

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 11495 of 2009

DATE OF DECISION: 08.04.2015

S.S. Julka

.....Petitioner

Versus

Punjab State Warehousing Corporation and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Vivek Sethi, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The petitioner was working in respondent-Corporation on the post of Technical Assistant since 14.7.1972 and remained posted at District Office, Faridkot as District Manager from 4.7.2002 to 6.7.2004. He retired from service on 31.1.2009 on attaining the age of superannuation. After his retirement, a chargesheet (Annexure P-1) was issued to him vide memo dated 15.7.2009 alleging therein that the then Warehouse Manager, State Warehouse, Faridkot, namely, Sh. N.K. Abrol has informed the petitioner in writing with regard to some discrepancies found at State Warehouse, Faridkot but no action was taken by him, which is the subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that the petitioner retired on 31.1.2009 and chargesheet was issued after his retirement, which is contrary to provisions of Rule 2.2 of Punjab Civil Services Rules Volume II Part I (hereinafter referred to as 'the Rules'). As per the provisions of Rule 2.2 (b) of the Rules, no disciplinary action can be taken against an employee after his retirement and no inquiry relating to an incident which has occurred more than four years prior to the date of taking action is permissible. Learned counsel further contends that the case of the petitioner is squarely covered by the decision of Division Bench judgment of this Court in **Raghubir Singh Vs. Punjab State Warehousing Corporation and another** (CWP No. 10456 of 2007 decided on 11.9.2008) and SLP filed against said judgment was also dismissed by Hon'ble the Apex Court on 7.1.2009. Learned counsel also contends that a similar issue was decided by this Court in C.W.P. No. 13421 of 2005 on 10.2.2009 (**Nanak Chand Vs. State of Punjab and others**) against which the appeal filed by Punjab State Warehousing Corporation was also dismissed on 5.10.2009.

Learned counsel for the respondent submits that the judgments cited by learned counsel for the petitioner are not applicable to the case in hand as the inter se communication dated 7.7.2003 came to the notice of the respondent-Corporation later on but till then the petitioner had already retired from service. Learned counsel for the respondent further submits that there is no violation of Rule 2.2 (b) of the Rules as the same relates to the issue in case the pensionary benefits have been denied to a Government employee because of some chargesheet/inquiry which was subsequent to his retirement. Learned counsel also submits that it is not only a case of negligence in duty but also of misconduct on the part of the petitioner which came to the notice of respondents only in the

month of May, 2009 and the chargesheet was issued on 15.7.2009 and not on 15.7.2001.

Heard the arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also perused impugned order and other documents available on file.

Admittedly, the petitioner retired from service on attaining the age of superannuation on 31.1.2009 and chargesheet was issued on 15.7.2009. It is also not disputed that the petitioner is governed by Punjab State Warehousing Corporation Staff (Condition of Service) (Group 'A' and Group 'B' Service) Regulations, 2002. As per Regulation 21 of the aforesaid Regulations, the disciplinary proceedings are to be governed by the provisions of Punjab Civil Services (Punishment and Appeal) Rules, 1970. A resolution was passed on 29.8.1988 by the Board of Directors of respondent-Corporation providing that the pension scheme for its employees will be at par with State Government employees. In pursuance of that decision of Board of Directors, the respondent-Corporation vide its notification dated 20.3.1996 sanctioned pension scheme for its employees stipulating therein that pension scheme for the retired/retiring employees will be at par with that of State Government employees.

Rule 2.2 (b) of the Rules is relevant for resolving the controversy in hand, which is reproduced as under:-

“2.2 (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 misconduct or negligence during the period of

his service, including service rendered upon re-employment 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 article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

(i) Shall not be instituted save with sanction of the Government.

(ii) Shall not be in respect of any event which took place more than four years before such institution; and

(iii) Shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relating to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

Explanation:- For the purpose of this rule-

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) A judicial proceeding shall be deemed to be instituted:

(i) In the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and

(ii) In the case of a civil proceedings, on the date of presentation of the plaint in the Court.”

A perusal of aforesaid Rule shows that a complete embargo has been imposed prohibiting holding of an inquiry against a retired employee for any event which has occurred four years prior to initiation of an inquiry, meaning thereby a departmental proceeding cannot be initiated against a Government employee in respect of an event, which has taken place more than four years prior to date of initiation of such inquiry. The same issue was for consideration before a Division Bench of this Court in **Baldhir Singh Vs. State of Punjab and others** (C.W.P. No. 17458 of 2007) decided on 18.7.2008 and also in case of **M.P. Goswami Vs. State of Punjab** (C.W.P. No. 17382 of 2005) decided on 7.8.2007. The aforesaid two judgments have also been relied upon by the Division Bench of this Court in **Raghubir Singh's case (supra)** and the same has been upheld

by Hon'ble the Apex Court as SLP filed by respondent-Corporation was dismissed on 7.1.2009 in special leave to appeal (Civil)...../2008 CC 17193/2008. This view was also held in **Nanak Chand's case (supra)**, wherein, also an appeal filed by the Punjab State Warehousing Corporation was dismissed by Hon'ble the Apex Court on 5.10.2009.

In view of facts and law position as discussed above, the present petition is allowed and impugned chargesheet dated 15.7.2009 (Annexure P-1) is quashed. The respondents are directed to release the benefits, if any, which have been withheld because of impugned chargesheet, to the petitioner.

April 08, 2015
pooja

(DAYA CHAUDHARY)
JUDGE