

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

CWP No.6981 of 2015

Date of decision: 18.01.2016

Prem Singh Bhardwaj

....Petitioner

Versus

Haryana Agro Industries Corporation Limited and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Raman B. Garg, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for the respondents.

RITU BAHRI J. (Oral)

The petitioner has filed this writ petition for quashing the impugned order dated 24.02.2015 (Annexure P-1) to the extent of imposition of condition of Rule 2.2(b) of Punjab Civil Services Rules Volume-II (as applicable to the State of Haryana) and further seeking direction to the respondents to pay the petitioner all the retiral benefits i.e. GIS payment, Gratuity, Leave Encashment, etc.

The petitioner was appointed in the respondent-Corporation on the post of Time Keeper on casual basis in the month of May, 1978. In terms of the policy of the respondent-

Corporation, the petitioner was appointed as Time Keeper vide order dated 12.05.1980 of the competent authority. Subsequently, the petitioner was granted deemed date of appointment w.e.f. 31.05.1979 vide order dated 27.11.1998. Thereafter, designation was changed to Time Officer Clerk. The petitioner was retired on superannuation on 28.02.2015 on the same post of Time Office Clerk without any promotion. However, at the time of retirement (Annexure P-1), a condition of Rule 2.2 (b) of the Punjab Civil Services Rules Volume-II (as applicable to the State of Haryana), was imposed upon the petitioner.

Reference has been made to the Corporation letter dated 28.09.1994, whereby categories of employees who were governed under the provisions of Punjab Civil Services Rules were identified and those were to be governed under the Certified Standing Orders (Annexure P-2). From the perusal of Annexure P-2 it is revealed that the post of the petitioner i.e. Time Office Clerk falls under the definition of workmen and thus the provisions of Punjab Civil Services Rules are not applicable on the said post. The services of the petitioner was not pensionable and he was only entitled for GIS payment, Leave Encashment and Gratuity. The petitioner has not been paid any of the retiral benefits i.e. GIS payment, Leave Encashment, etc. despite the fact that he has been retired on 28.02.2015 vide Annexure P-1.

Upon notice in the present petition, written statement

dated 04.09.2015, on behalf of respondents No.1 and 2, has been filed stating therein that the petitioner was charge-sheeted as per Clause 21 of the Certified Standing Order of the Corporation vide Memo dated 01.02.2005 and thereafter, he had faced an enquiry in the year 2007 and punishment for stoppage of one annual increment without cumulative effect was imposed upon him for being negligent in not ensuring preservation and delivery of purchased grain to FCI. Thereafter, the petitioner filed an appeal to the Board of Directors and the Board had considered his appeal and ordered to withdraw the penalty of stoppage of one annual increment without cumulative effect. At the time of 'No Dues Certificate', the DM, FSC, Karnal, informed the petitioner that he is responsible for a loss of 379.58 Qtls of wheat in less gain amounting to Rs.7,22,887/- and he had further verified regarding the presence of moisture at the rate 11% to 12% at the time of procurement of wheat. Further the amount of 20,047/- was outstanding against the petitioner, which was taken by him for upgradation of damaged wheat bags of Ballah Mandi and a recovery of Rs.7,22,887/- for less gain of 379.58 Qtls of wheat crop of Ballah Mandi has also been reported to the H.O. This information was given by the office of Karnal on 19.02.2015.

The petitioner was retired on 28.02.2015 and on the date of retirement there was no enquiry or charge-sheet pending against the petitioner. On the date of retirement of the petitioner,

no attempt was made by the department to initiate any charge-sheet or disciplinary proceedings against the petitioner. The question for consideration before this Court is that:-

1. *Whether the proceedings can be initiated against the petitioner after the date of retirement, if nothing is pending against him?*

The issue has come up before the Co-ordinate Bench of this Court in CWP No.15247 of 2011, titled as ***“S.C. Jain vs Managing Director, The Haryana State Federation of Consumers Co-operative Wholesale Stores Limited and another”***, decided on 22.05.2013, wherein it was held that the issue as to whether departmental proceedings, even if initiated against an employee during service, can continue after retirement was gone into by Hon'ble Supreme Court in ***“Chandra Singh vs State of Rajasthan and another”***, (2003) 6 SCC 545, wherein it was opined that in the absence of specific Rule to that effect and once an employee is permitted to retire, the proceedings cannot continue.

Keeping in view the above, the department cannot with-hold the retiral benefits of the petitioner in the absence of any disciplinary proceedings merely on the information given by the office of Karnal that some amount was to be recovered from the petitioner. The petitioner has also placed on record his replication and as per Annexure P-9, vide letter Nos.KNL/747, dated

07.03.2015, KNL/2015/395 dated 17.08.2015 and KNL/2015/456 dated 23.09.2015, the competent authority has accorded Ex-post fact approval for 3303 bags and incurred an expenditure of Rs.25,760/- for the crop year 2012-13 as per the recommendation. Hence, this amount should not to be recovered from the petitioner.

So, in view the above facts and circumstances, the present petition is allowed and the respondents are directed to pay all the retiral benefits i.e. GIS payment, Leave Encashment, Gratuity, etc. to the petitioner along with 9% interest.

(RITU BAHRI)
JUDGE

18.01.2016
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