

208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.22035 of 2012 (O&M)
Date of decision : September 20, 2016

Amarjit Kaur

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Chopra, Sr. Advocate with
Ms. Ekta Arora, Advocate for the petitioner.

Mr. R.S. Pathania, DAG, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Petitioner, who was holding the certificate of course in Physical Education conducted by the Bihar School Examination Board, Patna, under Roll No.PAT-185 held in April 1975, was appointed as P.T.I. in the Education Department of State of Punjab on 10.08.1976 on adhoc basis. Later on, her services were regularized w.e.f. 01.10.1980. Thereafter, a complaint was received against the petitioner, regarding the genuineness of her Physical Education Certificate. The verification was sought from the Principal Government College of Health and Physical Education, Rajinder Nagar, Patna, who sent a letter dated 29.11.2003 to respondent No.3, stating that the petitioner has passed the CPED. Examination from the Bihar School Examination Board.

It is claimed by the petitioner that due to rivalry with one of her colleagues, she was charge-sheeted on 13.12.2010, stating that her CPED

certificate is forged and over writing has been made on the marks sheet and petitioner has been shown passed in the examination. The matter was also referred to the Vigilance Bureau, Punjab, for investigation. Vide letter dated 12.05.2011 (Annexure P-15), the Senior Superintendent of Police, Vigilance Bureau, Ferozepur, intimated the Principal of the Government Senior Secondary School, Chimnewala, District Ferozepur, where the petitioner was posted that after the inquiry, the allegations against the petitioner has not been proved. Thereafter, on filing reply to the charge-sheet dated 13.12.2010 (Annexure P-11), a regular inquiry was held and accordingly, the report was submitted on 09.06.2011 (Annexure P-16), wherein the Inquiry Officer reported that the charges against the petitioner are not proved. Petitioner superannuated on 31.12.2011. Since the pensionary benefits were not released to the petitioner, therefore, she filed CWP No.4543 of 2012 for issuance of direction to the respondents to release pensionary benefits to him. Thereafter, provisional pension was released to the petitioner. GPF and leave encashment were also released but gratuity was not released to the petitioner. Thereafter, a fresh show cause notice dated 01.10.2012 (Annexure P-21) was issued to the petitioner under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 and Rule 2.2(A) of the Punjab C.S.R. Vol. 2 and under Rule 5 (V to IX) of Rule 5, wherein the same charges of forgery of the certificate were levelled in the enclosed charge-sheet, alleging that she had in fact, obtained 515 marks in CPED. Examination but he had over written the same to make the marks as 525 and got appointment on the basis of aforesaid certificate. Petitioner seeks quashing of second charge-sheet in the present petition.

The State in its reply had not denied that in the first charge-sheet, the inquiry was got conducted. However, it was stated that the inquiry was not fully satisfactory as many points were not explained such as at one time the Bihar School Examination Board, Patna declared the petitioner pass in CPED by securing 525 marks and later on, vide its letter dated 24.11.2003, she was declared fail scoring 515 marks. Therefore, some letters were written to the concerned authorities of Bihar Education Board for verification of certificate as no reply was received. Shri Kashmiri Lal, Head Master, Government High, Kikar Khara, District Ferozepur/Fazilka was deputed to obtain the report. He met the Deputy Secretary (Nigrani) and got the report vide memo No.359, dated 25.08.2012 that Smt. Amarjit Kaur (petitioner), bearing Roll No.PAT 185 has failed in the CPED Examination in the year 1974 and secured 515 marks. Hence, the fresh charge-sheet dated 01.10.2012 (Annexure P-21) was issued.

I have heard learned counsel for the parties and have also carefully gone through the case file.

In this case, it is not disputed that the petitioner joined the service on 10.08.1976. After joining the service, the educational certificates are normally verified. Petitioner continued in service and she was charge-sheet only on 13.12.2010 (Annexure P-11) regarding over writing in the certificate and regular inquiry was got conducted and in the inquiry report dated 09.06.2011 (Annexure P-16), it was reported that charges are not proved. The report from the Vigilance Bureau was also, accordingly, received. The Senior Superintendent of Police, Vigilance Bureau, Ferozepur, reported that from the investigation, the allegations against the

petitioner are not directly proved.

The reply filed on behalf of the respondents does not show that after the receipt of the inquiry report on 09.06.2011, the competent authority either accepted the report or differed with the same and decided to issue show cause notice for imposition one of the major or minor penalty. It appears that after the receipt of the report, the matter rested and no action was taken. Petitioner retired from service on 31.12.2011. It was thereafter that the petitioner was issued another show cause notice on 01.10.2012 (Annexure P-21) on the same allegations. The two questions will arise for consideration

- (i) as to whether the fresh charge-sheet dated 01.10.2012 (Annexure P-21) could be issued pertaining to same act done by the petitioner at or before the time of joining service in the year 1976?
- (ii) whether on the same charges, the second inquiry could be held without accepting or rejecting the first inquiry?

Rule 2.2(b) of the Punjab C.S.R. Vol. II provides as under:

“(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 pensioner is found in a departmental or judicial proceeding 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 pon 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; and

(iii) Shall be conducted by such authority and at such place or places as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made;

(3) Such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2); and

(4) The Public Service Commission shall be consulted before final orders are passed.

Sub Rule (3) of the aforesaid Rule shows that no proceeding can be instituted for the event more than four years before such institution.

In this case, allegedly the event took place either in the year 1976 when the petitioner joined the service or before that. Petitioner continued service and superannuated on 31.12.2011. Therefore, after 35 years, the charge-sheet under Rule 2.2 of C.S.R. Vol. II is otherwise barred.

Regarding the second inquiry on the same facts in which the first inquiry was neither accepted nor rejected, the authority of Hon'ble the Supreme Court delivered in case of *“Union of India vs K.D. Pandey and another”*, 2003(4) S.C.T. 484, applies, which shows that second inquiry on the same charges is not permissible. In this case, the matter was got inquired from the Vigilance Bureau as well as by appointing the inquiry officer. If the respondent was dis-agreeing with the first inquiry report, the competent authority should have differed with the inquiry report and after rejecting the same, the fresh inquiry could be initiated. However, after the receipt of the report, fresh queries were not put to the Bihar Education Board, Patna and without rejecting the first inquiry report, second inquiry was ordered after the retirement of the petitioner.

As such, the second charge sheet/show cause notice 01.10.2012 (Annexure P-21) is found to be against the law and is, accordingly, quashed.

Therefore, the present petition is allowed.

The respondents are directed to release the gratuity to the petitioner within two months from the passing of this order with 9% per annum interest from the date it became due till payment.

(KULDIP SINGH)
JUDGE

September 20, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes