IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3418 of 2014
Date of decision: 18.11.2016

Gurcharan Singh ...Petitioner

V/s.

State of Punjab and others ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Manish Dadwal, Advocate for the petitioner.

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

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KULDIP SINGH, J. (Oral)

Petitioner, who is a retired Assistant Controller (Local Audit) has invoked writ jurisdiction under Articles 226/227 of the Constitution of India for quashing the impugned order dated 22.05.2013 (Annexure P-6) vide which a cut of 10% has been imposed on his pension.

Petitioner was working as Assistant Controller (Local Audit) Finance Department and was posted at Municipal Council, Hoshiarpur. After his retirement, he was issued a charge-sheet on 03.01.2012 wherein several allegations were levelled, while he was posted as Assistant Controller (Local Audit) in Municipal Council, Hoshiarpur. The Municipal Council, Hoshiarpur did the development work through quotations by preparing small estimates upto the limit of ₹20,000/- which is against the rules and instructions. Petitioner failed to report this matter to the higher authorities and passed the huge bills against the rules and instructions when the tenders were not called and the work was done in small pieces. He was negligent in performance of duties which is also a misconduct. From the list of allegations, it comes out that all these works were done somewhere in the year 2008 and continuously done till the date of his retirement. Though the charge-sheet was issued under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, in view the retirement of the petitioner, this is deemed to be under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume II. Petitioner submitted the reply on 25.01.2012 (Annexure P-2) wherein he maintained that he had submitted audit requisition Nos. 180 dated 19.08.2009, 181 dated 14.09.2009 and 184 dated 12.10.2009 before the Executive Officer pointing out the practice which was not in accordance with rules. He had also met the Executive Officer and discussed the matter with him. The Executive Officer had told him that it was within special powers to get done the emergency work. Therefore, he has got the powers to undertake such kind of emergency upto the limit of ₹20,000/-. Since the reply was found unsatisfactory, a regular enquiry was got conducted after which the enquiry report (Annexure P-3) is passed in which charge No. 1 was held to be partly proved. It was held that negligence on the part of employee is proved but the other allegations are not proved. Charge Nos. 2 and 3 are not proved. It was reported that no financial loss has been caused to the Municipal Council.

After considering the enquiry report and the reply submitted to the show cause notice, the impugned order dated 22.05.2013(Annexure P-6) was passed vide which it was observed that he got the bills passed amounting to ₹69.71 lacs, on the work of 377 bills from the period 01.04.2009 to 31.03.2010 which is against the rules. Accordingly, a cut of 10% on his pension was imposed.

In the reply, the State has taken a stand that the petitioner remained Assistant Controller (Local Audit) Department of Finance, Government of Punjab in Hoshiarpur Municipal Council for a period of three years and had been continuously bypassing the mandatory tender procedure by allowing the breaking up the work of contract into petty work and awarding the same repeatedly to same person. The petitioner had admitted that practice of Municipal Council was in violation of Rule 12.2 (2) of the Municipal Account Code, 1930. The petitioner did not claim that he did not sanction the payment by the Municipal Committee to the contractor for the aforesaid bills for the said work. In fact, the financial loss was caused to the Municipal Council due to illegal action by splitting the work of more than ₹69 lacs into petty work of ₹20,000/- each. It is a clear cut case of negligence on the part of the petitioner as to why he did not refuse to sanction the payment of said bills. Therefore, he was negligent in performance of his duties. Further plea was taken that examination of documents would have revealed whether the such manholes were actually missing and how and why these covers had disappeared or were not in place for long time and whether the Municipal Council had filed any FIR concerning the disappearance or loss of manhole covers in the municipality of the huge amount of over ₹69 lacs. The petitioner did not comply with para V.3 (5) of the 1984 (Revised Edition) Office Manual of the Local Audit Department, Punjab issued under the authority of the Financial Commissioner and Secretary to Government Punjab, Finance Department which required that an audit will "bring to light not only the cases of clear irregularity but also every matter which appears to involve improper expenditure or wastage of public money even though the accounts themselves may be or may not be in order and no irregularity has occurred". The job of breaking up the work into petty contracts should have necessitated action by the petitioner.

I have heard learned counsel for the parties. Learned counsel for the petitioner argued that the reply of the petitioner was not considered. He had reported the matter to the Executive Officer by writing three letters and that the Executive Officer had insisted that it was within his emergency powers. It has been further argued that he was to report the Executive Officer. Therefore, there was no negligence on his part. It was further pointed out that in the enquiry report, it has been reported that no financial loss is caused to the Department. Therefore, provisions of Rule 2.2 (b) of Punjab Civil Services Rules Volume 2 could not have been invoked. It is further contended that in a similar matter punishment was given to some other employees. It is further contended that the reply of the petitioner was not properly considered and since no financial loss was caused, the impugned order is liable to be quashed.

Reliance has also been placed on the authority of ***Tarsem Singh*** Versus ***The Punjab Scheduled Castes Land Development and Finance Corporation***, 2013 (2) S.C.T. 342 and ***Brij Mohan Sondhi*** Versus ***Haryana Vidyut Parsaran Nigam and others,*** 2012(4) Law Herald 2940.

On the other hand, the State has relied upon the authority of ***Gian Singh, Naib Tehsildar (Retd.) Colonisation Deptt. Punjab*** Versus ***State of Punjab and others 2003(2) S.C.T. 509*** to press that even in case of negligence and misconduct, a charge-sheet can be issued after the retirement of the employee and the punishment of a cut in the pension can be imposed.

After going through the authority of Tarsem Singh ***(supra)***, I am of the view that this authority is not applicable to the facts of present case as in this case, the employee was dismissed retrospectively after his retirement which was not held to be permissible. In Brij Mohan's case, some deductions were made on the basis of report made by some Committee which was held to be not permissible. Each case is to be examined on the basis of its own facts. Petitioner was employee of the Finance Department of the Punjab Government and was posted in Municipal Council, Hoshiarpur to keep an eye on the financial dealings of the said Municipal Council. The Municipal Council undertook the work of replacement/repair of the manholes to the tune of ₹69 lacs. The work was divided in small parts so as to by pass the rules which required calling for tenders for such a work. The petitioner is stated to have passed as many as 377 bills. It was the duty of the petitioner to see whether the work is actually done or it is a way to misutilize the fund. If the manholes are missing, there must have been some FIR. Such large number of manholes cannot go missing overnight. Therefore, the petitioner should have checked the facts to see whether the work is actually done for the job or is shown to be done and why the same work is splitted into many small contracts to bypass the procedure of calling the tender. The petitioner himself wrote three letters to the Executive Officer, who has himself involved in such procedure of bypassing the rules. Petitioner was responsible to the Finance Department of the Government and in case such irregularity was found, he was not bound to pass such bills and should have referred the same to the Government. He failed to bring such irregularity to the notice of the Government and allowed the irregularity committed by the Municipal

Council. Therefore, it is a clear negligence on the part of the petitioner. Though the enquiry officer has held that no financial loss was caused but going by reasoning of a common man, if big work is splitted into small work, it is likely to cost more, as if a big work is allotted in one go then competitive price can be availed. In this way, by splitting the work in small pieces by passing 377 bills, the apparent financial loss was also there.

In these circumstances, I am of the view that there was not only misconduct and negligence on the part of the petitioner but apparent financial loss was also there. The case of the other employees are at different footings as it was found that some work was done in emergency. The facts of the present case are different. Hence, I do not find any illegality in the impugned order. Accordingly, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

November 18, 2016
Divyanshi

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No