

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19347-2015

Date of decision: - 25.09.2019

Darshan Pal Singh

....Petitioner

Versus

Haryana State Federation of Consumers Co-operative Wholesale
Stores Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Mohan Lal Singla, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the charge-sheet dated 09.01.2013 (Annexure P-1) as well as to the charge-sheet dated 12.09.2014 (Annexure P-5) and also to the subsequent proceedings, which have come into being in respect of the charge-sheet dated 12.09.2014 i.e. the impugned order which has been passed by the respondents on 30.06.2015 (Annexure P-10). The main ground for challenge is that the respondents have no authority to charge-sheet an employee, who has already retired, as no provision of law governing the service grants the respondents the power to charge-sheet a retired employee and therefore, any charge-sheet, which has been issued beyond jurisdiction, is liable to be quashed outrightly.

The facts stated in the writ petition are that petitioner was appointed as a Storekeeper on 27.02.1981 and he served the respondents on the same capacity till 31.03.2013. By the time the petitioner retired,

there was a charge-sheet, which was issued to him on 09.01.2013 (P-1), wherein, the allegations were made against him for giving less gain in the delivery of wheat stock to the FCI during the Rabi Season 2009 and 2010. Petitioner filed a reply to the said charge-sheet, but no action was taken by the respondents till the time he retired from service on attaining the age of superannuation on 31.03.2013. After the retirement, petitioner was served with another charge-sheet No.6913 dated 12.09.2014, wherein, the same allegations, which were earlier made in the charge-sheet dated 09.01.2013 (P-1), were alleged again. In the charge-sheet dated 12.09.2014 (P-5), it was mentioned that petitioner had given less delivery of the stock to the FCI during the Rabi Season 2009 till 2011. The petitioner gave the reply to the said charge-sheet and ultimately, the respondents passed an order dated 30.06.2015 (P-10) after holding an inquiry into the allegations, wherein, the charges alleged against the petitioner were proved and he was held responsible for causing financial loss of ₹7,14,156/- and order for recovering the said amount was passed.

The said order of punishment of recovery was passed on 30.06.2015 (P-10). After the said order was passed, petitioner has approached this Court challenging the charge-sheet dated 09.01.2013 (P-1) and charge-sheet dated 12.09.2014 (P-5) and the inquiry report dated 10.02.2015 (P-7) and also the impugned order for recovery of amount of ₹7,14,156/- dated 30.06.2015 (P-10).

The main thrust of the petitioner for challenging the charge-sheet is that on the day when the charge-sheet was served to him on 12.09.2015 (Annexure P-5), he had already retired from service and

therefore, there is no jurisdiction with the respondents to initiate any proceedings against a retired employee and in the absence of any power granted to the department to initiate disciplinary proceedings after retirement of an employee under the rules governing the service, the said act to be treated as without jurisdiction and the charge-sheet is liable to be set aside on this score. From the pleadings, it can be seen that the respondents have taken no action in respect of the charge-sheet dated 09.01.2013 (P-1) so far and impugned order dated 30.06.2015 (P-10) by which the punishment has been imposed upon the petitioner as it only relates to the charge-sheet dated 12.09.2014 (P-5).

Counsel for the respondents argues that impugned order dated 30.06.2015 (P-10), by which the recovery has been imposed upon the petitioner, is an appealable order and therefore, the present writ petition is liable to be dismissed. He further argues that reply on the merits on the allegations that petitioner was held guilty by the inquiry officer of the allegations of giving less gain while delivering the wheat stock to the FCI, due to which, the financial loss was caused, which has only been recovered from the petitioner and therefore, no fault can be found.

In the reply, the respondents have not mentioned any provision of law, which empowers the respondent-Federation to issue a charge-sheet to a retired employee. In the absence of any provision, it can be safely held that there is no provision with the respondents to initiate a departmental proceeding against a retired employee.

I have heard counsel for the parties and have gone through

the record with their able assistance.

The only question posed before this Court in the present writ petition is, as to whether, the charge-sheet dated 12.09.2014 (P-5), which has been issued to the petitioner after his retirement on 31.03.2013, was issued without jurisdiction or not?

The facts, which have been noted above, are not in dispute. Petitioner retired from service on 31.03.2013 and the charge-sheet was issued to the petitioner after his retirement on 12.09.2014 (P-5) after a period of 1½ years of his retirement. The retired employee can only be charge-sheeted in case there is a power with the employer under the rules governing the service and without the said power under the rules, once the master and servant relationship is over, the employee cannot be proceeded against departmentally for punishing a retired employee. After the retirement, a retiree cannot be treated as an employee so as to initiate disciplinary proceedings against him/her for any active inaction, which the employee has committed during the course of his service.

This question, with regard to the same respondent-Federation, had come up for consideration before 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 (Annexure P-11). In the said writ petition also, the charge-sheet was under challenge which was issued to the employee after his retirement. A Co-ordinate Bench after noticing the rules governing the service held that the respondent-Federation has no jurisdiction to issue a charge-sheet to a retired

employee as no rule governing the service permits the Federation to charge-sheet a retired employee and in the absence of any rules, the charge-sheet, which has been issued to the employee, are to be treated beyond the jurisdiction of the respondent-Federation and any punishment, which has been inflicted on the basis of the charge-sheet, which has been issued without jurisdiction, cannot be allowed to be sustained. The relevant portion of the judgment is as under: -

“A perusal of the aforesaid provisions clearly shows that the penalties, as provided for under the Rules, can be imposed only on an employee, who is drawing salary, either appointed on temporary or permanent basis. The penalties, which can be inflicted, show that the same are also of the kind which can be on an employee in service. None of the punishments, as extracted above, suggest that it can be imposed after an employee has retired from service.

The issue as to whether departmental proceedings, even if initiated against an employee during service, can continue after retirement was gone into by Hon'ble the Supreme Court in Chandra Singh's case (supra), wherein it was opined that in the absence of specific Rule to that effect and once an employee is permitted to retire, the proceedings cannot continue.

In view of my aforesaid discussion, once no provision in the Rules has been cited, in terms of which the proceedings against retired employee can be initiated, in my opinion, the action of the authorities in issuing charge-sheets to the petitioners after their retirement is without jurisdiction and is liable to be set aside. Ordered accordingly. Withheld retiral benefits of the petitioners be released within one month.

The writ petitions stand disposed of.”

The same question again came up for consideration before a Co-ordinate Bench of this Court in Jogi Ram Vs. Haryana State

Federation of Consumer's Co-operative Wholesale Stores, 2014(4)**PLR 460.**

Said writ petition was allowed while relying upon the judgment passed in **S.C. Jain's case (supra)** and the punishment imposed on the basis of the charge-sheet, which was issued after retirement, was set aside. The relevant portion of the said judgment is as under: -

7. On perusal of aforesaid provisions, it is clear that the penalties, as provided under the Rules, 1975, can be imposed upon an employee, who is drawing salary, either appointed on temporary or permanent basis. It is also clear that the penalty can be imposed only on an employee but after retirement, the petitioner cannot be termed as an employee and as such, no penalty can be inflicted upon him.

8. The issue as to whether the departmental proceedings can be initiated against an employee after retirement was gone into by Hon'ble the Supreme Court in **Chandra Singh vs State of Rajasthan and another 2003(6) SCC 545** and of this Court in **S.S. Arya vs Uttar Haryana Bijli Vitran Nigam, Panchkula and others 2009(8) SLR 53**.

9. It was held in the aforesaid judgments that in the absence of any specific Rule to this effect, no proceedings can be continued/initiated, once an employee is permitted to retire. Similar view was also held in the judgment of **S.C. Jain's case (supra)**.

10. In view of the facts and law position as mentioned above, it is clear that when there is no provision in the Rules as to the issuance of charge sheet or imposing a penalty upon an employee after retirement, the charge sheet issued to the petitioner is without jurisdiction and the same is liable to be set aside.

11. Accordingly, the present petition is allowed and the impugned charge sheet dated 12.09.2012 as well as the statement of allegations with the charge sheet dated 10.12.2012 are set aside. The respondents are directed to release the retiral benefits to the petitioner within a period of two months from the date of receipt of

certified copy of this order.”

Counsel for the respondents is unable to distinguish the case of the petitioner not being covered by law laid down in **S.C. Jain's and Jogi Ram's cases (supra)** in any manner qua the charge-sheet dated 12.09.2014 (Annexure P-5). Hence, keeping in view the settled principle of law settled by the Hon'ble Supreme Court in **S.C. Jain's and Jogi Ram's cases (supra)**, it is held that respondent-Federation has no power to issue the charge-sheet dated 12.09.2014 (P-5) to the petitioner after his retirement and same was issued by the respondents, which act was beyond their jurisdiction and accordingly charge-sheet dated 12.09.2014 is set aside. All the proceedings which have come into being in pursuance to the said charge-sheet including the inquiry report dated 10.02.2015 (P-7) as well the impugned order of punishment dated 30.06.2015 (P-10) are also liable to be set aside and are accordingly set aside.

With regard to charge-sheet dated 09.01.2013 (P-1), learned counsel for the petitioner states that the same cannot be permitted to continue and is liable to be set aside keeping in view the order passed by this Court in **S.C. Jain's case (supra)**. This Court while relying upon the judgment of Hon'ble Supreme Court in **Chandra Singh Vs. State of Rajasthan and another, 2003(3) SCT 694** and judgment of this Court in **S.S. Arya Vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others, 2009(8) SLR 53** has held that even the departmental proceedings though initiated against an employee during his service, cannot be allowed to continue after his/her retirement unless and until there is a

specific rule empowering the punishing authority to do so. In case there is no rule empowering the punishing authority to continue with the departmental proceedings after retirement of an employee, which were initiated during the service career of an employee, the proceedings are liable to be set aside.

Further, the said judgment is qua the same respondent-Federation and therefore, no argument can be accepted on behalf of counsel for the respondents about the jurisdiction of the Federation even to continue with the departmental proceedings after the retirement of employee especially when the said judgment i.e. **S.C. Jain's case (supra)** stands complied with by the respondents and has already attained finality.

Keeping in view the above, the present writ petition is allowed. Consequently, the charge-sheets dated 09.01.2013 (P-1) and dated 12.09.2014 (P-5) are set aside.

Counsel for the petitioner prays that a sum of ₹7,14,156/-, the recovery of which has been imposed upon the petitioner vide impugned order dated 30.06.2015 (P-10), has been withheld by the respondents out of the retiral benefits of the petitioner.

Let the said amount be released to the petitioner by the respondents within a period of one month from the date of receipt of certified copy of this order.

Present writ petition stands allowed in the above terms.

(**HARSIMRAN SINGH SETHI**)
JUDGE

September 25, 2019

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Whether reasoned/speaking?
Whether reportable?

Yes
Yes