216 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26728 of 2014 (O&M)
Date of decision : 24h January, 2017

Gurinder Singh .... Petitioner

Versus

Punjab Agro Industries Corporation (PAIC) Ltd. ...... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.P.Rana, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for the respondent.

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KULDIP SINGH J. (ORAL)

The petitioner was working as Executive with the Punjab Agro Industries Corporation Ltd. (PAIC). He retired from service on 31.07.2012. After his retirement, a charge-sheet was issued on 17.08.2012. The Enquiry Officer was appointed, who recorded the findings against the petitioner. Consequently, a show cause notice was issued to the petitioner and thereafter, the impugned order dated 10.11.2014 (Annexure P-8) was passed, vide which, recovery of Rs.14,04,05,831/- was ordered to be recovered from the petitioner. The petitioner has challenged this order on the ground that under the service rules applicable to him, he could not be charge-sheeted after his retirement and such a penalty could not be imposed.

The respondent on the other hand has taken the stand that under Clause 34 of the Standing Order, the appeal lies before the Chairman of the Corporation and the petition is, therefore, premature. It is further stated that service condition of the petitioner are governed under the Punjab Agro Industries Corporation Ltd. in Recruitment and Promotion Rules 1991. Rule 13 of the said Rule of 1991, provides that the petitioner is liable to disciplinary action not only under the Standing Orders as relied upon by the petitioner, but the Punjab Civil Services Rules are also applicable. It is stated that under Punjab Civil Services Rules 2.2 (b), Chapter-I, Vol-II, the department is competent to initiate the departmental proceedings after the retirement of the employee provided that the event did not take place more than four years before the institution of such proceedings.

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

Rule 13 of the Rules of 1991 is reproduced as under:-

> *"13.Discipline, Penalties and Appeals:*
>
> *The employees so appointed by direct recruitment or department promotion shall be liable to disciplinary action as per the provisions of the certified Standing Orders of the Corporation and as per Punjab Civil Services Rules."*

It shows that for the purpose of disciplinary proceedings in the Standing Order, Punjab Civil Services Rules are applicable.

Clause 34 of the Standing Order provides that the Appointing and Punishing Authority will be the Managing Director and Chairman of the Corporation shall be the appellate authority. Learned counsel contends that after filling of the written statement now the rules have been amended and now the appellate authority is the Board of Directors.

Rule 2.2(b) 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 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 service including service rendered on 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 rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service.

(2) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment,:-

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

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

(iii) shall be conducted by such authority and at such place or places as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made;

(3) such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his employment, shall be instituted in respect of an event as is mentioned in Clause (ii) of proviso (2); and

(4) The Public Service Commission shall be consulted before final orders are passed.

Explanation- For the purpose of this rule-

(1) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been instituted-

(i) in the case of criminal proceedings, on the date which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court;".

Now, the original charge-sheet shows that the allegations were leveled against the petitioner regarding being negligent in discharge of his duty and due to his negligence after release of some wheat for the year 2008-2009, 2009-2010, and 2010-2011 to FCI, loss to the tune of ₹79,48,12,246/- has been suffered by the Corporation. It is not disputed that the job of the petitioner is not pensionable. Rule 2.2 (b) relied upon by the respondent to initiate the proceedings, shows that under the said rule, the Government after holding an inquiry, can order to withdraw the pension or part of it, permanently or for a specified period. Since the job of the petitioner is not pensionable, no recovery from the pension can be made from it.

Learned counsel for the respondent states that on the basis of report of the inquiry, the respondent will file a civil suit.

I am of the view that holding a inquiry to fix the liability is one thing and passing the punishment order under a particular rule is another thing. Since, the order of recovery could not be passed under rule 2.2 (b), as the job of the petitioner is not pensionable, therefore, the impugned order 10.11.2014 (Annexure P-8) is set aside only to the extent of imposing the recovery. However, it shall always be open to the respondent to rely upon the inquiry report and file a civil suit for recovery, subject to various provisions of the law including limitation.

Petition is accordingly, partly allowed.

(KULDIP SINGH)
JUDGE

24th January, 2017
hemlata

Whether speaking / reasoned	Yes
Whether Reportable	No