IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11251 of 2013
Reserved on: 08.01.2016
Date of decision: 20.01.2016

Harbans Singh Walia ....Petitioner(s)

Versus

Punjab State Civil Supplies Corporation Ltd. and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Parveen Kumar Garg, Advocate, for the petitioner.

Mr. Aman Chaudhary, Advocate, for the respondents.

G.S.SANDHAWALIA, J.

The petitioner challenges the charge sheet dated 04.01.2012 (Annexure P-7) and all the consequential proceedings on the ground of violation of Rule 2.2(b) of the Punjab Civil Service Rules, Part 2, Volume 2 (for short 'the Rules'). Vide the said charge sheet, the petitioner, who had retired on 30.09.2011 as PDC (Inspector Grade-II), was issued the charge sheet under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (in short 'the 1970 Rules'). The charge against him was of causing financial loss to the Corporation to the tune of ₹8,76,801.99/- on account of giving less excess in the wheat crop of 2003-04 to the tune of 926.72.465 quintals. Thus, it is apparent that the incident in question pertains to period which was more than four years from the institution of the proceedings.

A little background would further go on to show that it is not that the department was unaware of the said loss. Rather, the proceedings had initially been dropped against the petitioner during his service period and he had been allowed to retire. Way back on 27.10.2005, a show cause (Annexure P-2) notice had been issued for imposing minor punishment under Rule 5 of the 1970 Rules for the same year in question i.e. 2003-04 regarding the same storage at Patiala center. At that time also, the petitioner, alongwith another employee, on account of the double lock system, had been accused of giving less excess of 594.77.965 quintals to the tune of ₹5,62,729/-. Apart from that, bags with less weight had been dispatched, on account of which, another amount of ₹1,75,080/- was also sought to be recovered from him and, therefore, financial loss of ₹7,37,818/- had been assessed. Vide order dated 28.02.2007 (Annexure P-3), the amount due against less weight of bags was reduced to ₹52,524/- as being 1/3rd share and the amount pertaining to less excess was kept in abeyance due to the pendency of the decision by this Court. Thereafter, on 08.12.2008 (Annexure P-4), the recovery of ₹52,524/- pertaining to the bags was also withdrawn. Thereafter, on 21.02.2011 (Annexure P-5), the show cause notice itself dated 27.10.2015 was declared null and void by the Managing Director. Thereafter, the petitioner, as noticed, retired on 30.09.2011 (Annexure P-1), though with a condition that financial benefits were to be withheld and that the retirement was subject to any departmental proceedings which may be initiated in future.

He thereafter, approached for his financial benefits on 10.10.2011. Rather than processing the case of the petitioner, the charge sheet dated 04.01.2012 (Annexure P-7) was slammed upon him by the Corporation for the less excess, as mentioned above, for the crop year 2003-04 for which, as noticed, proceedings initiated earlier in the year 2005 had already been withdrawn on 21.02.2011. The Corporation has tried to justify the same on the account that the petitioner was negligent and the corporation had suffered a loss and the quantity of less excess had increased in the light of the revised instructions dated 26.10.2004. Thus, the charge sheet had been issued to him and, therefore, the matter was still pending. It was further justified that the inquiry officer had already submitted his report but in view of the interim order passed by this Court, the matter was still pending.

After hearing counsel for the parties, this Court is of the opinion that the writ petition is liable to be allowed. Even if the revised instructions had been issued in the year 2004, the petitioner had already been issued a show cause notice on 27.10.2005, as noticed above, which eventually was totally withdrawn on 21.02.2011. The said notice does not show that the department had reserved any right with it to initiate fresh proceedings on the basis of the instructions which had already been issued on 26.10.2004. It was always open to the Corporations to continue with the proceedings which had been initiated earlier but they themselves had opted to withdraw the same. In such circumstances, at the time of retirement, the petitioner had a clean slate and, therefore, could not be charge sheeted afresh on 04.01.2012 for the shortage of 2003-04 which was beyond the period of four years before the institution of such proceedings. The said matter is no longer *res integra* and has been settled beyond an anvil of doubt by various Division Benches of this Court and the judgments of the Apex Court. The primary reason for granting the benefit to retired employees is that old settled matters cannot be reopened since the retiree may not be in a position to even defend himself after the expiry of the above said period as he would not have easy access to the records of the case.

The Division Bench of this Court in ***L.B Gupta Vs. Punjab State Electricity Board, 2001 (4) RSJ 127 and Baldhir Singh Vs. State of Punjab & others 2008 (2) ILR (Punjab & Haryana) 163***, have held that such belated charge sheets cannot be sustained.

In ***R.C.Gupta Vs. P.S.E.B. 2002 (1) RSJ 509,*** a Division Bench of this Court had quashed the charge sheet dated 26.03.1999 pertaining to the allegations of 1984 and the employee had retired on 30.06.1998. Similarly, in ***O.P.Kharab Vs. HVPN Ltd. & others 2007 (1) ILR (Punjab & Haryana) 613,*** chargesheet which was issued after 4 years i.e. on 30.10.2003, in respect of the events commencing from May, 1994 to July, 1994, was quashed by holding that the date of institution was date of the departmental proceedings, especially the date when the chargesheet was issued to the petitioner, as per the explanation to Rule 2.2 (b)(4). Relevant observations read as under:

> *"(7) A perusal of the afore-mentioned Rule shows that the respondents could order the recovery from pension of the whole or part of any pecuniary loss caused to the government if a pensioner is found in a department of judicial proceedings to be guilty of grave misconduct or he had caused pecuniary loss to the government by mis-conduct or negligence during his service provided that such an enquiry has been*

> *instituted during the period when the officer was on duty. However, if such an enquiry has not been instituted while the officer was on duty and before his retirement then it cannot be instituted in respect of an event which took place more than four years preceding the institution of such proceedings. In other words, an enquiry can only be instituted in respect of an event which has CWP No.6798 of 2013 -3- occurred four years before the date of the institution. The explanation appended to Rule 2.2(b)(4) further clarifies that departmental proceedings would be deemed to have been instituted when the charges framed are issued to him. In other words, the date of institution of departmental proceedings would be the date when the charge sheet is issued to the petitioner."*

The observations of the Division Bench, while taking into consideration the fact that the purpose of the rules, would go on to show that it is only to avoid undue hardship to the retirees who may not be in a position to defend themselves after having settled at one place. Relevant observations from *Baldhir Singh (supra)* read as under:

> *"6. A bare perusal of the aforementioned Rule makes it clear that Rules 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."*

The Apex Court in ***P.V. Mahadevan vs. M.D., Tamil Nadu Housing Board, 2005 (Supp2) SCR 474,*** similarly quashed the charge sheet, which was issued after 10 years only on the ground of delay. An explanation sought to be given was that it was not in the knowledge of the respondent-board and there was no delay on the part of the board in initiating the proceedings. It was accordingly held that protracted disciplinary proceedings against a government employee should be avoided not only in the interest of the government employee but also in public interest. For the mistake committed by the department, the employee could not be held to suffer.

In the present case also, as noticed, the charge sheet has been issued after a period of almost 8 years after dropping the proceedings earlier and the corporation cannot even claim that the said events were not in its knowledge.

In such circumstances, the present writ petition is allowed and the charge sheet dated 04.01.2012 (Annexure P-7) and all consequential proceedings are quashed. The petitioner's retiral benefits be paid to him within a period of one month from the date of receipt of certified copy of the order.

20.01.2016 (G.S. SANDHAWALIA)
shivani JUDGE