IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANIDGARH

217 **CWP-14317-2017**
Date of Decision: 19.02.2020

Krishan Kumar

..... Petitioner

Versus

Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. (CONFED) and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr.Dhiraj Chawla, Advocate for the petitioner.

Mr. Vivek Chauhan, Advocate,
for the respondents.

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NIRMALJIT KAUR, J (ORAL)

The prayer in the present writ petition is for quashing the impugned order dated 24.12.2013 (Annexure P-15) whereby the petitioner has been imposed penalty of recovery of ₹ 58,25,275/- i.e. 70% of the total recovery of ₹ 83,21,822/- after superannuation on 31.05.2011 and to further quash the order dated 15.10.2015 (Annexure P-17) whereby the appeal of the petitioner has been rejected.

With a further prayer to release the retiral benefits including gratuity, leave encashment, annual increments from 2003 onwards till retirement i.e. 31.05.2011 and to refund an amount of ₹ 3,29,313/- which

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have been deducted from the salary of the petitioner.

At the very outset, learned counsel for the petitioner submits that his case is squarely covered by the judgment rendered in the case of co-employee, namely S.C. Jain, who filed CWP No. 15247 of 2011 before this Court, which was decided vide order and judgment dated 22.05.2013 as well as Shamsher Singh Malik who filed CWP No. 8825 of 2015 which too was disposed of vide judgment dated 18.05.2016 holding therein that the Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. (CONFED) has no power to charge sheet a retired employee and disciplinary proceedings cannot continue after the retirement, as also Rule 2.2(b) of Punjab Civil Services Rules have not been adopted by the CONFED and that there is no clause in the Staff Services Rules for applicability of Punjab Civil Services Rules. The operative part of the judgment rendered in S.C. Jain, reads 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*

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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."

A similar view was also adopted by this Court in another case of co-employee, namely, Shamsher Singh Malik.

In fact, as per another Writ Petition No. 8253 of 2007 which was decided by this Court on 26.09.2013 titled as Ram Lal, Ex-General Manager vs. The Chief Secretary to Government of Haryana, Chandigarh and others, wherein an affidavit was filed by the respondent-CONFED to the effect that there is no clause in Staff Service Rules of CONFED regarding the applicability of the provisions of the Punjab Civil Service Rules and nor there are any instructions. Therefore, in the absence of the Rules for imposition of penalty upon the retired employees, the writ petition was allowed.

The observations in the case of Ram Lal case (supra) reads thus :-

"Vide order dated 08.08.2013, a direction was issued to the counsel for the respondents to furnish an affidavit of a responsible senior officer of respondent No.1 to the effect that the service rules, especially Rule 2.2(b) of the Punjab Civil

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Services Rules, Volume-II has or has not ever been adopted or made applicable to the employees of the CONFED.

An affidavit has been filed on behalf of Vinod Kumar, General Manager Administration, CONFED to the effect that there is no clause in Staff Service Rules of CONFED regarding the applicability of the provisions of Punjab Civil Service Rules. There has been no letter or instructions of the CONFED on the said issue."

It is not disputed that the petitioner has now retired on 31.05.2011 and impugned orders were passed on 24.12.2013 and the appeal too was dismissed on 15.10.2015 i.e. after the retirement of the petitioner. Accordingly, learned counsel for the respondent has not been able to dispute the above mentioned proposition of law in case of employees of the Confed.

Accordingly, the petition is allowed being squarely covered by the judgment rendered in the case of S.C. Jain case (supra) as well as Ram Lal case (supra) as also Shamsher Singh Malik case (supra) wherein the departmental proceedings initiated against the employees after retirement were held not permissible. Acordingly, impugned orders dated 24.12.2013 (Annexure P-15) and 15.10.2015 (Annexure P-17) are set aside and the respondents are directed to release the retiral benefits including gratuity and leave encashment holding the penalty orders not maintainable after his retirement. The same be released to the petitioner within a period of two months from today along with interest @ 6% p.a.

(NIRMALJIT KAUR)
JUDGE

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

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