

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

**LPA-340-2017 (O&M)
Date of Decision:08.02.2023**

Gurcharan Singh Appellant

Vs.

State of Punjab and others Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present: - Mr.Krishan Singh Dadwal, Advocate, for the appellant.

Mr.Karanjit Singh, Addl. A.G., Punjab.

M.S. RAMACHANDRA RAO, J. (ORAL)

This Letters Patent Appeal is directed against the judgment dt.18.11.2016 passed by the learned Single Judge in CWP-3418-2014.

The appellant had filed the said Writ Petition challenging order No.5(103)P/2730 dt.22.05.2013 passed by respondent No.1 whereby a cut of 10% from the pension has been imposed on the pension of the appellant.

The appellant admittedly superannuated on 28.02.2010 while holding the post of Assistant Controller (Local Audit), Finance Department, but his period of retirement was extended keeping in view the decision of the Government to extend superannuation age upto 59 years and an extension was given. But later on, the same was withdrawn and the appellant was superannuated on 31.03.2010.

Post retirement, a chargesheet dt.03.01.2012 was issued to the appellant by the respondents invoking Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 [hereinafter referred to as 'the Rules'].

Charges were framed against the appellant, whose gist is that works were not done through tenders and by not performing works through tenders, full benefit of market rates have not been taken; and by not initiating effective steps, he has not performed his responsibility in a right way.

The appellant denied the charges by filing a reply. He contended that the concerned Executive Officer was made aware of the Rules and he was also asked to execute these works through tenders, but the latter informed him that the works which are to be executed are of immediate and emergency nature and therefore, they fell within their Special power. It was also pointed out to the appellant by the latter that it was necessary to execute those works since they related to covers of manholes which had to be fixed urgently to avoid any untoward incident, and that the latter had been empowered to get executed the work upto the extent of ₹20,000/- as per a letter dt.29.08.2008 issued by the Local Government (General Branch). The appellant also clarified that the works had been got executed even below the PWD Common Schedule Rates and no monetary loss has been caused to the Municipal Council. He placed reliance on a letter dt.21.11.2011 issued by the Secretary-Cum-Director, Local Government. The appellant also stated that at the time of submission of the Audit Report, the appellant was neither issued any memo nor he was joined during the audit especially when he had not committed any default.

Dissatisfied with the reply given by the appellant, an enquiry officer was appointed on 13.03.2012 and after enquiry he submitted a report on 06.07.2012.

The enquiry officer in his report held that the appellant had issued Audit Requisitions with a view to stop execution of works through quotations instead of by calling through tenders in order to bring up the matter before the

higher officers; in the audit report of 2009-2010 and Para No.4(e) had been got registered, but the officials of the Municipal Council had not stopped this custom. He therefore, held that the allegation made against the appellant is not proved though there is negligence on his part in not obtaining further instructions from the Head Office. He also gave a finding that there was *no financial loss* caused to the Municipal Council by employing the method of getting the works done through quotations.

According to the appellant, officials of the Municipal Council, Hoshiarpur, who actually got executed the work and drawn the amount, were also charge-sheeted under Rule 8 of the Rules, but they were ultimately let off by imposing punishment of censure and in their order also it was clearly mentioned that there was no financial loss caused to the Municipal Council, but the employees had not followed the instructions meticulously.

The order impugned in the W.P

However, respondent No.1 passed an order on 21.05.2013 imposing a cut in the pension to the extent of 10%.

Respondent No.1 in the said order held that it was not a case of procedural lapse as was held by the enquiry officer; that the enquiry had not been conducted in a proper manner; all parties would get the work done through open tenders and competitive rates would be taken; and since works were got done through quotations, there is a doubt regarding reasonability of rates.

But even in this impugned order there is no finding that there is any loss caused to the Municipal Council by the conduct of the appellant in getting the works done through quotations though the opinion of the enquiry officer appears to have been doubted.

The instant Writ Petition

Challenging the said order, the appellant had filed the Writ Petition. But the learned Single Judge had dismissed the Writ Petition.

Learned Single Judge held that even post retirement, a chargesheet can be issued and a punishment of cut in pension can be imposed.

He held that each case is to be examined on the basis of its own facts and the appellant. being the employee of the Finance Department of the Punjab Government. had been posted in the Municipal Council, Hoshiarpur to keep an eye on the financial dealings of the Municipal Council, that the Municipal Council undertook the work of replacement/repair of manholes to the tune of ₹69 lakh by dividing the work into small parts so as to bye-pass the Rules which required calling for tenders for such work.

He held that the appellant is stated to have passed as many as 377 bills and it was his duty to see whether the work was actually done or it is a way to misutilize the fund. He held that the manholes are missing, there must have been some FIR and such large number of manholes cannot go missing overnight. He therefore, held that the appellant should have checked the facts to see whether the work is actually done for the job or is shown to be done and why the same work is split into many small contracts to bye-pass the procedure of calling for tenders.

Though the learned Single Judge noted that the appellant himself wrote three letters to the Executive Officer, who was himself involved in such procedure of bye-passing the Rules, the appellant was responsible to the Finance Department of the Government; and in case such irregularity was found, he was not bound to pass such bills and should have referred the same to the Government.

The learned Single Judge held that the appellant failed to bring such irregularity to the notice of the Government and allowed the irregularity committed by the Municipal Council, and so it was a clear case of negligence on his part.

The learned Single Judge then went on to hold that though an enquiry officer had held that no financial loss was caused, but the reasoning of a common man that if big work is split into small works, it is likely to cost more, has to be applied, and there is an apparent financial loss.

The LPA

Challenging the same this Appeal is filed.

Counsel for the appellant, *inter alia*, contended that as per Rule 2.2 of the Rules, recovery from pension can be made as a punitive measure in order to make good loss caused to the Government as a result of negligence or fraud on the part of the person concerned while he was in service. Admittedly, the enquiry officer, who conducted the enquiry against the appellant in the instant case categorically recorded that *no financial loss* has been caused to the Municipal Council in spite of the deviation in the procedure for execution of the works done under his supervision by the Municipal Council. The enquiry officer even noted that the appellant had issued certain audit requisitions in audit report of 2009-2010 protesting against the procedure of execution of work through quotations instead of inviting tenders. But inspite of the same, the officials of the Municipal Council ignored his protest and continued to get the works executed by inviting quotations instead of calling for tenders. Since the work pertained to manholes and was claimed to be of urgent nature by Executive officer of the Municipal Council, who claimed to have been authorized through Government letter dt.24.08.2008 to spend ₹20,000/- on

immediate expenses if there is an urgency or immediate need to get the work done, and the appellant had protested, he cannot be *prima facie* accused of being negligent merely because he did not take further instructions from the Head Office as was held by the enquiry officer. Counsel contended that even respondent No.1, who passed the impugned order, gave no categorical finding that there was loss caused to the Municipal Council though he doubted the correctness of the finding of the enquiry officer that there was only procedural lapses and no financial loss.

We find force in the above contentions.

In the absence of any finding against the appellant that he was responsible for causing financial loss to the Municipal Council either by the enquiry officer or by respondent No.1, it was not open to the learned Single Judge to give a finding that financial loss was caused to the Municipal Council on the basis of assumptions and presumptions without any material on record.

Only if there is a finding of financial loss caused to Government by the enquiry office or respondent no.1, Rule 2.2(b) of the Rules can be invoked. It permits recovery of pension after it has been sanctioned as a punitive measure in order to make good loss to the Government on account of negligence on the part of an employee.

In the absence of any finding of loss caused to the Government either by the enquiry officer or by respondent No.1, no recovery from pension could have been ordered as a punitive measure by the respondents.

Therefore, this Appeal is allowed; the judgment dt.18.11.2016 passed by the learned Single Judge in CWP-3418-2014 and the impugned order dt.21.05.2013 (P6) passed by respondent No.1 are set aside; and the respondents are directed to pay back to the appellant the amounts deducted from his pension

from 21.05.2013 till date with interest @ 6% per annum from the date of such deduction till the date of repayment.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

08.02.2023
Vivek

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |