

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203)

CWP No. 15236 of 2017
Date of Decision : 28.02.2020

Sukhdev Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. A.K. Walia, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to the charge-sheet dated 29.03.2017 (Annexure P-3), served upon the petitioner vide letter dated 15.06.2017. The grievance of the petitioner is that he had already retired from service on attaining the age of superannuation on 28.02.2013 and, therefore, after the retirement, keeping in view the provisions of Rule 2.2(b) of Punjab Civil Services Rules, a charge-sheet can only be served upon a retired employee in respect of an incident, which is not more than four years old on the date of initiation of the departmental proceedings and in the charge-sheet dated 29.03.2017, the allegations relates to February, 2012, which are beyond a period of four years on the date of serving of the charge-sheet and hence the serving of the charge-sheet dated 29.03.2017, is

beyond the jurisdiction of the respondents being impermissible as per the provisions of the Punjab Civil Services Rules.

The facts as stated in the writ petition are that petitioner was appointed as a Warder on 05.06.1983. In the year 2012, petitioner was promoted as Head Warder. On the night of 12.02.2012, under trials had escaped from Central Jail, Gurdaspur, where the petitioner was posted. No action was initiated against the petitioner in respect of the said incident. Thereafter, once again on the intervening night of 3/4.10.2012, another incident of jail break happened and the petitioner was held liable for the same and vide order dated 24.12.2012, petitioner was dismissed from service by invoking powers under Article 311 (2) (b) of the Constitution of India. No enquiry proceedings were undertaken by the respondents before the order dismissing the petitioner from service was passed.

Petitioner availed the remedy of an appeal against the order dated 24.12.2012, which appeal was also dismissed by the authorities on 27.11.2013. Petitioner approached this Court challenging the order dated 24.12.2012 by which he was dismissed from service as well as the order dated 27.11.2013 passed in appeal by the competent authority by filing CWP No. 26802 of 2013. The said writ petition was allowed by this Court on 12.12.2014 and the impugned order of punishment dismissing the petitioner from service was set-aside but liberty was granted to the respondents to pass a fresh order after following the due procedure of law as envisaged under the Rules.

By the time, the writ petition was allowed, the petitioner had already attained the age of superannuation on 28.02.2013 and keeping in

view the said fact, the respondents passed an order releasing 75% of the provisional pension. As the respondents were given liberty to proceed against the petitioner in accordance with the rules, a charge-sheet was issued to the petitioner on 10.03.2015 in respect of the incident of escaping of the under trials, which happened on the intervening night of 3/4.10.2012. The said charge-sheet was taken to the logical end and ultimately on 28.02.2017, petitioner was imposed a punishment of 3% cut of his pension for a period of two years.

After the said proceedings came to an end, the respondents issued another charge-sheet to the petitioner on 29.03.2017 for the incident, which happened in the night of 12.02.2012, wherein three under trials escaped from prison. The said charge-sheet, which has been issued to the petitioner on 29.03.2017 (Annexure P-3) is under challenge on the ground of jurisdiction.

Upon notice of motion, respondents have filed the reply and in the reply, the respondents are defending the issuance of the charge-sheet to the petitioner on the ground that once, the petitioner was responsible for the escape of three under trials on the night of 12.02.2012, respondents are well within their jurisdiction to inquire into the said allegations and in case, petitioner is found guilty, to impose punishment as well, hence, the charge-sheet dated 29.03.2017 (Annexure P-3), which has been served upon the petitioner vide letter dated 15.06.2017 is perfectly valid and legal and within the jurisdiction of the respondents.

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

The above stated facts are not in dispute. The only question which arise for determination in the present writ petition is whether the issuance of the charge-sheet dated 29.03.2017 in respect of the incident, which happened on the night of 12.02.2012, wherein, three under trials escaped from prison is legal and is within the jurisdiction of the respondents.

It is not disputed that the petitioner was a retired employee on 29.03.2017 when the charge-sheet (Annexure P-3) was sought to be served upon him. The charge-sheet to a retired employee can only be issued under Rule 2.2 of the Punjab Civil Services Rules, Volume-II. The said Rule 2.2 (b) is as under:-

“(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 proceedings, the pensioner is found guilty of grave misconduct or negligence, during his service, including service rendered on 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 proceeding 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 this 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;

Further, the explanation given under Rule 2.2(b) ibid also explains as to when the departmental inquiry shall be deemed to have been instituted. The said explanation under Rule 2.2 (b) is reproduced as under:-

“Explanation:-For the purpose of this rule-

a) a departmental proceedings 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;”.

A bare perusal of the Rule reproduced above would state that Rule 2.2(b) (ii) clearly states that in case any departmental proceedings are not initiated while the officer was in service before his retirement or during his re-employment, then departmental proceedings cannot be initiated in respect of the event which took place more than four years before the

institution of such proceedings.

In the present case, the charge-sheet dated 29.03.2017 (Annexure P-3) has been issued to the petitioner after his retirement. The said charge-sheet relates to the incident of escaping of the under trials on the night of 12.02.2012. Admittedly, when the charge-sheet was served, the incident/allegations are in respect of an incident which had taken place more than four years prior to the issuance of the said charge-sheet dated 29.03.2017 (Annexure P-3). That being so, the respondents do not have the jurisdiction to initiate proceedings against the petitioner in respect of the allegations, which have been alleged in the charge-sheet dated 29.03.2017 (Annexure P-3).

Learned counsel for the respondents has not been able to show as to how, the respondents have the jurisdiction for issuing a charge-sheet to the petitioner after his retirement in respect of an allegation, which was more than four years old on the date of issuance of the charge-sheet keeping in view the Rule 2.2(b) (ii) of the Punjab Civil Services Rules, Volume-II. Once, it is proved on record that the allegation in respect of which petitioner is being proceeded was more than four years old on the date of institution of the charge-sheet dated 29.03.2017 (Annexure P-3) and the petitioner had already retired by the said date, the same is impermissible and beyond the jurisdiction of the respondents.

Rule 2.2(b) (ii) has already been interpreted by this Court more than once and this Court has consistently held that respondents will not have the jurisdiction to issue a charge-sheet so as to hold the departmental proceedings against a retired employee in respect of an allegation, which is

beyond four years on the date of the institution of the said proceedings. A Division Bench of this Court in ***Baldhir Singh Vs. State of Punjab and others, 2009(1) RSJ 351*** while considering the same question of law held as under:-

“8. The aforementioned discussion shows that on principle as well as on precedent it has been held that no inquiry could be initiated against a retired employee in respect of an event which has taken place more than four years preceding the date of such initiation. In the present case the event in respect of which inquiry has been initiated is more than five years old. Therefore, the same is liable to be set-aside.”

A Co-ordinate Bench of this Court in ***S.S. Arya Vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others, 2009(4) RSJ 553*** while considering the same rule, held that no proceedings can be instituted against a retired employee in respect of the incident, which is four years old on the date of institution of the proceedings. The relevant paragraphs of the said judgment are as under:-

“7. Regarding the other shortages, i.e., items No.2 to 7 (total amount involved in these items is Rs.58,106/-) in the charge-sheet, it is clear from the charge-sheet itself that these shortages were pertaining to the years 2000, 2001 and 2002 when the Division Store, Narwana was checked by Shri H.C. Arora, SDO on different dates. The shortages in the aforesaid checking was never conveyed to the petitioner nor at that time any action was taken. Only after one-and-half years of the retirement of the petitioner, a charge-sheet was issued for initiating departmental action against the petitioner for the acts of omissions, which resulted into loss to the respondent

Nigam. It has not been disputed by the respondents that the alleged shortages which related to the period 2000, 2001 and 2002, were not communicated to the petitioner during that period, but were communicated to him after six years of his retirement, i.e., in the year 2007. In these facts, in my opinion, the initiation of the departmental proceedings by issuing charge-sheet in the year 2007 is totally contrary to the provisions of Rule 2.2(b) of the Punjab Civil Services Rules, 1970, Vol.II, which is reproduced as under:-

'Rule 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 specific 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 judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during his service including service rendered on 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 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 an event which took place not more than four years before the institution of such proceedings; 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 employment, shall be instituted in respect of a cause of action which arose or an event which took place more than four years of such institution; and The Public Service Commission should be consulted before final orders are passed."

This Court in Baldhir Singh's case (supra) has held as under:- "A bare perusal of the aforementioned Rule makes it clear that Rule 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 efflux 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."

During the course of hearing, counsel for the respondents could not controvert the aforesaid legal position or cite any contrary judgment which justifies the action of initiation of the departmental proceedings against the petitioner after one-and-half years of his retirement for the acts of omissions, resulting into loss to the respondent Nigam, which took place four years before the institution of such proceedings. In view of this, in my opinion, the initiation of the departmental proceedings against the petitioner by issuing the charge-sheet 31.1.2007 and the subsequent proceedings are illegal and without jurisdiction and hence are not sustainable in the eyes of law."

Learned counsel for the respondents has not been able to cite any law in support that de-hors Rule 2.2(b) (ii) of the Punjab Civil Services Rules Volume-II, respondents have the jurisdiction to initiate the proceedings in respect of an incident, which is more than four years old on the date of institution of the departmental proceedings.

Keeping in view the above, the claim of the petitioner is allowed. The charge-sheet dated 29.03.2017 (Annexure P-3) is set-aside.

Learned counsel for the petitioner states that due to the pendency of the charge-sheet, certain retirement benefits of the petitioner

have been withheld. Now as the charge-sheet has been set-aside, a direction is issued to the respondents to consider the claim of the petitioner for the release of the retiral benefits, which have been withheld during the pendency of the charge-sheet dated 29.03.2017, in case, there is no other impediment in the release of the same. While considering the claim of the petitioner for retiral benefits, respondents will also consider the claim of the petitioner for the grant of interest on the said payment as the charge-sheet was issued to the petitioner in violations of the rules governing the service as well as the settled principle of law.

Writ petition is allowed in above terms.

February 28, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*