

252

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 1850 of 2015 (O/M)
Date of decision : 5.5.2017

Baljeet Singh

..... Petitioner (s)

Versus

Haryana Dairy Development Co-operative Federation Limited and others
..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Praveen Gupta, Advocate, for the petitioner.

Mr. Rajesh Arora, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH J. (ORAL)

The petitioner has approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned orders dated 20.11.2013 and 21.11.2013 (Annexure-P-11 and P-14 respectively) as well as order dated 11.10.2013 (Annexure-P-9), passed by respondent No. 3, ordering recovery of loss caused by the petitioner on the basis of inquiry report dated 31.12.2004 (Annexure-P-1). Also challenged in the present writ petition is to the order dated 17.10.2014 (Annexure-P-18), passed by the appellate authority, whereby the appeal of the petitioner was dismissed. Mandamus is also sought for direction of release of all the terminal/retiral benefits with effect from 2.11.2001 when the resignation of the petitioner was accepted alongwith interest at the rate of 24% per annum. The petitioner also seeks the quashing of the inquiry report dated 31.12.2004 (Annexure-P-1).

CWP No. 1850 of 2015 (O/M)

The brief facts of the case are that the petitioner was working as a Milk Procurement Assistant with effect from 12.3.1980. He submitted voluntary resignation on 27.10.2001 with effect from 2.11.2001. The petitioner thereafter despatched another letter dated 31.10.2001 withdrawing the resignation. The petitioner claims that the said letter was received in the office of respondent No. 3 on 1.11.2001 i.e. before the date the resignation was to become effective, but the same has been shown to have been received on 5.11.2001. The petitioner also claims that vide ante dated order, his resignation was accepted with effect from 2.11.2001. The petitioner filed a civil suit against the order accepting his resignation. His civil suit as well as appeal have been dismissed and now RSA No. 518 of 2006, titled as Baljeet Singh Versus Managing Director, Haryana Dairy Development Cooperative Federation, Chandigarh, is stated to be pending. The said controversy is not an issue before this Court. The petitioner claims that his retiral benefits were not released for about 12 years. He claims that after his resignation was accepted with effect from 2.11.2001, he was served with a chargesheet on 16.1.2002 for causing loss to respondent-department. The inquiry officer was appointed, who submitted the inquiry report on 31.12.2004 (Annexure-P-1) Thereafter, no action was taken on the said inquiry report. Thereafter, the petitioner served a legal notice dated 5.6.2013 (Annexure-P-5) upon respondents, claiming the release of leave encashment, gratuity, salary for October, 2001 and part of November, 2001, remitted amount to LIC, Karnal, pension payable under the EPF Pension Scheme alongwith interest. Thereafter, the petitioner filed CWP No. 17984 of 2013, titled as Baljeet Singh Versus Haryana Dairy Development Co-operative Federation Limited and others, before this Court, which was disposed of by Single Bench, vide

CWP No. 1850 of 2015 (O/M)

order dated 19.8.2013 (Annexure-P-6), directing respondent No. 2 to decide the legal notice dated 5.6.2013 within a period of three months after receipt of certified copy of the order. It was thereafter that respondents issued a show cause notice dated 11.10.2013 (Annexure-P-8), intimating him that in the inquiry report submitted on 31.12.2004, he was held guilty of the charges mentioned in the show cause notice and that he has caused loss to the tune of Rs. 1,04,955.57 and why the said loss be not recovered from him ? Vide order of the same date i.e. 11.10.2013 (Annexure-P-9) and after withholding the said financial loss, the balance amount of gratuity was ordered to be released. Against the said show cause notice, the petitioner submitted the reply dated 30.10.2013 (Annexure-P-10). Thereafter, in compliance with the order passed by this Court in CWP No. 17984 of 2013, the speaking order dated 20.11.2013 (Annexure-P-11) was passed, whereby the claim made in the legal notice dated 5.6.2013 was declined. Vide orders dated 21.11.2013 (Annexures-P-12 and P-13), passed separately, the sanction was granted for release of leave encashment to the tune of Rs. 53,092/- and gratuity to the tune of Rs. 1,36,645/-. Regarding the departmental proceedings, order Annexure-P-14 was passed on 21.11.2013 itself, whereby the loss to the tune of Rs. 1,04,955.57 caused to respondent-organization was ordered to be recovered from the terminal/retiral benefits of Baljeet Singh (petitioner). Thereafter, the petitioner preferred an appeal (Annexure-P-16) against the said orders, which was dismissed, vide impugned order dated 17.10.2014 (Annexure-P-18). The petitioner claims that the inquiry could not be held against him after he has submitted resignation and that the inquiry is also illegal. He seeks the quashing of the inquiry report. He also claims that the financial

CWP No. 1850 of 2015 (O/M)

loss is illegal and that he is entitled to all the terminal benefits alongwith interest, which were released only after 12 years of his retirement.

In the written statement, respondents have taken the stand that the resignation of the petitioner dated 27.10.2001 was accepted to be effective from 2.11.2001. At the time of tendering resignation, a preliminary inquiry was underway for certain acts of omission and commission committed by the petitioner. Therefore, on the basis of preliminary inquiry, a chargesheet was served upon the petitioner, vide memo dated 16/18.1.2002. The petitioner filed the reply to the same, which was found unsatisfactory and a departmental inquiry was conducted, in which he was found guilty of causing financial loss to respondent-department to the tune of Rs. 1,04,955.57. On the basis of said inquiry report, it was decided to recover the loss from the retiral benefits, vide Headquarters letter No. 9589, dated 27.3.2008. It was also stated that the petitioner had challenged the letter dated 31.10.2001, vide which his resignation was accepted. His civil suit was dismissed and his appeal was also dismissed. The RSA is stated to be pending before this Court. The filing of the previous writ petition and passing of the impugned orders of recovery of loss is not denied. Respondents have justified their action.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

Admittedly, the resignation of the petitioner was accepted with effect from 2.11.2001. The petitioner had filed a civil suit, but it is not claimed by either party that there was stay on the order of acceptance of resignation. Therefore, the resignation became effective from 2.11.2001. The petitioner raised two legal questions; first is that under the relevant

CWP No. 1850 of 2015 (O/M)

rules, the inquiry could not be initiated against a retired employee and secondly, the inquiry report shows that it is based on no evidence and is a sort of ex-parte inquiry and without examining any record, the conclusions have been drawn. Therefore, the inquiry report is liable to be quashed. The third ground pressed is that though the inquiry report was submitted way back in the year 2004, but respondents remained mum and only when the petitioner served a legal notice and moved to this Court and this Court, vide order dated 19.8.2013 (Annexure-P-6), passed the order to decide the legal notice within a period of three months from the date of receipt of certified copy of the order, only then respondents suddenly woke up. They dug up the previous inquiry and issued a show cause notice to the petitioner on 11.10.2013 and even before passing the formal order, they withheld the estimated amount of loss, vide order dated 11.10.2003 (Annexure-P-9), which is the date of issuance of show cause notice. However, after obtaining the reply dated 30.10.2013 (Annexure-P-10), the order was passed on 21.11.2013 (Annexure-P-11), whereby it was decided to recover the financial loss. It is contended that the inquiry report was dug up after 9 years only in response to the legal notice dated 5.6.2013 (Annexure-P-5), served by the petitioner upon respondents, seeking release of his retiral benefits and that such order is illegal.

Firstly, I will come to the legal point whether the inquiry could be initiated against the petitioner under the rules applicable to the services of the petitioner? Admittedly, the petitioner is governed by the Haryana Dairy Cooperative's Staff Service Rules, 1988 (in short 'Rules of 1988'). The inquiry report shows that the action was probably taken under Rules 47 and 48 of the Rules of 1988. Regarding application of the rules, the perusal of

CWP No. 1850 of 2015 (O/M)

Rule 1.3 of Rules of 1988 shows that these rules are applicable to the employees of Haryana Dairy Development Cooperative Federation Ltd. and those of the District Milk Producers Cooperative Unions, which are members of the former and have adopted these rules. Further Rule 46 of the Rules of 1988 points out the minor misconduct and Rule 47 of the Rules of 1988 points out the major misconduct. In Rule 47 of the Rules of 1988, the major misconducts are enumerated, which refer to the employees of respondent. Rule 48 of the Rules of 1988 deals with the penalties and the same is reproduced as under :-

“48.1 Notwithstanding anything contained in any other regulation and without prejudice to such action to which an employee becomes liable under any other law or regulation for the time being in force, the following penalties may be imposed for good and sufficient reasons on any member of the service.”

The said rule shows that an employee can be imposed with the penalties mentioned in Rule 48 of the Rules of 1988, which are minor and major penalties.

In the present case, the minor penalty mentioned in clause (d) was imposed for recovery of pecuniary loss caused to respondents. Rule 48.3 of the Rules of 1988 deals with the procedure, which is reproduced as under :-

“48.3 (a) No disciplinary action shall be initiated against an employee unless the charge(s) on which it is proposed to take disciplinary action against him have been communicated in writing and he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.”

It also deals with an employee. Therefore, on the strength of

CWP No. 1850 of 2015 (O/M)

the abovementioned provision, the learned counsel for the petitioner has argued that minor and major penalties could be imposed only against an employee. There is no provision in the rules for imposing any punishment on an ex-employee. Since the petitioner stood retired with effect from 2.11.2001, therefore, he being an ex-employee could not be served with a chargesheet on 16.1.2002 after his retirement and his retiral benefits could not be withheld on the ground that the chargesheet has been served upon him. In the inquiry report (Annexure-P-1), the charges levelled against the petitioner were as under :-

- “1. That you are guilty of negligence in supervision resulting into manipulation of Fat/SNF at Society level/Transporter level while working as route Incharge of Kunjpura route during your stay in Milk Union thereby violation of Rule 47.1 of Haryana Dairy Coop. Staff Services Rules 1988.
2. That you are guilty of violation of Coop. System by running one man society and releasing of cash payment to the societies which are not in existence causing loss Rs. 1,04,955.57 thereby violation of rule 47.1 A of the Haryana Dairy Coop./Staff Service Rules, 1988.
3. That you are guilty of claiming wrong TA thereby violation of Rule 47.31 of the Haryana Dairy Coop. Staff Service Rules, 1988.”

It is stated that the inquiry report is sketchy. For holding the petitioner guilty, just the charges have been repeated and without discussing the documents and the facts, it has been held that the petitioner manipulated Fat/SNF at Society level/Transporter level while working as route Incharge of Kunjpura route and that he released cash payment to the societies, which were not in existence without recording that such milk was received.

CWP No. 1850 of 2015 (O/M)

Regarding the claim of wrong TA, it has not been discussed when the petitioner infact violated the rules and made wrong claim of TA. The impugned order of punishment shows that apparently on account of charge No. 2, the recovery of Rs. 104955.57 has been ordered.

Further the learned counsel for the petitioner has argued that his retiral benefits have been withheld approximately for 12 years and the inquiry was dug up only after this Court ordered in the earlier writ petition to decide the legal notice of the petitioner dated 5.6.2013 within three months from the date of receipt of certified copy of the order and thereafter the show cause notice dated 11.10.2013 (Annexure-P-8) was issued after 9 years of the submission of the inquiry report and the punishment order was passed, for which respondents had already made up their mind to recover the financial loss.

On the other hand, the learned counsel for respondents has argued that for the financial loss, the recovery could be effected. He has justified the withholding of retiral benefits stating that it can be withheld as the petitioner has challenged his resignation before the Civil Court and that a chargesheet was pending against him.

Now, coming to the first point as to whether the inquiry could be initiated against a retired employee ? The learned counsel for respondents has submitted that though in the rules, there is no provision to take action against the retired employees or ex-employees, however, the learned counsel for respondents has relied upon Rule 66 of the Rules of 1988, which is reproduced as under :-

“Rule 66. Saving

66.1 Where these rules are silent, the provisions of Civil Services Rules and instructions of Government Applicable to

CWP No. 1850 of 2015 (O/M)

Government employees shall apply to the employees covered by these rules.”

The perusal of the aforesaid rule shows that where the rules are silent, the provisions of Civil Services Rules and instructions of the Government, applicable to Government employees, shall apply to the employees covered by these rules. The word 'employees' itself has been defined in Chapter-I Rule 2 (x) of the Rules of 1988, which is reproduced as under :-

“Rule 2 (x) “Employees” includes all salaried persons appointed either on adhoc basis or temporarily or permanently and shall also include persons appointed; as casual workers, apprentice or Probationers.”

The definition of 'employees' shows that the said definition does not include the retired or ex-employees, who have already resigned from service. Therefore, if Rule 66 of the Rules of 1988 is read in the light of the definition of the employees, reproduced above, it comes out that the Punjab Civil Services Rules will apply to the existing employees and not to the retired employees, who have already resigned from service.

Now, it appears that respondent-department itself bungled in the matter. When respondent-department suspected in the preliminary inquiry that something is going on against the petitioner and he resigned from service without submitting one month's salary, as required under the rules, his resignation should have been rejected. However, in place of rejecting the same, it was accepted and despite the plea of the petitioner that he wants to withdraw his resignation, respondent-department insisted that the resignation has been accepted, regarding which the litigation is still pending. Therefore, I am of the view that under the said Rules of 1988, no

CWP No. 1850 of 2015 (O/M)

departmental proceedings could be initiated after the employee has already resigned from the service. Therefore, the initiation of departmental proceedings itself is illegal and contrary to the Rules of 1988, applicable to the petitioner when he was in service.

Now, coming to the delay part, undisputedly, the petitioner was chargesheeted on 16.1.2002 i.e. after two months of his retirement. The inquiry officer submitted the report on 31.12.2004. Thereafter, respondent-department went in silent mode and did not proceed to accept the inquiry report, nor issued a show cause notice to the petitioner.

The learned counsel for respondents states that Surcharge proceedings under Section 101 of the Haryana Cooperative Societies Act, 1984, were initiated against the petitioner, which were completed in the year 2005, in which it was decided to recover the loss.

However, I am of the view that since in the inquiry itself, it was held that the petitioner is responsible for the loss, therefore, no further proceedings were required to be initiated, as done by respondent-department. Even after year 2005, respondent-department remained silent. It was only when this Court, vide order dated 19.8.2013, passed in CWP No. 17984 of 2013, directed respondent-department to decide the legal notice of the petitioner dated 5.6.2013 that the department dug up the inquiry and issued a show cause notice to the petitioner on 11.10.2013 and passed the impugned order of recovery on 21.11.2013 i.e. within three months of the receipt of certified copy of the order dated 19.8.2013, passed by this Court in CWP of 17984 of 2013. Apparently, this was done to justify their action of withholding the retiral benefits of the petitioner without passing any order to that effect.

CWP No. 1850 of 2015 (O/M)

The learned counsel for respondents states that no order was passed under the impression that regarding the civil suit challenging the acceptance of resignation, the RSA was pending before this Court.

However, the petitioner failed to get any relief in the civil suit and appeal filed, respectively, before the lower Court and the appellate Court and there was no stay order from this Court in the RSA filed against the orders of the lower Court as well as lower appellate Court. Therefore, the pendency of RSA before this Court appears to have been used as an excuse for withholding all the retiral benefits and not to pass any order and not to complete the inquiry proceedings. In such circumstances, respondent-department should take action against his own employees, who did not take any action for 9 years on the inquiry report and fix the responsibility. It is now a stale inquiry, which was against the rules and under which no action could be taken since it is found that no action can be taken against the retired or ex-employees.

Now, coming to the merits on findings of the inquiry report, the punishment order shows that recovery of Rs. 1,04,955.57 is sought to be recovered from the petitioner only on account of charge No. 2, which is regarding releasing of cash payment to one man society in violation of rules of the Society. The perusal of the inquiry proceedings shows that it mainly relied upon the statement of respondent that the milk was being lifted from Dera Bhoop Singh to Dera Garhpur by one person and that some animals of Dera Bhoop Singh were shifted to Garhpur Dera. However, this will not prove that there was one man society. For proving one man society, the record was required to be considered whether any society was in existence or not and whether there was one man society or multi member society.

CWP No. 1850 of 2015 (O/M)

Regarding manipulation of Fat/SNF, respondent-department never claimed that the petitioner himself converted the raw milk into cow milk, so as to manipulate the Fat/SNF. The petitioner had put the blame on the transporter. The inquiry officer without examining the records and without examining the contents of milk held that charge No. 1 is proved. Infact, the burden of proof was on respondent-department, but the inquiry officer merely drew his own conclusion on the basis of questions put to the defaulting employee. Therefore, on merits also, I find the inquiry report as tainted.

In view of the foregoing discussion, the present writ petition is allowed. The impugned orders dated 20.11.2013, 21.11.2013 and 11.10.2013 (Annexures-P-11, P-14 and Annexure-P-9 respectively) are hereby set aside. The inquiry report dated 31.12.2004 (Annexure-P-1), punishment order dated 17.10.2014 (Annexure-P-18) are also hereby quashed. A sum of Rs. 1,04,955.57 recovered from the arrears of the petitioner are ordered to be refunded to him with interest at the rate of 9% per annum alongwith the remaining arrears, which were withheld illegally by respondent-department. The petitioner shall be entitled to interest at the rate of 9% per annum, starting three months from the date of his resignation till the date of payment.

(KULDIP SINGH)
JUDGE

5.5.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes