

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1485 of 2016 (O&M)

Date of Decision: 06.03.2017

State Federation of Consumer Cooperative
Wholesale Stores Ltd. (Confed)

... Appellant

VS.

Ish Pal Singh & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. Pankaj Jain, Advocate for the appellant

Mr. AK Khubbar, Advocate for respondent No.1

Mr. Rajesh Bhardwaj, Addl. AG Punjab

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal is directed against the order dated 28.01.2016 whereby learned Single Judge allowed the writ petition filed by respondent No.1 and has quashed the show cause notice of recovery issued to him after his retirement.

(2) The first respondent served the appellant-Federation as Store Keeper for 34 years before retirement on attaining the age of superannuation w.e.f. 31.10.2012. He was charge-sheeted on 06.06.2013 after his retirement leveling allegations of negligence in the performance of duties and thereby causing financial loss to the Federation. The first respondent submitted his reply which was not found satisfactory. Thereafter enquiry was held in which the respondent was exonerated but after recording a note of disagreement, the punishment of recovery of ₹ 13,80,429/- was imposed on him. He challenged the above-stated order primarily on the ground that no charge-sheet could be served after his retirement as there was no relationship of master and servant was subsisting thereafter.

(3) Learned Single Judge has allowed the writ petition mainly on the strength of an earlier decision of this Court dated 22.05.2013 passed in **CWP No.15247 of 2011 (S.C. Jain vs. Managing Director, Haryana State Federation of Consumers Co-op Wholesale Stores Ltd. & Anr.)**. The said decision also pertains to the appellant-Federation. There also the employee was subjected to punishment after his retirement. This Court held that the Federation was not competent to take disciplinary action against a retired employee.

(4) In the instant appeal, the Federation places reliance on Rule 60 of the Staff Service Rules of Confed to contend that under the afore-stated Rule, the appellant-Federation is entitled to withhold or withdraw the retiral benefits or any part thereof in pursuance to the order of recovery from retiral benefits *“if the retiree is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to Confed by misconduct or negligence during his service...”*.

(5) The above-stated Rule concededly came into existence w.e.f. 25.04.2013 i.e. much after the retirement of first respondent. There was earlier no such provision in the service Bye-laws under which the appellant-Federation could either charge-sheet the first respondent or effect any recovery from his retiral benefits. In the absence of express power to this effect, the view taken by this Court in **S.C. Jain’s** case (supra) which has been followed by learned Single Judge in the order under appeal, cannot be faulted with.

(6) For the reasons afore-stated, we do not find any merit in this appeal which is accordingly dismissed.

(7) The appellant-Federation is directed to release the retiral dues of the first respondent within a period of two months from the date of receipt of certified copy of this order.

(8) Ordered accordingly.

(Surya Kant)
Judge

06.03.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No