reply, which was duly considered.

4. Upon hearing learned Counsel for parties and perusing impugned order, I find that although it may be a fact that incident, on the basis of which Petitioner was convicted, relates to year 1978 and FIR thereof was registered against him on 22.08.1981 and he was thereafter retired from service on 31.10.1991, but he was convicted for aforesaid offence by judgment of the court dated 13.09.1994. Order of conviction has admittedly been passed after retirement of Petitioner. Rule 6 of Rules of 1996 inter-alia provides that future good conduct shall be an implied condition of every grant of pension and its continuance under the Rules of 1996. Appointing authority may by order in writing withhold or withdraw pension or part thereof; 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. While it is true that Clause (a) of Sub-rule (1) of Rule 6 of Rules of 1996 provides that "future good conduct" shall be an implied condition of every grant of pension and its continuance but at the same time Clause (b) thereof also provides that appointing authority may, by order in writing, withhold or withdraw a pension or part thereof either permanently or for a specified period, if pensioner is convicted of a serious crime or is found guilty of grave misconduct. While latter part namely, "guilty of grave misconduct" may relate to order of penalty i.e. passed in proceedings which might have been pending in the case of a retiring government servant; the former part, namely, "convicted of a

serious crime" is attracted in a situation where retired government servant is convicted and sentenced by a court of law. Now Clause (b) of Sub-rule (1) of Rule 6 of Rules of 1996 shall apply in case of retired government servant because it provides for withholding or withdrawing of pension or part thereof, which can be granted only to retired government servant. Argument of Petitioner that phraseology used in Sub-rule 1 (a) of Rule 6 of Rules of 1996 with regard to "future good conduct" show that on the basis that conviction order was passed in 1994 for incident which took place in 1978, entire Rule 6 include Sub-clause (b) of its Sub-rule (2) can not be applied, is fallacious because in every case of retired government servant order of conviction would certainly be passed after his retirement and that is when question of withholding or withdrawing pension would arise. Sub-Rule 1(b) of Rule 6 of the Rules of 1996 has to be therefore independently applied in a situation like this.

5. Coming now to another submission that since Petitioner's appeal is pending wherein order of his conviction has been suspended, therefore Respondents could not invoke provisions of Rule 6 of Rules of 1996 during pendency of appeal, I find that mere filing of appeal and suspension of sentence by itself do not apply the facts of present case have the effect of obliterating or wiping out conviction, although if eventually appeal succeeds and conviction is set-aside, it may give rise to a right in favour of Petitioner to reclaim withheld pension for intervening period.

6. I therefore do not find any merit in this writ petition. It is accordingly dismissed, however, with aforesaid observations.