

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

CWP No. 8825 of 2015

Date of decision : 18.05.2016

Shamsher Singh Malik

....Petitioner

versus

**Hry. State Fed. Of Consumers
Co-op Wholesale Stores Ltd & anr.**

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Y.P. Malik, Advocate
for the petitioner.

Mr. Parvindra Singh Chauhan, Advocate
for respondent No. 1

Mr. Ravi Pratap Singh, A.A.G. Haryana

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

RITU BAHRI, J.

Petitioner has filed the present writ petitioner seeking a writ in the nature of certiorari quashing order dated 20.02.2015 and further prayer is for issuance of direction to the respondents to grant/release all the retiral benefits to the petitioner.

The petitioner retired from the post of General Manager on 31.12.2010 but till date the petitioner was not given the retiral service benefits. Petitioner served a legal notice dated 09.05.2014 (P-1) in this regard. When no action was taken by the respondents on his legal notice, he filed CWP No. 23534 of 2014, which was disposed of by this court on 28.11.2014 (P-2) with directions to the respondents to pass speaking order

on the legal notice of the petitioner within a specified time.

In compliance of the above said order, the respondents rejected the claim of the petitioner on 20.02.2015 (P-3) with regard to retiral benefits on the ground that the recoverable amount of Confed against the petitioner is higher than his payable dues.

Total four charge sheets were pending against the petitioner. Out of 04 charge sheets, 03 pertains to the year 1993, 2002 and 2004 and recovery was imposed vide orders dated 26.07.2013, 06.09.2012 and 13.12.2011. The 4th charge sheet was dated 23.08.2012, which was post retirement.

Learned counsel for the petitioner at the very outset contends that the penalties, as provided under the Rules, can be imposed on an employee, who is drawing salary either appointed on temporary or permanent basis. Further under the Service Rules, neither departmental proceedings can continue after the retirement nor initiated.

This issue has come up for consideration before this Court in a case of **Jogi Ram vs. Hry. State Fed. Of Consumers Co-op Wholesale Stores Ltd & anr., passed in CWP No. 1873 of 2014, decided on 23.05.2014 (P-11)** wherein the petitioner was also declined the retiral benefits on the ground that charge sheet was issued to him after his retirement. This Court while examining the Staff Service Rules of Hry. State Fed. Of Consumers Co-op Wholesale Stores Ltd, 1975 held that there is no provision under Rules 1975 to either issue a charge sheet or holding disciplinary proceedings against the retired employees. The writ petition was allowed by relying upon judgment of Hon'ble the Supreme Court in a case of

Chandra Singh vs. State of Rajasthan and another 2003(6) SCC 545 and of this Court in S.S. Arya v. UHBVNL, Panchkula and others, 2009(8) SLR 53. The relevant portion of the judgment reads as under:

“In view of the facts and law position as mentioned above, it is clear that when there is no provision in the Rules as to the issuance of charge sheet or imposing a penalty upon an employee after retirement, the charge sheet issued to the petitioner is without jurisdiction and the same is liable to be set aside.”

Learned counsel for respondent No. 1 while referring to the written statement has argued that the petitioner has been retired from service subject to outcome of the proceedings/action to be taken against him in pending charge sheets.

Heard learned counsel for the parties.

Reference at this stage can now be made to the charge sheets issued to the petitioner and the recovery orders passed against him.

<i>Sr. No.</i>	<i>Date of issuance of Charge sheet</i>	<i>Date of imposition of recovery</i>	<i>Amount</i>
1	21.07.1993	26.07.2013	Rs.11,555/-
2	15.04.2002	06/09/12	Rs.79,488/-
3	27.10.2004	13.12.2011	Rs.8,78,697/-
4	23.08.2012	16.02.2015	Rs.33,38,422/-

The petitioner retired on 31.12.2010 and the above said recoveries are being sought from the petitioner after his retirement.

Learned counsel for the respondents has not been able to controvert the fact that there is no rule for imposition of penalty upon the retired employees, as held by this Court in **Jogi Ram's case (supra)**

In the absence of any Rule for imposition of penalty upon the retired employees, the writ petition deserves to be allowed.

Applying the ratio of the above said judgment to the facts of the present case, the present petition is allowed and order dated 20.02.2015 (P-3), 26.07.2013, 06.09.2012, 13.12.2011 and 16.02.2015 (P-7 to P-10) respectively are hereby set aside. A direction is given to the respondents to release the withheld amount of the petitioner, within a period of two months, by giving 9% interest after three months of the retirement of the petitioner i.e 01.04.2011 till the payment is made.

(RITU BAHRI)
JUDGE

18.05.2016
G Arora