IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 12309 of 2014

Date of Decision : November 03, 2015

Thambu Ram .... Petitioner

Vs.

State of Haryana and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Namit Kumar, Advocate
for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

* * *

DEEPAK SIBAL, J. :

Through the present petition, the petitioner challenges the order dated 26.03.2014, through which ₹ 4,08,439/- are sought to be recovered from him, which amount was paid by the Government as back wages while complying with the order of this Court, through which reinstatement of a labourer had been ordered, whose services had been ordered to be terminated by the petitioner while he was in service, as Block Incharge of the Forest Department, Government of Haryana.

The uncontroverted facts, which have emerged from the record and after hearing counsel for the parties are that way back in the year 2001, when the petitioner was serving the respondents as a Block Incharge, he had ordered the termination of a labourer namely Satpal son of Shri Leela Ram, who had challenged his termination by making a claim before the Labour Court, which was dismissed. Thereafter, aforesaid Satpal challenged the Award of the Labour Court through a writ petition filed in this Court being **C. W. P. No. 3900 of 2009**, which, vide order dated 08.05.2012, was allowed, directing the respondents to reinstate him in service with back wages. In compliance with the order of this Court dated 08.05.2012, back wages amounting to ₹ 4,08,439/- were paid to him. Through the impugned order, the amount paid to aforementioned Satpal is sought to be recovered from the petitioner on account of wrongful termination of his services by the petitioner in the year 2001.

The event, on the basis of which, the impugned recovery is sought to be made from the petitioner, pertains to the year 2001. The petitioner retired from service on 31.01.2009 and the impugned order has been passed on 26.03.2014. Thus, the impugned recovery is sought to be made by way of a penalty, after over five years of the petitioner's retirement, on the basis of an event, which took place 13 years before the passing of the impugned recovery order and about eight years prior to the petitioner's retirement.

Rule 2.2 (b) of the Punjab Civil Services Rules, Volume II, Part I, as applicable to the State of Haryana, clearly bars such recovery, the relevant portion of which is reproduced hereunder for ready reference :-

> ***"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 the petitioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on 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 rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service.*

(2) *such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, -*

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

(ii) *shall be in respect of an event*

> *which took place not more than four years before the institution of such proceedings;"*

In this regard, the observations made by a Division Bench of this Court in **Baldhir Singh v. State of Punjab and others** - **2009 (1) RSJ 351** may usefully be referred to, which are as under :-

> ***"5.*** *Having heard learned counsel for the parties and perusing the paper book with their able assistance, we are of the considered view that there is merit in the instant petition and the same deserve to be allowed. Rule 2.2(b) of the rules, which has been invoked by the Government to charge-sheet the petitioner, itself prohibits institution of an enquiry against a retired officer for an event which had taken place more than four years before such institution. This prohibition is contained in sub-clause (ii) of sub-rule (2) of Rule 2.2 (b) which reads thus :*
>
> > ***"2.2(b)(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 the sanction of the Government.*
> >
> > ***(ii)*** *shall not be in respect of any event which took place more than four years before such institution."*

(Emphasis added)

6. *A bare perusal of the aforementioned Rule makes it clear that Rule 2.2(b)(ii) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by afflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree. The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end. Moreover, the learned State counsel has* *not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner.***”**

In view of the above, the recovery sought to be made from the petitioner cannot be sustained.

Resultantly the impugned order dated 26.03.2014 (Annexure P-1) is quashed.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

November 03, 2015
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