IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 26943 of 2014
Date of decision : 28.01.2016

Ish Pal Singh ....Petitioner

versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Kumar Khubbar, Advocate
for the petitioner.

Mr. Samarvir Singh, D.A.G. Haryana

Mr. Aseem Rai, Advocate
for respondent No. 2 and 4

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

****

RITU BAHRI , J.

The present petition is for issuance of writ in the nature of certiorari for quashing an order dated 10.07.2014 (P-8) passed by respondent No. 2 whereby show cause notice of recovery of Rs.13,80,429/- issued to the petitioner has been confirmed and recovery has been ordered to be made from the retiral benefits of the petitioner.

The petitioner who put in 34 years of service with the respondent-office was ordered to retire from the post of Storekeeper on attaining the age of superannuation, vide memo dated 19.10.2012 but no retiral benefits were paid to him despite the letters/reminders given by the petitioner. Petitioner then filed CWP No. 7712 of 2013, which was disposed of by this Court on 19.02.2013 by giving a direction to respondent-office to decide the representation/legal notice of the petitioner, within a period of three months. However, the respondent-office instead of releasing the retiral benefits of the petitioner issued him a charge sheet vide memo dated 06.06.2013 (P-2) levelling allegations against him that he was negligent in the performance of duties involving the federation into serious losses. The petitioner was held responsible for causing loss of Rs.12,28,426/- for the year 2011-12 and Rs.1,52,003/- for the year 2012-13.

Petitioner filed detailed reply dated 25.06.2013 (P-3) to the charge sheet stating that the wheat being hydropheric commodity by nature, it takes and gives out moisture under conditions of atmospheric changes and during this process, there may be loss and gain in weights. The moisture content at the time of receipt of stocks for the crop year 2011-12 was 11.50% to 12% as the weather was dry and there was no rain.

The District Foods and Supplies Controller, Karnal was appointed as Inquiry Officer who conducted the inquiry and submitted the inquiry report vide memo dated 13.02.2014 (P-4) and the petitioner was exonerated of the charges levelled against him by giving a finding that there is no significant change in the moisture contents, therefore, uniform norms for fixing the responsibility of storage gain @ 700 gram per qtl, is not justified.

However, respondent-office directed the Inquiry Officer to conduct a fresh inquiry and again an inquiry was conducted. But the petitioner was again exonerated of the charges levelled against him, vide inquiry report dated 01.04.2014 (P-5).

The respondent-office again vide memo dated 05.05.2014 (P-6) did not agree with the finding of the Inquiry Officer and issued a dissenting note to the petitioner and it has been stated that the Inquiry Officer has erred in interpreted the instructions of Financial Commissioner which makes it mandatory for State Government agencies to give 1% storage gain in case of wheat stored in covered godown is 7% gain in case of wheat stored in open. This storage gain has no relation with the receipt and dispatch moisture percentage. As FCI has deducted less than charges of Rs.13,80,429/- in the instant matter of storage of wheat stocks in open plinth, the liability has been fastened upon the petitioner.

Petitioner submitted his reply dated 03.07.2014 (P-7) to the dissenting note but respondent No. 2 passed the impugned order dated 10.07.2014 (P-8) holding the petitioner negligent in the performance of duties causing high loss amounting to Rs.13,80,429/-. On the basis of letter dated 14.03.2003 (P-9), the petitioner was held responsible for 70% less gain in the year 2011-12 and 35% loss for less gain for the year 2012-13.

On notice, two separate written statements had been filed by respondent Nos. 1 and 3 and 2 and 4 admitting that the petitioner retired on 31.10.2012 from the respondent-Federation and stated that the petitioner is not entitled to any relief and the writ petition deserves to be dismissed, as he had caused heavy loss to the office.

Learned counsel for the petitioner at the very outset stated that in terms of the provisions of Staff Service Rules of the Haryana State Federation of Consumer's Co-operative Wholesale Stores Ltd, enquiry can be initiated only against an employee in service, who is drawing salary. Neither it can be initiated nor even continued after retirement of an employee.

The relevant provisions of the Rules are extracted below:-

"2. Definition:

xx xx xx

(c) "Service" means the service of The Haryana State Federation of Consumer's Cooperative Wholesale Stores Ltd.

xx xx xx

(e) The "Board" means the Board of Directors of The Haryana

State Federation of Consumer's Cooperative Wholesale Stores Ltd.

xx xx xx

(s) "Penalty" means censure, with-holding of increments, demotion, reduction to the lower post of time scale, removal or dismissal of any employee.

xx xx xx

26.3 Penalties for misconduct:

An employee found guilty of gross misconduct may be awarded any one or more of the following punishments apart from the recovery of actual loss or damage caused by him to the Federation.

(i) Depriving from payment of bonus.

(ii) Withholding of annual increments.

(iii) Barring of promotion to the higher-grade post for a specific period.

(iv) Reversion to a lower grade post.

(v) Suspension (Deleted by RCS vide letter No. 21/9/88/ CS-I dated 23.8.89).

(vi) Dismissal.

(vii) Fine not exceeding Rs. 250/-.

(viii) Termination of service.

26.4 ***An employee found guilty of minor misconduct may be awarded any one of the following punishments according to the gravity of his misconduct:***

a) Be warned or censure.

b) Have his increments stopped for a period of not longer than six months.

(c) Be fined (where a fine is imposed, it shall not exceed 1/3 of the monthly wages of the employee).

26.5 The punishment, if any inflicted on any employee shall be recorded in his service book.

xx xx xx"

A perusal of the aforesaid provisions clearly shows that the penalties, as provided for under the Rules, can be imposed only on an employee, who is drawing salary, either appointed on temporary or permanent basis.

Learned counsel for the petitioner has submitted that the above said Rules has been interpreted by this Court in ***S.C. Jain v. Managing Director, Haryana State Federation of Consumers Co-op Wholesale Stores Ltd and anr, passed in CWP No. 15247 of 2011, decided on 22.05.2013*** whereby petitioners were charge-sheeted after their retirement. This Court disposed of the writ petition by setting aside the charge sheets and ordered the department to released the retiral benefits of the petitioner within a period of one month.

Learned counsel for the respondents has not disputed the judgment relied upon by learned counsel for the petitioner.

Heard learned counsel for the parties.

The facts not in dispute is that the petitioner retired on 31.10.2012 after attaining the age of superannuation and was issued charge sheet on 06.06.2013 after his retirement and the retiral benefits of the petitioner were not released to him, despite the fact that he was exonerated by the Inquiry Officer, vide their enquiry reports dated 13.02.2014 (P-4) and 01.04.2014 (P-5).

The above said Rule and the judgment passed by this Court makes it ample clear that after the retirement of an employee, he cannot be charge sheet.

This aspect has been gone into by Hon'ble the Supreme Court in ***Chandra Singh vs. State of Rajasthan and anr 2003 (6) SCC 545 and by this Court in S.S. Arya v. Uttar Haryana Bijli Vitran Nigam, Pkl and others, 2009(8) SLR 53***

This Court in **S.C. Jain case (supra)** while considering the case of an employee of the Corporation in which the petitioner was also working, allowed the writ petition and held that no proceedings can be initiated against an employee after his retirement once he has been permitted to retire from service by the Office.

Applying the ratio of the above said judgments and keeping in view the fact that the charge sheet has been issued after retirement of the petitioner, order dated 10.07.2014 (P-8) is set aside and the respondents are directed to release the retiral benefits of the petitioner within a period of two months from the date of receipt of certified copy of this order. However, the petitioner is entitled for interest @9 per cent per annum on delayed payment of the retiral benefits, after the expiry of three months from the date of his retirement i.e w.e.f 01.02.2013.

The writ petition stands allowed.

(RITU BAHRI)
JUDGE

28.01.2016
G Arora