

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO. 15857 OF 2016

DATE OF DECISION: AUGUST 08, 2016

Azad Singh Hooda, Associate ProfessorPetitioner

Versus

State of Haryana and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.HS Hooda, Senior Advocate with
Mr.GS Hooda, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The petitioner, who was serving as Associate Professor in Sociology, retired on 30.4.2012 upon attaining the age of superannuation.

2. Challenge in the instant petition is to the order dated 2.5.2016, Annexure P3, whereby one Shri RC Sharma, HCS (retired) has been appointed as an Enquiry Officer to hold a departmental enquiry under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 against the petitioner.

3. Learned senior counsel would submit that earlier in point of time on the same very charges the penalty of withholding of two increments with cumulative effect had been imposed vide

order dated 8.7.2005. Such penalty had been affirmed by the Appellate and Revisional Authorities. The petitioner had preferred Civil Writ Petition No.2551 of 2008 assailing such action and the writ petition was allowed vide judgment dated 6.8.2015 at Annexure P1 and the order of penalty had been set aside by taking a view that the Disciplinary Authority/Punishing Authority could not have imposed such penalty without taking recourse to a regular enquiry. It is argued that just to wreak vengeance and without there being any application of mind, the impugned order dated 2.5.2016, Annexure P3, appointing an Enquiry Officer has been issued. Reliance has also been placed upon Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II, Chapter 2 (for short 'the Rules') as applicable to the State of Haryana to contend that the petitioner is a retired employee and the initiation of enquiry vide impugned order dated 2.5.2016 would be barred under such provision. Furthermore, learned senior counsel has even adverted to the specific article of charge drawn against the petitioner in the charge sheet. As per charge sheet, the petitioner was posted as Lecturer in Sociology in Government College, Bound Kalan from 8.7.1997 to 23.8.2001 and the Deputy Commissioner-cum-District Election Officer, Bhiwani had assigned to the petitioner the duties of a Returning Officer in the general elections of Gram Panchayat in the year 2000 at village Barsi Jattan, District Bhiwani to oversee the filing of nomination papers for election of Panch/Sarpanch. Nomination papers were to be filed from 26.2.2000 to 28.2.2000. From ward No.11 only one nomination paper in the name of Shri Mauji Ram was filed upto

28.2.2000 i.e. the last date of filing of nomination papers. The act of omission and commission levelled against the petitioner is that he had instead declared one Shri Mange Ram son of Nand Ram of Ward No.11 as elected Panch and pursuant thereto, on the basis of a patently wrong declaration made by the petitioner, wrong notification regarding Panch of Ward No.11 was issued. Argument raised is that such act of omission and commission as alleged cannot be construed as mis-conduct so as to justify the initiation of departmental proceedings and appointment of an Enquiry Officer vide impugned order dated 2.5.2016. In support of such contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Inspector Prem Chand v. Government of NCT of Delhi and others, (2007)4 Supreme Court Cases 566.**

4. Having heard learned senior counsel at length and having perused the pleadings on record, this Court is of the considered view that no interference in the matter is called for.

5. Rule 2.2(b) of the Punjab Civil Services Rules, Vol.II, Chapter 2 reads as follows:

"2.2(a) xxxxxxxxxx

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 the 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 departmental or judicial proceedings, 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 on 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 re-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.

Explanation- For the purpose of this rule;-

1) Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

2) Judicial proceedings shall be deemed to have been instituted -

i) in the case of criminal proceeding, on the date on which the complaint is made or a challan is submitted to a criminal court; and

ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court;

Note 1 - As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.

Note 2 – In a case in which a pension as such is not

withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which may have been commuted."

6. A perusal of the statutory provision re-produced hereinabove would clearly reveal that departmental proceedings if not instituted against the employee prior to retirement can be instituted post-retirement only in respect of an event which took place not more than four years before the institution of such proceedings. Explanation to the Rule clarifies that departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him.

7. The submission made by learned senior counsel as regards Rule 2.2(b) of the Rules constituting a bar for conduct of enquiry against the petitioner is based on a mis-reading of such provision. In the first instance, it may be observed that initiation of departmental proceedings is reckoned from the date of issuance of a charge sheet and is not relatable to a decision appointing an Enquiry Officer. In the facts of the present case, the act of omission and commission against the petitioner covered by term '**event**' finding mention in Rule 2.2(b)(ii) of the Rules is of the year 2000 when the petitioner was assigned election duty. Initiation of departmental proceedings took place in the year 2002 when the charge sheet was issued i.e. well within the stipulated time frame of four years contemplated under Rule

2.2(b) of the Rules. The impugned order in the instant petition dated 2.5.2016 appoints an Enquiry Officer. Such order cannot be viewed as initiation of departmental proceedings so as to attract the bar under Rule 2.2(b) of the Rules.

8. The action of the respondent-authorities in appointing the Enquiry Officer vide order dated 2.5.2016, Annexure P3, is rather found to be in conformity of the liberty granted by this Court while deciding Civil Writ Petition No.2551 of 2008 that had been filed by the petitioner and decided on 6.8.2015. While setting aside the earlier order of penalty of stoppage of two increments with cumulative effect on the ground that a regular enquiry had not been conducted, it had been observed by the Co-ordinate Bench as under:

“However, this order of mine shall not preclude the respondent-Authorities, in case, the Rules framed permits them to initiate the enquiry in order to prove the charges.”

9. This Court having already taken a view that the impugned order of appointing an Enquiry Officer does not fall foul of any statutory provision, the action is in terms of the liberty granted by this Court while deciding Civil Writ Petition No.2551 of 2008.

10. The contention as regards the charge against the petitioner not falling within the expression 'mis-conduct' would not require to be dealt with on merits at this stage. Whether or not the charge and act of omission and commission is a mis-conduct would be a subject matter of a regular departmental

enquiry that already stood initiated by issuance of the charge sheet and now carried forward by appointing an Enquiry Officer. The findings that would be furnished in due course would then have to be examined by the Disciplinary Authority and it is at that stage that the question of any mis-conduct having been committed would have to be dealt with. Such issue will not require examination at the very threshold and that too at the hands of this Court while exercising the powers under Article 226 of the Constitution of India.

11. In the case of **Inspector Prem Chand** (supra) that had been relied upon by learned senior counsel, the Apex Court had examined the scope of the term 'mis-conduct'. In the facts of that case, disciplinary proceedings had been initiated against the appellant i.e. Prem Chand in terms of the provisions of Delhi Police (Punishment and Appeal) Rules, 1980. A view was taken that it was imperative for the Disciplinary Authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. While holding in favour of the appellant, it was observed that no such finding had been arrived at by the Disciplinary Authority. In the present case, the petitioner is seeking the setting aside of an order of appointment of an Enquiry Officer and thereby attempting to even avoid facing a regular departmental enquiry and thereby pre-empting the Disciplinary Authority from even examining the issue at the appropriate stage as to whether there was any mis-conduct. Such a contention is wholly mis-conceived and cannot be accepted.

12. For the reasons recorded above, this Court does not find any infirmity in the action of the respondent-authorities in having appointed an Enquiry Officer vide impugned order dated 2.5.2016 at Annexure P3.

13. Consequently, the writ petition is dismissed.

AUGUST 08, 2016
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether speaking/reasoned? Yes/No

Whether referred to Reporter? Yes/No