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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3282-2016

Date of Decision : October 31, 2018

D.K.Kaushal

.... Petitioner.

Versus

Punjab State Warehousing Corporation (PSWC) .

.... Respondent.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Mr. Tarun Sethi, Advocate,
for Mr. Sumit Jain, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing show cause notice dated 30.3.2015 (Annexure P/4) issued by the respondent-Corporation in violation of Rule 2.2(b) of the Punjab Civil Services Rules, Volume II, Part I for recovery of Rs.1,30,734/- on account of less storage gain in wheat stocks delivered from State Warehouse against Crop year 1995-96 and 1997-98.

2. As per the petitioner, he retired from the respondent Corporation as Additional District Manager on 30.11.2006 on attaining the age of superannuation. After retirement, the petitioner was issued

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different charges sheets and the impugned charge sheet and show cause notice on the basis of that is fifth one. The earlier three charge sheets were challenged by way of CWP-3312-2009 and CWP No.10042 of 2013 and vide orders dated 20.1.2010 (Annexure P/1) and 20.8.2014 (Annexure P/2) the same were quashed. The petitioner is aggrieved of not releasing his pension which has been withheld on account of charge sheet and show cause notice. As per learned counsel for the petitioner, the same has been issued in violation of Rule 2.2(b) of the Punjab Civil Services Rules, Volume II, Part I (for short, "the Rules").

3. In the reply filed by the respondents and affidavit having been filed by the Managing Director of the Corporation dated 29.05.2018, plea was taken that there were total five charge sheets issued to the petitioners and out of them, three have been quashed by this Court vide orders, Annexure P/1 and P/2, but the petitioner was not issued charge sheet twice for the same lapse. All these charge sheets have been issued to the petitioner for different lapses. As per the respondents, wheat tends to gain weight during storage and for this purpose, norms were notified/fixed and in case of less storage, concerned employee was responsible for maintenance of the said stocks and charge sheets were issued accordingly. Present fifth charge sheet, dated 30.3.2015 was for less weight gain in wheat and the total pecuniary loss is to the extent of Rs.1,30,734/- to the respondent-Corporation and the charge sheet is still pending.

4. As per the respondents, employees Union had filed CWP No.

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11967 of 2009 challenging the policy issued by Government of India dated 7.7.2006. The said writ petition was decided by this Court on 24.08.2012 and the employees had filed CWP No. 27725 of 2013 and this Court passed the following orders:-

"CM No. 7468 of 2014

Heard.

Application is allowed and Annexure P/25 is taken on record.

CWP-27725 of 2013

List again on 12.12.2014.

In the meantime, disciplinary proceedings may continue but final order be not passed."

5. The said writ petition was then taken up on 16.9.2015 and this Court passed the following order:-

" Further proceedings on charge-sheets issued to the employees of the Corporation, i.e. members of the petitioner-association, are ordered to be stayed till further orders by this Court, subject to the condition that such charge-sheets are solely based on infringement of the norms fixed by the FCI. If they are based on infringement of norms fixed as per statutory regulations, there shall be no stay on further proceedings pursuant to issuance of such a charge-sheet."

The said order is still in operation.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the matter in controversy has already been decided by this Court in CWP-3312-2009 and CWP No.10042 of 2013 vide orders dated 20.1.2010 (Annexure P/1) and 20.8.2014 (Annexure P/2) while interpreting the ambit and scope of Rule 2.2(b) of the Rules, which is extracted below:-

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“2.2 (a) XX XX XX

(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 reemployment 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 shall be conducted by such authority and at 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.”

7. The validity of said rule was matter in controversy before Hon`ble Division Bench of this Court in **CWP No.10456 of 2007 – Raghibir Singh Vs. Punjab State Warehousing Corporation & another**, decided on 11.9.2008 and **L.B.Gupta Vs. Punjab State Electricity Board, 2001**

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(40 RSJ 127. In Baldhir Singh Vs. State of Punjab & others, 2008 (2)

ILR (Punjab & Haryana) 163, Hon`ble Division Bench of this Court observed as under:-

“6. A bare perusal of the aforementioned Rule makes it clear that Rules 2.2(b)(ii) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by afflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree. The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end. Moreover, the learned State counsel has not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner.”

8. In the light of view taken by Hon`ble Division Bench of this Court and the facts of the present case, there is no dispute that the petitioner herein had retired on 30.11.2006 and the charge sheet and show cause notice dated 30.3.2015 for recovery of Rs.1,30,734/- for less storage gain in wheat stocks were issued to him after his retirement. Such a

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recovery cannot be ordered.

9. In view of the above, the present writ petition is accepted and the show cause notice dated 30.3.2015 (Annexure P/4) issued by the respondent-Corporation for recovery of Rs.1,30,734/- on account of less storage gain in wheat stocks is quashed.

10. The writ petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 31, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes