IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.02.2016

CWP No.14399 of 2010

Ram Rattan ...Petitioner

Vs.

Guru Nanak Dev University, Amritsar ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Raman Sharma, Advocate, for the petitioner.

Mr. Amrit Paul, Advocate, for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner retired as Senior Assistant from the service of the respondent – University on 31st July, 2009. The respondent – University has created a Pension Corpus Fund (PCF), where money is invested from time to time to earn maximum interest on the money invested, which forms the nucleus of payment of pension to the retiring University employees. The investment is made in Banks in the shape of Fixed Deposit Receipts (FDRs). Large sums of money were invested in FDRs. The petitioner was accused of negligence in failing to renew one of the 20 FDRs after a decision was taken in the year 2007 to break the existing FDRs before the dates of maturity and to re-invest the sums to earn higher interest then prevailing. There is an Investment Seat, which manages the Pension Corpus Fund (PCF). The Investment Seat is headed by a Senior Assistant working under the overall control and supervision of the Superintendent. The next higher authority over the Superintendent is the Assistant Registrar (Accounts) and over him is the Officer on Special Duty

(Accounts). The overall charge is with the F.D.O. However, at the relevant time, the post of F.D.O. was lying vacant and the senior-most authority on the accounts side was the OSD (Accounts). After the petitioner had been transferred to another seat, it was revealed in an audit objection that one of the FDRs in the sum of Rs.50 lakh had not been re-invested to earn 3.5% higher interest. This was viewed as an act of misconduct causing financial loss suffered by the University and the liability was sought to be saddled on the petitioner alone. In terms of the money, the loss was valued to Rs.1,76,250/-, which the University said was the liability of the petitioner to pay, but since he had retired from service, the retirement benefits of the petitioner were withheld for adjustment by the recovery mode from the outstanding dues in the petitioner's pension account.

2. A departmental enquiry was ordered on 11th August, 2009. The Enquiry Officer submitted his report on 1st December, 2009 which held the petitioner entirely responsible for the financial loss caused to the University. The Enquiry Officer nailed the OSD (Accounts) for not acting responsibly in safeguarding the interest of the University by failing to act swiftly "to look deep in the matter for finding the fault and for suggesting remedial measures for the future". It happened that the University on its part had failed to press upon the Bank to yield to give higher rate of interest on the disputed FDR amounting to Rs.50 lakh since the money kept lying with the Bank, but was not renewed to earn higher interest then available. With the enquiry report in hand, the Vice Chancellor in anticipation of the approval of the Syndicate of the University issued a show cause notice dated 13th January, 2010 to the petitioner asking him to explain within 15 days as to why the pecuniary loss of Rs.4,03,571/- caused to the University may not be deducted from his retiral dues.

3. It may be mentioned that the petitioner had earlier approached this Court by way of CWP No.14054 of 2009 praying for directions to release his retiral dues. The petition was disposed of in *limine* by an ex parte order dated 9th September, 2009 directing the University to consider and decide the representation dated 25th August, 2009 submitted by the petitioner within three months. Non-compliance led to filing of COCP No.2222 of 2009. This Court passed an interim order on 5th January, 2015 pursuant to which original file pertaining to the petitioner was produced in Court, wherein it was found that the Vice Chancellor had appointed an Enquiry Officer in the year 2008 (before retirement) and when the enquiry report was not submitted to the University, it was entrusted to another Officer on 11th August, 2009, after retirement of the petitioner.

4. Mr. Amrit Paul, learned counsel appearing for the University, has vehemently relied upon and pressed Regulation 38 of the University Statutes, which deals with penalties ranging from Censure to Removal from service, Dismissal and Compulsory Retirement. University counsel points out to Regulation 33(iv), which prescribes that method to be adopted when it is proposed to take action under clauses (a), (b) or (d) thereof, which are penalties of censure; withholding of increment or promotion; and recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders. The regulation provides that when such action is proposed no order shall be passed imposing a penalty on an employee unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation has been taken into consideration. What is argued by Mr. Paul is that Regulation 33(i) contains in running form both major and minor penalties without distinguishing the two sets. However, when minor penalty is to be imposed, such as recovery from pay, then no regular

enquiry is prescribed in the Rules. The mechanism of show cause notice and receiving reply thereto and its consideration are sufficient for passing a final order of recovery. It is only in cases falling in penalties (c), (e), (f) & (g) that the proposed action has to be reduced to the form of a definite charge or charges which shall be communicated in writing to the employee concerned to enable him to defend himself. Only then is a regular enquiry necessary.

5. To rebut the stand, Mr. Raman Sharma appearing for the petitioner relies on the decision of this Court in Sukhdev Singh Vs. State of Punjab & others, 2012 (2) RSJ 196 to contend that it is an inherent fallacy in drawing inference that "Recovery" is always a "minor punishment" even in the case of a retiree. The only punishment that can be imposed on a retired employee is enumerated in Rule 2.2(b) of the Punjab Civil Services Rules Volume II, namely, recovery through cut in pension. The cut in pension for all times to come or for a specified duration shall have the same civil consequences as were noticed by the Supreme Court in Kulwant Singh Gill Vs. State of Punjab, 1991 SCC Supp (1) 504:1991 (2) SCT 30, but when the nature of the charge is such that it is dependent on evidence and proof, a regular departmental enquiry should be held but a recovery order simplicitor cannot be sustained.

6. In the midst of the heated arguments generated by both the learned counsel on the issue of recovery, a letter dated 3rd February, 2009 was produced by Mr. Raman Sharma stated to be obtained under the Right to Information Act, 2005 from the University. This is a speed post letter signed by the Registrar of the University addressed to the Manager, State Bank of India, Putlighar Branch, Amritsar, which changes the entire complexion of the case so materially that its contents tend to nullify the liability created by the University on the petitioner. Mr. Amrit Paul has had no serious objection to its

retention on record and consideration on merits since it is an official document lying on the University record and coming from an authentic source. The document has been taken on record as Mark 'A'. The contents of the letter are reproduced in *extenso*:

> *"The Manager,*
> *State Bank of India,*
> *Putlighar Branch,*
> *Amritsar.*
>
> *Dear Sir,*
>
> *A FDR of Pension Corpus Fund of this office matured on 18.02.2004. Vide this office letter No.1570/A dated 23.02.2004, it was requested that the amount of the FDR be reinvested for a period of five years from the due date in the name of Registrar, Guru Nanak Dev University, Amritsar and the FDR be sent to this office, for record.*
>
> *On perusal of record, it has been noticed that the FDR for Rs.50.00 lakh was not received by this office. In this connection, when the Bank officials were contacted, it was verbally informed by the Bank that the FDR bearing No.10061352481 dated 18.02.2004 for Rs.50.00 lakh was issued by the Bank, but the Bank could not provide any documentary evidence in support of handing over the FDR to any official of the University. However, after furnishing an affidavit, on the lines provided by the Bank, a duplicate FDR bearing No.965927 dated 20.06.2008 was issued by the Bank in lieu of the earlier FDR.*
>
> *In view of the fact that the Bank did not hand over the FDR to any official of the University for its record, the University could not get the premature payment of this FDR when the interest rate rose during the year 2007, resulting in interest loss to the University.*
>
> *Through this letter, you are requested that a documentary evidence in support of handing over the*

FDR to an official of this University may please be supplied to this office within 10 days positively, otherwise, the FDR may be treated as pre-matured on 31.01.2007 and the amount be reinvested from this date @ 9.15% per annum as was done in case of other FDRs.

Yours faithfully,
Sd/-
Registrar"

7. If the FDR of Rs.50 lakh was not received by the University, then I dare say the charge against the petitioner vanishes. No documentary evidence is forthcoming on this crucial aspect. If it is not forthcoming then it is a case of no evidence and consequently the enquiry proceedings stand vitiated as misdirected. This writ petition was filed in the year 2010, but this material document has not seen the light of day on the file even when it was the duty of the University when it filed written statement on 11th August, 2011 to have place the document on record and to show any further correspondence between the University and the State Bank of India with regard to the disputed FDR. The University should not have suppressed such vital document, which has been produced at the hearing today, which materially alters the dispensation of justice and saves the petitioner from what could have been a monumental miscarriage of justice if the court had not seen the document and had depended on the written statement alone to adjudicate the case. Thus, it has not been established beyond doubt or within reasonable probabilities that the FDR issued by the Bank was the responsibility of Ram Rattan to collect from the Bank premises even when he was only one official in the chain of command on the Investment Seat with the ultimate responsibility falling on his superior officer. In such circumstances it is hardly necessary to express any opinion on

the rule position cited by Mr. Amrit Paul that not holding a regular inquiry was necessary or not.

8. In view of the above discussion and in the face of the University letter Mark 'A', I would allow this petition on facts with costs of Rs.1 lakh awarded against the University and in favour of the petitioner for failing to disclose the letter dated 3rd February, 2009 in its written statement filed later. Any superannuation benefits as may be outstanding shall be paid to the petitioner within 45 days from the date of receipt of the certified copy of this order. If any amount is due and payable to the petitioner, other than paid already the same will carry interest at the rate of 12% per annum from the date of retirement till payment.

[RAJIV NARAIN RAINA]
JUDGE

19.02.2016
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