IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP-11939-2013
Date of decision : 02.02.2017

Shadi Lal ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. O.P.S.Tanwar, Advocate,
for the petitioner.

Mr. Naveen Sheoran, Deputy Advocate General, Haryana,
for the respondents.

KULDIP SINGH J. (ORAL)

Petitioner, who retired as Block Education Officer from the State of Haryana, has impugned the charge-sheet dated 4/9.03.2009 (Annexure P-5), inquiry report dated 28.04.2010 (Annexure P-10), order of punishment dated 17.08.2011 (Annexure P-12), letter dated 21.12.2011 (Annexure P-14) and order dated 05.02.2013 (Annexure P-16), claiming that these are arbitrary and against the principle of natural justice. He also seeks release of gratuity and commutation pension and interest on the retiral benefits.

Petitioner was previously working as a Principal and later on promoted as Block Education Officer. He retired from service on 31.05.2009. It comes out that during his service, he was served with a charge-sheet (Annexure P-5) on 4/9.03.2009, whereby, four charges were levelled against him. First charge is that, on account of his transfer as Principal to Government Secondary School, Jetana, Mewat, he neither took over the charge of new posting nor handed over the charge of the school to his successor till 06.02.2008. Second charge is that he kept the Government money amounting to Rs.1,25,527/- with him w.e.f. 06.02.2008 to 16.09.2008, whereas, the same was required to be deposited in the school account. The third charge is that he diverted the funds of Rs.4,800/- from some other funds for dismantling the roof of the school, whereas, the funds were to be used from the building funds. The fourth charge is that he spent a sum of Rs.12,20,000/- for construction/repair of the school building boundary wall and Rs.3,50,000/- for computer lab without obtaining approval from the competent authority. Whereas, there is a direction to constitute a committee and get the approval from the competent authority, but he has incurred the said amount under the supervision of Additional Deputy Commissioner without constituting the committee.

As a result of the inquiry, inquiry report dated 28.04.2010 (Annexure P-10) was submitted, in which, all the four charges were held to be proved. Regarding Charge No.1, it was held that he had intentionally not handed over the charge for the said period. Regarding Charge No.2, it was stated that a demand draft of Rs.1,23,527 was handed over to Shri Mahender Singh only on 16.09.2008 and he kept the same with him from 06.02.2008 to 16.09.2008 in unauthorized manner and did not hand over to his successor, immediately. Therefore, he had illegally kept the money during the intervening period. The third charge is regarding diversion of funds were also proved. Regarding Charge No.4, it was found that the committee was constituted and a letter in this regard was dispatched to Additional Deputy Commissioner, Hissar and District Education Officer, Hissar, but no approval seems to have been received. The expenditure was incurred by the Principal on his own without taking into confidence the members of the proposed committee and he has clearly violated the protocol and procedure. It was also noticed that, in this regard, FIR had also been registered against the petitioner.

Now, punishment order dated 17.08.2011 (Annexure P-12) against which, a legal notice dated 18.11.2011 (Annexure P-13) of the petitioner was rejected vide order dated 05.02.2013 (Annexure P-16), goes to show that earlier the petitioner had approached this Court by way of filing C.W.P. No.3556 of 2012 and the respondents were directed to consider the legal notice and the same was rejected vide order dated 05.02.2013 (Annexure P-16). With the result that order of punishment dated (Annexure P-12) stands affirmed. The following punishment has been awarded to the petitioner:-

> "*...... I am of the considered view that the punishments of recovery of Rs.12,20,000/- plus Rs,3,50,000/- i.e. 15,70,000 be made from the retiral benefits i.e. gratuity, commutation of pension and leave encashment of the incumbent and 5% cut in pension under Rule 2.2 (b) of Punjab Civil Services Rule (Vol. II) will be sufficient to meet the end of justice.*"

It comes out that two punishments have been imposed, one is the recovery of the entire amount, i.e., Rs.15,70,000/- which has been handed over to him for construction of boundary wall of the school and for computer lab, and another is the 5% cut in pension under Rule 2.2 (b) of the Punjab Civil Services Rules (Vol. II).

In the written statement, the respondents have reiterated its stand and supported the allegations levelled in the charge-sheet and it is stated that the charges were proved and, therefore, the punishment order was correctly passed.

I have heard learned counsel for the parties and gone through the record carefully.

Admittedly the charge-sheet was served upon the petitioner under Rule 7 of Haryana Civil Services (Punishment & Appeal) Rules, 1987, when the petitioner was still in service, therefore, the inquiry could continue and could be concluded even after his retirement. First charge is regarding not handing over the charge after his transfer, the second charge is regarding retaining of demand draft of Rs.1,23,527/- for certain period, third charge is for diversion of funds and fourth charge is for violating the protocol and procedure for spending the money entrusted to the petitioner for construction and computer lab. The impugned order dated 05.02.2013 (Annexure P-16) passed on the direction of this Court, shows that it was observed that petitioner had, in fact, constituted a committee and the proceedings of the committee were approved by the Additional Deputy Commissioner. Rule 2.2 (b) of the Punjab Civil Services Rules (Vol. II) provides 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 the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his C.W.P. No. 17823 of 2008 service including service rendered on re-employment after retirement."*

Admittedly, for the financial loss caused to the Government, the Government is competent to recover the same. Admittedly, for the misconduct even after the retirement of the petitioner, punishment order could be passed under Rule 2.2 (b) of the Punjab Civil Services Rules (Vol. II). So far as the financial loss is concerned, the perusal of the inquiry report shows that no financial loss is caused to the Government. The money is involved only in Charge Nos.2, 3 and 4. Regarding Charge No.2, it was found that he kept the demand draft with him for about seven months. It is not alleged against him that he got encashed the demand draft and used the government money for seven months. He merely did not hand over the said demand draft to his successor which could be an act of negligence. However, the money was never used by the petitioner for his own purpose. Charge No.3 is regarding use of fund from another head. Here also the work was done and no financial loss is alleged to have been caused. It is merely a procedural irregularity. Regarding Charge No.4, it is found that after receiving funds, committee was constituted, the approval of the Additional Deputy Commissioner was taken and the funds were spent. The charges proved against the petitioner are that he did not take members of the committee into confidence and that he violated the protocol and procedure.

I am of the view that the procedure for spending the money was to constitute a committee and get the approval of the higher authorities. In the present case, committee was also constituted and the proceedings were got approved from the Additional Deputy Commissioner. There are no allegation or findings in the inquiry report that the funds to the tune of Rs.12,20,000/- for the building and Rs.3,50,000/- for the computer lab, were misused, wholly or partly or converted by the petitioner for his own use.

The allegations proved are of procedural violation. Therefore, in none of the charges, any financial loss is proved to have been caused to the State. Consequently, the punishment orders, so far as ordering recovery of Rs.15,70,000/- has to be held against the principle of natural justice, arbitrary and illegal and is hereby quashed. So far as 5% cut in pension under Rule 2.2 (b) of the Punjab Civil Services Rules (Vol. II), is concerned, since the procedural irregularities have been found, therefore, the department was competent to impose cut in the pension. However, no period has been specified for which this cut will remain in operation. That would mean that it will remain in operation for whole of the life.

Keeping in view the facts, it is discretion of the competent authority to impose cut in the pension for a limited period or for whole of the life, this Court does not feel it proper to intervene in the said order of cut in the pension or to modify the same. As a result of the foregoing discussion, the impugned order dated 17.08.2011 (Annexure P-12) followed by order dated 05.02.2013 (Annexure P-16) so far as the punishment order of imposing the recovery of Rs.15,70,000/- to be made from the retiral benefit, i.e., gratuity, commutation of pension and leave encashment of the petitioner are hereby quashed. The respondents are, accordingly, ordered to release the retiral benefits of the petitioner with interest at the rate of 9% per annum starting three months from the date of retirement till the date of payment. However, the order imposing 5% cut in the pension under Rules 2.2 (b) of the Punjab Civil Services (Vol. II), is maintained. Payment of retiral benefits be released within two months from the date of receipt of certified copy of this order. The amount already deducted from the arrears of retiral benefits of the petitioner, is also ordered to be released to the petitioner within two months with interest at the rate of 9% per annum.

Accordingly, petition is allowed partly.

(KULDIP SINGH)
02.02.2017 **JUDGE**
adhikari

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No