

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

CWP No.6487 of 2015

Date of Decision: 23.11.2016

Dalvinder Kumar Sharma

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Harbans Lal Sharma, Advocate
for the petitioner.
Mr. Rupam Aggarwal, D.A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the charge sheet issued vide letter dated 25.06.2014 in violation of the statutory Rules, especially Rule 2.2(b)(2) of the Punjab Civil Services Rules Volume II. A further prayer has also been made for issuance of a writ in the nature of *mandamus* directing the respondents to compensate the petitioner as he was harassed without any reason and in violation of Service Rules.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was initially appointed as an Inspector Co-operative Societies in the department of Co-operation, Government of Punjab in the month of May 1981. Since then, he had been working regularly. He was posted at different places and his work and conduct was satisfactory. Thereafter, vide order dated 12.12.2007, the petitioner was placed under suspension under Section 27(2) of the Punjab Co-operative

Societies Act. Regular inquiry was conducted against him and the report was sent by the Deputy Registrar Co-operative Societies, Sangrur in compliance of special Audit Report, which was done vide resolution dated 29.11.2008. Ultimately, the petitioner retired from service on attaining the age of superannuation vide order dated 31.08.2010. He submitted his complete pension papers before the date of his retirement. The complaint made against the petitioner was withdrawn by the authorized member of the Managing Committee on 04.04.2012. The pension case of the petitioner was not sent to the Accountant General, Punjab after his retirement and only the provisional pension was sanctioned vide order dated 07.01.2013. The petitioner made a representation but when no action was taken thereupon, he filed **CWP No.24152 of 2013** before this Court, which was disposed of vide order dated 31.10.2013 with a direction to the respondents to pass a speaking order on the representation dated 03.01.2013. In response to said direction, the order was passed on 10.12.2013 and the pensionary benefits of the petitioner were released after delay of three years and four months. Thereafter, he moved an application for grant of interest on delayed payment. A charge sheet was issued to him vide order dated 25.06.2014 i.e after his retirement. The said charge sheet has been challenged by the petitioner by raising various grounds.

Learned counsel for the petitioner submits that no disciplinary proceedings can be initiated after retirement as per provisions of Rule 2.2(b) of Punjab Civil Service Rules Volume II, wherein, it has been provided that no disciplinary proceedings can be initiated against a retired employee and especially relating to an event which is more than four years' old. Learned counsel also submits that even the complaint moved against the petitioner

was withdrawn but the charge sheet issued to the petitioner was not withdrawn in spite of serving a legal notice.

Learned counsel for the petitioner has also relied upon the judgment of Division Bench of this Court in case ***Sub Inspector Puran Chand (Retd.) vs State of Punjab and others 2000(3) SCT 515*** as well as judgment of Single Bench of this Court in case ***Mukhtiar Chand Dhir vs The State of Punjab and others 1982(1) SLR 889***, in support of his contentions.

Learned counsel for the respondents submits that although the petitioner had retired from service on 31.08.2010 but the complaint dated 26.11.2009 was made against him which cannot be said that it was regarding some subsequent event. It was of the period prior to the date of retirement. Said complaint was regarding omission on the part of the petitioner to take action against one Darshan Singh, the Secretary of the Chhiniwala Cooperative Agricultural Service Society alleging involvement in case of embezzlement. Instead of lodging FIR against him, he deliberately filed the arbitration cases. The allegations were inquired into vide report dated 04.03.2010 and the same were proved. Even the explanation of the petitioner was called for on 27.05.2010. He submitted his reply to the show cause notice even before the date of his retirement. Learned State counsel also submits that in case, the departmental proceedings are initiated before the date of retirement then the respondents are within their rights to take action even after retirement. Learned counsel also submits that the intention of the respondents was fair and provisional pension was also given to the petitioner.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

Admittedly, the petitioner retired from service on 31.08.2010 on attaining the age of superannuation as Assistant Registrar Cooperative Societies. It is also not disputed that neither any charge sheet was issued nor any inquiry was initiated against him before the date of his retirement. The pension papers were also submitted by the petitioner before the date of his retirement but the benefits were not released to him because of complaint pending against him and the provisional pension was released to him. It is also not disputed that the petitioner filed **CWP No.24152 of 2013**, which was disposed of with a direction to the respondents to decide the representation dated 03.01.2013 by passing a speaking order within a period of two months from the date of receipt of certified copy of the order.

In response to said directions, the order dated 10.12.2013 was passed, wherein, it was mentioned that due to complaint pending against the petitioner, no pensionary benefits were released to the petitioner and he was allowed the provisional pension. Admittedly, the petitioner retired from service on 31.08.2010 and the complaint was made pertaining to the period i.e June 2006, wherein, no charge sheet was issued to the petitioner while he was in service.

Now the question for consideration before this Court is as to whether the pension of the petitioner can be stopped by taking into consideration the complaint made against him before the date of his retirement or for an incident which has occurred four years prior to the date of retirement. Rule 2.2(b) of the Punjab Civil Services Rules, Vol. II is relevant for decision of the controversy, in hand, and the same is

reproduced as under :-

“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 a 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, in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon 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 Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his reemployment -

(i) shall not be instituted save with the sanction of the Government ;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made in relation to officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment shall be instituted in respect of a

cause of action which arose or an event which took place more than four years before such institution; and the public Service commission should be consulted before final orders are passed.

Explanation – For the purpose of this rule -

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date on such date; and

(b) a judicial proceeding shall be deemed instituted -

(i) in the case of criminal proceeding, on the date of which the complaint or report of the police officer on which the Magistrate takes cognizance is made; and

(ii) in the case of civil proceeding, on the date of presentation of the plaint in the Court.

Notice : As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institute such proceedings should without delay intimate the fact to the Accountant General. The amount of the pension withheld under clause (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of the pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

(c)(i) Where any departmental or judicial proceeding is instituted under clause (b) of Rule 2.2 or where a departmental proceeding is continued under clause (i) of the provision thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have

been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding the date on which he was placed under suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority :

Provided that where Departmental proceedings have been instituted under rule no of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of the gratuity or death-cum-retirement gratuity, as the case may be, shall to (not ?) be withheld.

(2) Payment of provisional pension made under sub-clause (i) shall be against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note :- The grant of pension under this rule shall not prejudice the operation of rule 6.4 *ibid* when final pension is sanctioned upon conclusion of the proceedings.”

As per clause (2) of the aforesaid rule 2.2(b), it is clear that the departmental proceedings cannot be initiated against an employee after his retirement for an incident which has taken place four years prior to the date of his retirement.

In the present case, the petitioner has retired on attaining the

age of superannuation on 31.08.2010 and no charge sheet was issued to him during his service i.e before the date of his retirement. Even no inquiry or disciplinary proceedings were initiated before the date of his retirement. Hence, the charge sheet was issued after the date of retirement is violative of Rule 2.2(b) of CSR Volume II as the incident was more than four years' old. Moreover, the complaint was also withdrawn by the complainant by filing an affidavit. Petitioner also filed reply to the charge sheet on 01.08.2014 which was not considered. The controversy in the case, in hand, is squarely covered by *Puran Chand's* case (supra). In the said judgment, the judgment rendered in *Narinder Dev Sharma vs State of Punjab and another 1996(2) Service Law Reporter 270* has been relied upon, wherein, it was observed that the Disciplinary Authority is empowered to initiate disciplinary action, against an employee even after his retirement, subject to the condition, that the enquiry pertained to an incident not more than four years prior to the date of initiation of the enquiry.

In the present case, the incident has occurred more than four years prior to the date of retirement and as such, the charge sheet is barred under the provisions of clause (2) of rule 2.2(b) as mentioned above.

For the reasons recorded above, the present petition is allowed and the impugned charge sheet dated 25.06.2014 is hereby quashed.

It is also directed that the petitioner shall be released all his retiral benefits within a period of three months, if not released.

(DAYA CHAUDHARY)
JUDGE

23.11.2016

gurpreet

Whether speaking/reasoned

Whether Reportable

Yes

Yes