

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

**C.W.P No. 4150 of 2014
Date of decision : 01.03.2016**

Om Parkash Dhama

...Petitioner

versus

**Haryana State Federation of Consumers
Co-op Wholesale Stores Ltd & anr.**

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Kumar, Advocate
for the petitioner.

Mr. Aseem Rai, Advocate
for the respondents

RITU BAHRI , J.

By way of present writ petition, petitioner is seeking quashing of charge sheet dated 19.01.2010 (P-1), show cause notice dated 05.04.2010, order dated 12.09.2011 and order dated 12.11.2013.

Brief facts of the case are that the petitioner retired on 31.03.2008 and after his retirement, a charge sheet dated 19.01.2010 has been issued against him for negligence in performance of his duties/doing an act of prejudicial to the interest of the Federation in serious losses amounting to Rs.1,17,201/-. The above said charge sheet relates back to the year 1994 i.e 16 years old. Petitioner submitted its

reply on 10.08.2010 to the above charge sheet (P-2). Sh. V.K. Verma conducted the enquiry into the charge sheet of Ram Lal and did not agree with the enquiry report of Superintendent of Police, C.M. Flying Squad and held that there was no loss to the Federation.

Thereafter, vide order dated 28.03.2008, it was decided that all the regular employees of the Corporation who have been retired or going to be retired will be allowed the benefit of leave encashment as per Staff Service Rule 55 of the Confed/Haryana Government Rules/instructions issued from time to time and there will be ceiling of 365 days in a year. An amount of Rs.2,43,230 was sanctioned in favour of the petitioner on account of earned leave encashment.

But thereafter, a show cause notice dated 05.04.2010 was issued to the petitioner wherein it has been stated that as to why excess payment of Rs.1,12,697/- be not recovered from the arrears of 6th pay scale along with interest thereon as the excess payment of Rs.1,12,697/- for 139 days earned leaves has been paid to the petitioner (P-16) to which the petitioner submitted its reply dated 28.02.2011 but the respondents vide order dated 12.09.2011 passed the recovery order and appeal against this order was dismissed.

The point for consideration before this Court that whether the respondents can issue charge sheet to the petitioner after his

retirement on 31.03.2008 and further whether any recovery orders can be passed after the same has been granted in his favour.

With regard to the first question that whether any charge sheet can be issued to the petitioner, similar issue came up for consideration before this Court in a case of ***R.D. Bansal vs. Haryana State Federation of Consumers Co-op Wholesale Stores Ltd & anr., passed in CWP No. 9722 of 2014, decided on 09.02.2016 whereby also the challenge was to the charge sheet which was issued after the retirement.*** This Court relied upon a judgment of this Court in CWP No.1873 of 2014 titled ***Jogi Ram Vs. Haryana State Federation of Consumer's Co-operative Wholesale Stores***, decided on 23.05.2014 (Annexure P-36), wherein, it was held that there is no provision in the Rules 1975 as to the issuance of charge-sheet or imposing a penalty upon an employee after retirement. The similar view was also gone before the Hon'ble Supreme Court in case ***Chandra Singh Vs. State of Rajasthan and another, 2003(6) SCC 545*** and this Court in ***S.S. Arya Vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others, 2009(8) SLR 53***. The writ petition was accordingly allowed.

With regard to the recovery part, reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***State of Punjab and others vs. Rafiq Masih and others, 2015 (1)***

RSJ 177 wherein in para 12 and 13, it has been observed as under:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group `C' and Group `D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

In view of the above mentioned judgment, the case of the petitioners falls in category (ii) and thus the recovery cannot be affected from him as he retired on 31.03.2008 and recovery orders

were passed on 12.09.2011 (P-18) after a period of 03 years.

In view of the above, the writ petition is allowed and charge sheet dated 19.01.2010 (P-1), show cause notice dated 05.04.2010, order dated 12.09.2011 (P-18) and order dated 12.11.2013 (P-21) are hereby quashed and the petitioner is entitled to all consequential benefits.

01.03.2016

G Arora

(RITU BAHRI)
JUDGE