

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.19878 of 2013
Date of decision: 13.07.2016**

Gaganjit Singh

.....Petitioner

Versus

The learned District & Sessions Judge, Sangrur

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Ms. Saloni Sharma, Advocate,
for the petitioner.

Mr. Vikas Suri, Advocate,
for the respondent.

Ritu Bahri, J.

The petitioner is seeking quashing of the show cause notices dated 26.04.2013 (Annexures P-3 & P-4) issued by the respondent.

Gaganjit Singh-petitioner joined the services on 03.12.1979 as Fine Moharir in the Court of Chief Judicial Magistrate, Sangrur. Later on, departmental proceedings were initiated against him and he was awarded punishment. On administrative side, this Court allowed his appeal vide orders dated 07.09.2005 and 28.09.2005 (Annexures P-1 & P-2). Keeping in view that the petitioner had rendered more than 20 years of service as on 11.05.2000, a lenient view was taken and the order of dismissal from service was modified to compulsory retirement and he was held entitled to all the

23.12.2000, under Sections 198, 465, 468, 471 and 201 IPC. Vide order dated 06.01.2010, the Additional Chief Judicial Magistrate, Sangrur acquitted the petitioner under Sections 465, 468 and 201 IPC, but convicted him under Sections 471 and 198 IPC. On appeal, he was acquitted by the Additional Sessions Judge, Sangrur vide order dated 05.10.2012. During the pendency of criminal trial, provisional pension of the petitioner was stopped. Thereafter, he filed CWP No.16880 of 2012, which was disposed of by this Court vide order dated 20.08.2013. During the pendency of said petition, the petitioner was issued two show cause notices on 26.04.2013 (Annexures P-3 & P-4) simultaneously pertaining to the exparte enquiry held in March, 2001.

Learned counsel for the petitioner contends that the petitioner, who had already been compulsorily retired in 2005, has been issued the aforesaid show cause notices after a gap of almost 8 years with respect to an exparte enquiry, which had been concluded in the year 2001. He has referred to the judgment passed by a Division Bench of this Court in **Dr. Inderjit Singh Wasu Vs. State of Punjab and others**, 2007 (2) ILR (P&H) 134, to contend that after retirement, no charge-sheet can be issued against an employee because relationship of employer and employee comes to an end with the superannuation of an employee. After retirement, only those proceedings are allowed to continue, which have been initiated during the course of employment and if, an employee is found guilty, then either a cut in his pension could be imposed or recovery could be effected from his gratuity. In the present case, the enquiry was concluded way back in the year 2001 and punishment of dismissal was reduced to compulsory retirement in 2005. Therefore, the relationship of employer and employee came to an end between the petitioner and the respondent. Even if, the enquiry was

concluded exparte, the show cause notice to impose major punishment has been issued after 8 years of his retirement, which could not be done as per the aforesaid judgment passed by the Division Bench of this Court. She has referred to a decision given by the Hon'ble Supreme Court in **Kirti Bhusan Singh Vs. State of Bihar and others**, AIR 1986 Supreme Court 2116, where an employee had been retired on invalid pension during pendency of disciplinary proceedings before attaining the age of retirement. After concluding the disciplinary proceedings, the Government revoked the order of retirement and dismissed him from service. The State Government took a stand that during the pendency of disciplinary proceedings, invalid pension could not be granted to an employee on medical ground before attaining the age of retirement and hence, after concluding the departmental proceedings, the Government had a right to revoke the retirement order and dismiss him from service. The dismissal order passed after retirement of the employee was held as nullity. She has further referred to a Full Bench judgment passed by the Kerala High Court in **R.P. Nair and another Vs. Kerala State Electricity Board and others**, 1979 (1) SLR 384, to contend that once an employee has been retired as per Regulation 9 of the Service Rules of the Kerala State Electricity Board, the disciplinary proceedings could not be initiated or continued after retirement.

On the other hand, the stand taken by the respondent in his written statement is that many departmental proceedings were pending against the petitioner and one of the proceedings, he was dismissed from service vide order dated 11.05.2000. However, the order of punishment of dismissal was modified to punishment of compulsory retirement vide order dated 07.09.2005. Before the order of dismissal was passed, the petitioner was

also charge-sheeted vide memo dated 04.06.1999 (Annexure R-3). During the pendency of above mentioned disciplinary proceedings, the order dated 11.05.2000 dismissing him from service was passed. Thereafter, on 19.04.2002 (Annexure R-5), the disciplinary authority adjourned the proceedings sine die and the same were to be put up in case the petitioner was reinstated. After the punishment of dismissal was modified to that of punishment of compulsory retirement in 2005, the competent authority revived the disciplinary proceedings against the petitioner vide order dated 04.10.2005. A further direction was given that the pension papers be prepared and sent to the concerned quarter. While passing the order of restoration of provisional pension vide order dated 26.07.2013 (Annexure R-7), it was further observed that certain other enquiries were still pending against the petitioner and the provisional pension was subject to final conclusion of such enquiries. Thereafter, the show cause notices dated 26.04.2013 (Annexures P-3 & P-4) were issued. A separate order was passed by the respondent to find out who was responsible for keeping the enquiries pending/unattended and dumped. The report of the Inquiry Officer dated 25.03.2014 has been annexed as Annexure R-8.

Mr. Vikas Suri, learned counsel for the respondent, has argued that the petitioner was dismissed from service on 11.05.2000 and thereafter, on 19.04.2002 (Annexures R-5 & R-6), the aforesaid charge-sheets were adjourned sine die for further orders and those were to be put up in case the petitioner was reinstated. However, even after passing of the compulsory retirement order dated 07.09.2005, the files of the above said charge-shets were not put up before the disciplinary authority. An enquiry, in this regard, has been conducted and during enquiry one Subhash Kumar, English Clerk

25.03.2014 (Annexure R-8), Rakesh Kumar, LRC was having the custody of files and Mangat Raj, then English Clerk, was used to put up the files before the District & Sessions Judge. However, he did not put up the files after December, 2006 and did not report with regard to pending enquiry files in the custody of Rakesh Kumar, LRC. Both the employees were found at fault with regard to non production of enquiry files. He further argued that since the employees, who did not put up the files for further orders after passing of the compulsory retirement order dated 07.09.2005, have been identified, the delay in issuing the impugned show cause notices dated 26.04.2013 (Annexure P-3 and P-4) should not be made a ground to quash the said proceedings.

In rejoinder to the replication, the respondents have further stated that the petitioner had filed CWP No.2674 of 2015, which was disposed of by this Court vide order dated 18.02.2015 (Annexure R-10) by giving direction to the respondent to look into the grievance of the petitioner raised vide representation dated 19.09.2013 and decide the same. In compliance of the above said order, a speaking order was passed on 24.04.2015 (Annexure R-11) by the District & Sessions Judge, Sangrur. As per letter dated 15.05.2015 (Annexure R-12), sent by the Registrar General of this Court to the District & Sessions Judge, Barnala, the department proceedings mentioned at serial No.3 in Annexure R-12, have since been dropped since the petitioner had been compulsorily retired way back on 07.09.2005 i.e. four years back. This enquiry was pertaining to the loss of record i.e. case file bearing FIR No.67 dated 14.09.1997, under Sections 408/409 IPC, Police Station, Sehna, titled as 'State Vs. Surjit Singh'.

Heard, counsel for the parties.

As per order dated 24.04.2015 (Annexure R-11), three

departmental proceedings were pending against the petitioner after he was compulsorily retired vide order dated 07.09.2005. The third enquiry was dropped by this Court, as informed by the Registrar General to the District & Sessions Judge, Sangrur vide letter dated 15.05.2015 (Annexure R-12). The other two enquiries were relating to the loss of affidavit from a civil suit and misplacement of report of Local Commissioner. In these two proceedings, an exparte enquiry was conducted way back in the year 2001. Keeping in view that the petitioner had been compulsorily retired on 07.09.2005 i.e. more than five years back and the lost file had been reconstructed, the third departmental proceeding was dropped by this Court as per letter dated 15.05.2015 (Annexure R-12). The other two enquiries were also relating to the loss of records i.e. (i) loss of affidavit from Civil Suit No.54 of 08.02.1995 and (ii) misplacement of report of Local Commissioner dated 06.01.1999. However, the files relating to these proceedings were not put up for eight long years and as per enquiry report dated 25.03.2014 (Annexure R-8), the officials who have not put up the files, have been identified. However, since now almost more than eight years have gone by since the petitioner had retired on 07.09.2005, no purpose will be served in prolonging the disciplinary proceedings. Moreover, one of the department proceedings has been dropped by this Court vide order/letter dated 15.05.2015 (Annexure R-12).

In view of the above discussion and the judgment passed by a Division Bench of this Court in **Dr. Inderjit Singh Wasu's** case (supra), this petition is allowed and impugned notices dated 26.04.2013 (Annexures P-3 & P-4) are set aside.

(RITU BAHRI)
JUDGE

13.07.2016