IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2598-2004
Date of decision: March 20, 2018

Punjab State Electricity Board, Patiala and others ....Appellants

Versus

Gurjit Singh (deceased) through LRs ....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. S.S. Siao, Advocate
for the appellants.

Mr. S.K. Arora, Advocate
for the respondents.

RAJ SHEKHAR ATTRI, J.

Plaintiff-Gurjit Singh (respondent herein) was working as Junior Engineer and retired from service on 31.05.1995 on attaining the age of superannuation.

On 10.01.1995 a show cause notice was issued to him with regard to the misappropriation of an amount of Rs.19,89,117/- and he was asked to explain his position. Thereafter, without conducting an enquiry, the Chief Engineer (Operation) South vide his office order dated 25.05.1995 imposed a penalty of Rs.19,89,117/- upon the plaintiff. However, after his retirement, he was informed by office order dated 11.02.1997 for modifying previous order dated 25.05.1995. The allegations of plaintiff was again asked to submit the reply within seven days with regard to the misappropriation for an amount of Rs.5,36,408.80. No enquiry was conducted this time nor any permission was obtained from the competent authority under the provisions of Rule 2.2 (b), Volume II, Chapter 2 of the Punjab Civil Services Rules (in short 'Rules') and it was ordered that this amount of Rs.5,36,408.80 may be recovered from the plaintiff. Plaintiff was not given his retiral benefits after his retirement till filing of the suit.

Suit has been contested, *inter alia* that the plaintiff had withdrawn an amount of Rs.19,89,117/- between the period from 01.12.1990 to 23.07.1993 for carrying out different works but he failed to account for the same therefore, vide order dated 25.05.1995 it was ordered that this amount of Rs.19,89,117/- be recovered from the plaintiff. However later on, plaintiff produced the accounts but he could not account for an amount of Rs.5,36,408.80, therefore, criminal case was registered against him qua this amount. It is further asserted by defendants that plaintiff was not entitled to pension, gratuity, leave encashment, GPF etc. as recovery of more than Rs.16.85 lacs is outstanding against him and the plaintiff even did not submit proper forms for settlement of the GPF. However, it is not disputed that plaintiff retired from service on 31.05.1995 i.e. on attaining the age of superannuation. Remaining averments to the plaint have been denied.

After considering the pleadings and the evidence, the trial Court framed the following issues: -

1. Whether the plaintiff is entitled to the fixation of pay after release of annual increments and one increment each after completion of eight years and 18 years of service?OPP
2. Whether the plaintiff is entitled to the release of pension and other retirement benefits including G.P.F. , gratuity, leave encashment etc.? OPP

3. What is the effect of non-exhausting of departmental remedies?OPD
4. Whether the suit is barred by the act and conduct of the plaintiff? OPD
5. Whether the suit is not maintainable in the present form?OPD
6. Whether this court has no jurisdiction to try the present suit? OPD
7. Whether the plaitiff has not come to the court with clean hands as he has misappropriated material of the board worth Rs.5,36,408.80 and many other amounts as alleged, if so to what effect?OPD
8. Whether the suit is not valued correctly for the purpose of court fee and jurisdiction? OPD
9. Whether the plaintiff is entitled to the mandatory injunction?OPP
10. Relief.

Learned trial court has afforded adequate opportunities to both the parties to adduce evidence. On appreciation of evidence the suit was decreed.

The defendant have preferred first appeal which was also dismissed.

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

In this case the following facts are not in dispute:-

a) Plaintiff retired from service on 31.05.1995 from the post of Junior Engineer.

b) After his retirement, fresh notice was issued to him on 11.02.1997 for submitting explanation with regard to an amount of Rs.536408.80

c) No notice or charge-sheet has been submitted to the plaintiff nor any enquiry was conducted with regard to this amount of Rs.536408.80.

The claim of plaintiff is acceptable mainly on two grounds; firstly, no enquiry was conducted with regard to embezzlement or no refund of said amount of Rs.5,36,408.80; and secondly, Rule 2.2 (b) of the Rules requires that if after retirement any disciplinary action be taken against a retired employee then sanction of the competent authority be obtained but no sanction has been obtained in the case in hand.

Undisputedly, plaintiff retired from service on 31.05.1995. At that time a charge sheet was issued to him for embezzlement of an amount of Rs.19,89,117/- but said order was withdrawn and therefore, fresh notice was issued for explaining shortage of Rs.5,36,408.80. It was mandatory on the part of the appellants to issue show cause notice with regard to embezzlement of this amount.

Rule 2.2(b) of the Rules is savior to the retired government employees from harassment of the departmental proceedings. This rule reads as under:-

> "2.2 (a) xxxx
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> 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, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon 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 article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service; (2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment– (i) shall not be instituted save with the*

> *sanction of the Government; (ii) shall not be in respect of any event which took place more than four years before such institution; and (iii) shall be conducted by such authority and in such place 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 in relation to the officer during his service. (3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and The Public Service Commission should be consulted before final orders are passed. Explanation.–For the purpose of this rule– (a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and (b) a judicial proceeding shall be deemed to be instituted-*
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> *(i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and (ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.*
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> ***Note:–****As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance."*

Thus, a bare perusal of the Rule (supra) transpires that if departmental disciplinary action is required to be taken against a retired government employee then prior sanction is to be required from the government. Undisputedly, in this case, the disciplinary action with regard to non-accounting of Rs.5,36,408.80 has been initiated after his retirement and no sanction has been obtained from the government. Therefore, action on the appellants is bad in the eyes of law and is not sustainable.

Viewing from all the angles, this court is of the opinion that ordering the recovery of Rs.5,36,408.80 after retirement of the plaintiff-respondent is illegal and unauthorized and not binding upon the plaintiff. Thus, he is entitled to all retiral benefits as observed by learned trial court.

On the independent appraisal of the evidence, this court is of the opinion that the findings and observations of the courts below are based upon proper appreciation of evidence and they do not call for interference as such, the same are upheld. No other point is urged before me nor cropped up during the course of arguments.

As a result, this appeal is devoid of any merit, the same is hereby dismissed with costs and judgments as well as decrees of the courts below stand upheld. However, the defendants/appellants are at liberty to act in accordance with law with regard to recovery of the amount.

(RAJ SHEKHAR ATTRI)
JUDGE

March 20, 2018
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No