IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6229 of 2018
DATE OF DECISION:05.12.2019

Baldev Singh Saini ... Petitioner

Versus

Haryana State Federation of Consumers' Co-operative Wholesale Stores Ltd.

... Respondent

CWP No.9868 of 2019 (O&M)

Dhan Singh ... Petitioner

Versus

Haryana State Federation of Consumers' Co-operative Wholesale Stores Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Dhiraj Chawla, Advocate
for the petitioner(s).

Mr. Harsh Aggarwal, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

By this order, the two writ petitions bearing CWP Nos.6229 of 2018 and 9868 of 2019, the details of which have been given in the heading, are being decided by this common order as both the writ petitons involve the same questions of law and similar facts.

For the purpose of this order, the facts are being taken from CWP No.6229 of 2018.

The grievance, which is being raised by the petitioner is that a chargesheet has been served upon the petitioner after his retirement and keeping in view the Rules governing the service, the respondent has no authority to initiate the disciplinary proceedings against a retired employee, hence chargesheet is liable to be set aside on the ground that respondent has no jurisdiction to serve a chargesheet to a retired employee.

As per the facts stated in the writ petition, the petitioner was appointed as General Manager in the respondent-Federation on 01.12.1979 and he continued working on the said post till he retired on attaining the age of superannuation on 31.05.2014. After his retirement, the petitioner was served with a chargesheet on 15.12.2017 under Rule 60 of the Staff Service Rules of the respondent-Federation.

While filing reply to the chargesheet, the petitioner raised a preliminary objection for holding the disciplinary proceedings against a retired employee on the ground that no Rule governing the service grants the power to the respondent-federation to initiate disciplinary proceedings against a retired employee and, therefore, the chargesheet has been issued upon the petitioner without jurisdiction.

The respondent initiated the disciplinary proceedings and appointed an inquiry officer and as the respondent decided to intiate the disciplinary proceedings, the petitioner preferred the present writ petition challenging the said chargesheet dated 15.12.2017 on the ground that the respondent does not have the jurisdiction to initiate the disciplinary proceedings against a retired employee.

While issuing notice of motion vide order dated 14.03.2018, the proceedings in respect of the chargesheet dated 15.12.2017 (Annexure P-3), were stayed.

The petitioner brought to the notice of the respondents that another chargesheet, which was also issued to the petitioner after his retirement on 05.08.2014, has already been set aside by this Court while deciding CWP No.22435 of 2014 on the ground that after the retirement, there is no power available with the respondent-federation to initiate the departmental proceedings against a retired employee.

Upon notice of motion, reply has been filed by the respondent-federation and it has been admitted that this Court had already set aside the chargesheet, which was issued to the petitioner in the year 2014 after his retirement vide order dated 04.10.2016 passed in CWP No.22435 of 2014. The issuance of the chargesheet has been defended on the ground that the petitioner misconducted himself during his service career due to which the Federation has suffered loss.

I have heard the counsel for the parties and have gone through the record of the case with their able assistance.

It is an admitted fact that prior to the chargesheet dated 15.12.2017, which is impugned in this writ petition, the petitioner was also charge-sheeted by the respondents on 05.08.2014. The said chargesheet dated 05.08.2014 was also served upon the petitioner after the petitioner had superannuated on 31.05.2014. This Court while considering Rule 60, under which the chargesheet was served upon the petitioner, which Rule has been brought in force for the issuance of the chargesheet in question in this writ petition as well, this Court held that the respondent does not have any jurisdiction to issue a chargesheet and initiate disciplinary proceedings against a retired employee and the chargesheet dated 05.08.2014 was set aside and the said judgment has already attained finality as no appeal has been preferred against the same.

The relevant paras of the judgment in CWP No.22435 of 2014 decided on 04.10.2016 is as under:-

> "The plea of learned counsel for the respondent is that the damage was done in the year 2011. Therefore, charge-sheet is within four years. However, a perusal of the charge-sheet shows that the alleged act was done by the petitioner during the period from 16.02.2009 to 31.08.2009 and the damage took place more than two years later. It will first raise the question whether the petitioner could be held liable for the damage occurring two years later? However, this issue need not to be considered. Apparently, the act was the act done between 16.02.2009 to 31.08.2009 due to which alleged loss was caused.
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> Rule 60 of the CONFED Rule is reproduced as under:
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> "60. The Confed further reserve to themselves the right of withholding or withdrawing retiral benefit or any part of it, whether permanently or for a specified period and the right of ordering the recovery from retiral benefits of the whole or part of any pecuniary loss caused to Confed, if the retiree is found in departmental or judicial proceedings to have been guilty of gave misconduct or to have caused pecuniary loss to by misconduct or negligence during his service rendered on reemployment after retirement either by issue notice or through Land Revenue Department as arrear of land revenue.

Provided that:-

(1) Such departmental proceedings, if instituted while the employee was in service whether before his retirement or during re-employment shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner an as if the employee had continued in service:

(2) **Such departmental proceedings, if not instituted while the employee was on duty either before retirement or during re-employment:**

(i) Shall not be instituted save with the sanction of the Competent Authority.

(ii) **Shall be in respect of an event which took place <u>not more than four years</u> before the institution of such proceedings; and**

(iii) Shall be conducted by such authority and at such place or places as the Competent Authority may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made;

(3) Such judicial proceedings, if not instituted while the employee was on duty either before his retirement or during his re-employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2); and

(4) The Competent Authority shall be consulted before final orders are passed.

Explanation: for the purpose of this rule:-

(1) Departmental proceedings shall be deemed to have been instituted when the charges framed against the retiree are issued to him or, if the employee has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been

instituted;

(i) in the case of criminal proceeding, on the date on which the complaint is made or as challan is submitted to a criminal court: and

(ii) in the case of Civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to Civil Court.

The said Rule makes it clear that the departmental proceeding shall be deemed to have been instituted when the charge sheet is issued to the retirees.

Rule 60(2) of the CONFED Rule makes it clear that after the retirement of an employee, the departmental proceedings will not be instituted save with the sanction of the Competent Authority and shall be in respect of an event which took place not more than four years of the institution of said proceedings. The alleged act of procuring wheat at low line plinth was done between 16.02.1009 to 31.08.2009. The damage ensued later on. Therefore, for the said event, the petitioner could be charge-sheeted at the most till 30.08.2013. However, the petitioner was charge-sheeted on 05.08.2014. Thus, the present charge-sheet is contrary to Rule 60 of the CONFED Rule reproduced above and is hereby quashed. This is without prejudice to the other charge-sheet, which is not the subject matter of the present petition. However, the department shall have the right to recover the loss, if alleged to have been proved, through the other lawful means, except the departmental proceedings.

As a result of the quashing of the charge-sheet, letter (Annexure P-5), debiting the amount from the account of the petitioner for loss to the tune of ₹15,55,209/- also stands quashed and same shall be refunded to the petitioner's account.

Accordingly, the present petition is allowed."

Learned counsel for the respondent very fairly admits that the question of law and the facts in the present writ petition are akin to CWP No.22435 of 2014 and the chargesheet in the similar circumstances has already been set aside, which was issued to the petitioner after retirement. Once, there are no facts which differentiate the present writ petition from CWP No.22435 of 2014, the case of the petitioner is squarely covered in his favour by the said judgment dated 04.10.2016.

In an another writ petition bearing CWP No.15247 of 2011 titled as **S.C. Jain Vs. Managing Director, The Haryana State Federation of Consumers Cooperative Wholesale Stores Limited and another**, which was also against the same respondent-federation, this Court vide order dated 22.05.2013 held that there has to be a specific Rule to empower the employer to initiate disciplinary proceedings against a retired employee and in the absence of the same, any disciplinary proceedings initiated against a retired employee will be without jurisdiction.

The relevant para of the judgment passed in **SC Jain's case (supra)** 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.
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> 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."

Keeping in view the settled principles of law noted above, the respondent-federation has no jurisdiction to issue chargesheet or to initiate disciplinary proceedings against a retired employee and, therefore, in the present case, once the petitioner had already retired on 31.05.2014, the chargesheet served upon the petitioner on 15.12.2017 (Annexure P-3) is beyond the jurisdiction of the respondent as no Rule permits the respondent-federation to initiate disciplinary proceedings against a retired employee.

Chargesheets issued to the petitioners on 15.12.2017 (Annexure P-3) in CWP No.6229 of 2018 and chargesheet dated 12.03.2019 (Annexure P-2) in CWP No.9868 of 2019 are set aside.

Leaned counsel for the petitioner submits that the retiral benefits of the petitioner have been withheld due to the pendency of these chargesheets and he seeks a direction to be issued to the respondents to release the pensionary benefits of the petitioner in case, the same were withheld keeping in view the chargesheets which have been quashed in this writ petition in case there is no impediment for the release of the same.

Ordered accordingly.

Let the respondents pass an order within two months from the date of receipt of certified copy of this order in respect of the release of the benefits, which were withheld keeping in view the chargesheets which have been impugned in the present writ petition and have been set aside by this Court.

The writ petitions are allowed in the above terms.

December 05, 2019
jt **(HARSIMRAN SINGH SETHI)**
JUDGE

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