

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

CWP No. 3669 of 2015 (O&M)

Date of Decision: 16.05.2017

SATISH KUMAR GUPTA

... Petitioner

V/s.

***HARYANA STATE FEDERATION OF CONSUMER'S COOPERATIVE
WHOLESALE STORES LTD.***

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Jatinder Nagpal, Advocate,
for the petitioner.

Mr. Aseem Rai, Advocate,
for the respondent-CONFED.

KULDIP SINGH, J. (Oral)

Brief facts of this case are that the petitioner retired as Assistant Manager, Confed, District Office, Jind, on attaining the age of superannuation on 29.02.2012 in terms of retirement order dated 09.02.2012 (*Annexure P-1*). After his retirement, he was served with a charge-sheet dated 23.08.2012 (*Annexure P-3*) levelling some allegations of negligence in performance of his duties and causing a loss to the wheat stock by hiring a plinth which was low from the back side than the front side and some wheat was damaged due to heavy rain. In the enquiry, petitioner was found guilty and subsequently, punishment order dated 07.07.2014 (*Annexure P-5*) was passed under Regulation 26.1 of the Staff Service Rules, 1975 of the Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited (*herein after referred as "Service Rules, 1975"*) whereby, 10% of the total loss i.e. a sum of ₹4,31,314/- was ordered to be recovered from the petitioner. The petitioner has challenge the said order as a illegal.

The respondent in its reply have supported the charge-sheet and stated that due opportunity was given to the petitioner and the orders has been passed in accordance with the Service Rules. It was also stated that the petitioner was served with charge-sheet under rule 26.1 of the Service Rules, 1975. Further plea was taken that no departmental appeal against this said order has been filed by the petitioner.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

The law-point raised by the learned counsel for the petitioner before this court is that the services of the petitioner were governed by the Service Rules, 1975. He was charge-sheeted under Rule 26.1 of the said Service Rules. Rule 26.3 deals with the penalties for misconduct and Rule 26.4 deals with the penalties for minor misconduct. The bare perusal of the penalties in the above noted Rules shows that these pertained to the serving employees only. The matter has already been examined by 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 there is no provision in the Service Rules, 1975 for charge-sheeting/punishing the retired employee of the respondent department.

Learned counsel for the respondent was asked to point out whether there is any rule under the Service Rules, 1975 that governs the serving of charge-sheet or imposition of punishment upon the retired employees? In response thereto, learned counsel for the respondent conceded that there is no such Rule in the Service Rules, 1975. Therefore, the impugned

order dated 06.01.2015 (*Annexure P-10*) is liable to be set aside. Since, the impugned order of charge sheeting a retired employee is itself illegal, therefore, no departmental-enquiry was required to be initiated.

It being so, the writ petition is allowed and the impugned order dated 06.01.2015 (*Annexure P-10*) is ordered to be set aside being contrary to the Service Rules, 1975. The recovery, if any, made from the petitioner, is ordered to be refunded to him alongwith interest @ 9% per annum.

Before imparting with the judgment, it is disheartening to know that CONFED, despite being aware of the fact that some of its employees commit misconduct during the service for which they are charge-sheeted during the service, and for one or the other reasons, the enquiry is prolonged beyond the date of retirement of the employees. In some cases, preliminary formalities are completed only after the retirement and then the employees are required to be charge-sheeted. Unluckily, under the Service Rules, 1975, there is no provision to charge-sheet and punish a retired employee, with the result that the employee who commit misconduct or cause loss to the CONFED, go scot free. The CONFED should be aware about such lacuna in the said Service Rules, 1975. It appears that CONFED itself is a party to such misdeeds of the employees and deliberately omitted to frame/amend such Rules. This is nothing but hands-in-gloves of the CONFED with the delinquent employees.

Learned counsel for the respondent has also informed that since, the CONFED is in winding-up process, therefore, it may not be possible to amend the Service Rules.

I am of the view that when there is such a serious lapse on the part of the CONFED, it is the need of the hour to stop the fate of CONFED in running into losses and winding-up, therefore, the appropriate authority i.e.

Registrar, Co-operative Societies, Haryana shall examine the entire matter and find out that if the said Service Rules, 1975 are deliberately not being framed/amended, if so, then as to who are responsible for the same.

May 16, 2017

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

<i>Whether speaking / reasoned</i>	:	✓ Yes	/	No
<i>Whether Reportable</i>	:	✓ Yes	/	No