

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 960 of 2011

DATE OF DECISION: 01.04.2015

Gurdial Kapoor

.....Petitioner

Versus

Punjab State Civil Supplies Corporation Ltd.

.....Respondent

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. V.K. Shukla, Advocate
for the petitioner.

Mr. I.S. Sidhu, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present petition has been filed by the petitioner under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned show cause notice dated 30.9.2009 (Annexure P-1) passed contrary to Rule 2.2 (b) of Punjab Civil Services Rules, Volume II (hereinafter referred to as 'the Rules) served upon him after his retirement.

The petitioner was working as Sub Inspector in the respondent-Corporation and thereafter he was promoted as Inspector Grade-I. During the period from 1984 to 1986 he remained posted in District Jalandhar and retired from service on 30.4.2009 after attaining the

age of superannuation. After his retirement, he was served with a show cause notice dated 30.9.2009 under Rule 10 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as 'the Rules 1970') containing allegations that the petitioner while being posted as Inspector Grade-II at Jalandhar City during the period from 26.4.1984 to 30.11.1986 had replaced gunny bags beyond the norm of 1% in excess, due to which financial loss to the tune of ₹ 45,820/- was caused to the Corporation which was proposed to be recovered from him along with interest.

Learned counsel for the petitioner contends that this irregularity was never pointed out to the petitioner earlier till his retirement and now a show cause notice has been issued to him after a period of 24 years. The replacement of gunny bags, which were in excess for storage, was due to heavy rain and damage was consequent effect of that. After issuance of show cause notice to him, he demanded copies of some relevant documents under Right to Information Act but the same were denied to him on the ground that the record is very old and is not traceable. Learned counsel further contends that even after filing of the reply to the show cause notice, no order was passed. Learned counsel also submits that as per Rule 2.2 (b) of the Rules, Departmental proceedings could not be initiated with regard to any event which is more than four years old. In the present case, show cause notice was issued in the month of September 2009 pertaining to the allegations of the year 1985-8, hence, the action of the respondent-Corporation is contrary to Rule 2.2 (b) of the Rules. Learned counsel has also relied upon the Division Bench judgments of this Court in **Sub Inspector Puran Chand (Retd.) Vs. State of Punjab and others 2000 (2) RSJ 85** and **Gurdev Singh Vs. State of Punjab 2004 (2) RSJ 325**, in support of his contentions.

Learned counsel for the respondent submits that the loss was caused to the respondent-Corporation because of negligence of the petitioner and an FIR No. 47 dated 14.9.2005 was also registered against him for embezzlement of wheat stock for the crop of year 2002-03 at Phagwara and those proceedings are still pending. Learned counsel further submits that the irregularity committed by the petitioner was pointed out by the audit department and thereafter two chargesheets were issued to him. Learned counsel also submits that action has been taken against the erring official and the petitioner is responsible not only for negligence of duty but also for causing loss to the respondent-Corporation.

Heard the arguments advanced by learned counsel for the petitioner as well as learned counsel for the respondent and have also perused impugned show cause notice and other documents on the file.

Admittedly, the petitioner retired from service on 30.4.2009 on attaining the age of superannuation. A show cause notice was issued to the petitioner after the date of his retirement i.e. on 30.9.2009 containing allegations pertaining to the period from 26.4.1984 to 30.11.1986. It is also not disputed that the petitioner submitted reply to the show cause notice but his request for supply of certain relevant documents/information was declined on the ground that the relevant documents/information are not traceable.

Rule 2.2 (b) of the Rules puts an embargo for initiation of an inquiry against the retired officer in relation to an event which is more than four years old. Rule 2.2 (b) of the Rules 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.”

The show cause notice has been issued after a period of 24 years, which has caused prejudice to the rights of the petitioner. The petitioner was not in a position to recollect with regard to replacement of gunny bags which relates to year 1985-86. Moreover, the petitioner has not been supplied the required documents but his request was declined on the ground that the record is old one and is not traceable. The show cause notice issued has not been supported by any material or record and simply the allegations have been levelled. In **Sub Inspector Puran Chand's case (supra)** also, similar controversy was there and show cause notice as well as chargesheet were quashed. The aforesaid judgment has been

passed by relying upon another decision of this Court in **Narender Dev Sharma Vs. State of Punjab and another** 1996 (2) Service Law Reporter 270, wherein, it has been held that disciplinary authority is empowered to initiate action against an employee after retirement subject to the condition that the inquiry pertains to an incident, which is not more than four years prior to date of initiation of the inquiry. Similarly in **Gurdev Singh' case (supra)**, the inquiry proceedings were quashed being time barred.

In view of facts as well as law position mentioned above, it is clear that the show cause notice has been issued contrary to provisions of Rule 2.2 (b) of the Rules and after long period of 24 years from the date of incident. Accordingly, this petition is allowed and impugned show cause notice dated 30.9.2009 is hereby quashed.

April 01, 2015
pooja

(DAYA CHAUDHARY)
JUDGE