218 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.619 of 2018
Date of Decision: 10.2.2020

Mukesh Sharma .....Petitioner

Versus

The Haryana Agro Industries Corporation and another

........Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Jagdeep Bains, Advocate, for the petitioner.

Mr. Padam Kant Dwivedi, Advocate, for the respondents.

NIRMALJIT KAUR, J.

Prayer in the present petition is for setting aside the charge-sheet dated 13.9.2017 (Annexure P-6) issued by respondent No.1, which was issued to the petitioner in contravention of the provisions of Rule 12 of the Haryana Civil Services Pension Rules, 2016.

While praying for quashing the said charge-sheet, learned counsel for the petitioner submitted that the same was beyond the period of four years from the date of omission of act, which could not have been issued in view of the Rule 2.2 (b) of the Punjab Civil Services Rules as applicable to Haryana and parallel Rule 12 of the Haryana Civil Services Pension Rules, 2016. Secondly, the cause of action arose to the Corporation after the recommendation and signing of the agreement with M/s Sidh Ganesh Warehousing Corporation on 20.5.2013. Even, if the date of the report of the Committee is taken to the 5.12.2012 then the limitation as per Rule 2.2. (b) of the Service Rules elapsed much prior to 13.9.2017. Thirdly, the only charge as alleged against the petitioner is the recommendation dated 3.1.2013 and approval dated 2.5.2013, which is much after the initial agreement dated 4.10.2011 with the M/s Sidh Ganesh Warehousing Corporation. The cart cannot be put before the horse. Fourthly, the petitioner retired from the service of the Corporation on 30.5.2015 unconditionally. After retirement, he cannot be charge-sheeted as per the embargo created by Rule 12 of the Haryana Civil Services Pension Rules, 2016 and Rules 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 2016 (as the 1987 Rules have been repealed). Fifthly, the second round of proceedings relating to the same substance of charge which has been enquired into by the Managing Director vide order dated 24.12.2015 amount to violating the rights of the petitioner as enshrined under Articles 14, 16 and 19 of the Constitution of India as he is being exposed to the doctrine of double jeopardy. Reliance was placed on the judgments of Hon'ble the Apex Court rendered in the case of Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board, Lucknow and others, 2014(7) SCC 260 to contend that the disciplinary proceedings cannot be continued after the retirement as no recovery can be after retirement on establishing the misconduct and in the case of Bhagirathi Jena vs. Board of Directors, O.S.F.C., 1999 AIR (SC) 1841, wherein, it has been held that proceedings continuing after retirement shall automatically lapse after retirement. Allahabad High Court in the case of Prabhat Kumar vs. U.P. State Ware Housing Corp. Thr. Its MD Lko & 3 others, 2016(1) UPLBEC 377 held that no recovery can be effected and neither any disciplinary proceedings can proceed against an employee after his retirement. Division Bench of the

Rajasthan High Court in the case Rajasthan Small Industries Corporation Limited and another vs. Balbir Singh Khandekar, 2018(1) RLW 397 held that in absence of express provision to continue disciplinary enquiry, no departmental proceedings can continue after the age of superannuation, which lapse automatically on retirement as also in the judgment of this Court rendered in the case of S.S.Arya vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others, 2009(3) SCT 440.

Reply has been filed. As per the reply, the agreement dated 20.5.2013 (Annexure R-12) was in existence for a period of three years from 1.3.2013 to 28.2.2016, and the matter came in the knowledge of the competent authority vide report dated 15.5.2015 of the HSWC (Annexure R-14), that the godowns hired by the HAIC at Barwala are not as per FCI specifications. Hence, the cause of action to charge-sheet the petitioner arose on 15.5.2015 on the basis of the report of HSWC and report dated 26.11.2016 of the Committee of officers of HAIC (Annexure R-16). The charge-sheet dated 13.9.2017 has thus rightly been issued to the petitioner and the same is not hit by provision of Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II as applicable to Haryana.

For proper adjudication, the relevant Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II as applicable to Haryana and Rule 12 2 (b) of the Haryana Civil Services Pension Rules, 2016 is reproduced as under:-

> "**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 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 the pensioner is

found in a departmental judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by 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 rule 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 on duty either before his retirement or during his re-employment,–

(i) shall not be instituted save with the sanction of the Government;

(ii) shall 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 at such place or places 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;

(3) Such judicial proceedings, if not instituted while the officer 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 Public Service Commission should be consulted before final orders are passed.

12. **Right of appointing authority to withhold or withdraw pension.**—

2. (b) The departmental proceedings, if not instituted

while the Government employee 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 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 Government employee during his service.

A perusal of the provisions rendered above as well as the various judgments show that the departmental proceedings commence from the date of the issuance of the charge-sheet and no charge-sheet, therefore, can be issued after retirement for an offence or for act, for omission of act, which took place more than four years before the initiation of the such proceedings. Thus, the only question is as to whether the act or act of omission in the present case pertains to four years prior to the initiation of the charge-sheet or the said charge-sheet was within the limitation period of four years.

In order to adjudicate the same, it is necessary to look into the charge-sheet as well as the statement of allegations. The charge-sheet was issued to the petitioner on 13.9.2017 placed on record as Annexure P-6 alongwith the statement of charges. It is evident from the statement of charges that the allegations pertained to an agreement with M/s Sidh Ganesh Warehousing Corporation, Hisar entered into on 4.10.2011 qua which godowns were required to be constructed as per the FCI specification and were to be handed over to HAIC latest by 31.3.2012. The godowns were said to be not constructed by the cut-off date. It was, therefore, alleged that the petitioner had recommended a proposal on 31.3.2013 to hire incomplete godowns on higher rent. Thereafter, the petitioner wrongly approved the same from the competent authority on the basis of misleading report dated 2.5.2013. The possession of the said godowns was accepted by one Pankaj Batra without consulting the Committee in contravention of the agreement dated 20.5.2013. Thus, the allegations on the face of it are pertaining to the year 2013. Therefore, the argument of learned counsel for the respondents that the charge-sheet was issued on the basis of the report dated 15.5.2015 submitted by the Sub Divisional Engineer, HSWC, Fatehabad does not condone the delay in issuance of the charge-sheet or condone the limitation period provided for issuance of charge-sheet vis-a-viz the date of the act or the act of omission, especially when the charge-sheet was issued after more than two years of the date of the enquiry report. The petitioner retired from service after attaining the age of superannuation on 31.5.2015 and whereas, the charge-sheet was issued on 13.9.2017 after more than two years of his retirement as well as enquiry report and four years after the alleged offending agreement/date of offence.

The law on the issue is well settled.

This Court in the case of Baldhir Singh vs. State of Punjab and others, 2008(4) SCT 652; 2009(1) RSJ 351 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 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 of his favour may not be available. The co-employee after retirement might have settled at far flung places and memory maynot 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."

Thereafter, Division Bench of this Court in CWP-10456-2007 titled as Raghubir Singh vs. Punjab State Warehousing Corporation and another, decided on 11.9.2008 after taking into account Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II as applicable to Haryana held thus:-

"A perusal of the aforementioned Rule makes it clear that a complete embargo has been imposed prohibiting holding of an enquiry against a retired employee for any event which has happened four years prior to the initiation of a enquiry. Therefore, a departmental proceeding cannot be initiated against an employee in respect of an event that has taken place more than four years prior to the date of institution of such an enquiry. The matter came up for consideration before a

Division bench of this Court in Baldhir Singh Vs. State of Punjab and others (CWP No.17458 of 2007 decided on 18.7.2008 of which one of us (M.M Kumar, J) is a Member. We have also noticed that the judgment in L.B Gupta's case (Supra) and in the case of M.P Goswami vs. State of Punjab (CWP No.17382 of 2005 decided on 7.8.2007) also fully apply to the facts of the present case.

In view of the above, the writ petition succeeds. The impugned charge sheet dated 16.5.2007 (Annexure P-3) is quashed.

Consequently, the respondents are directed to release all the pensionary benefits of the petitioner which have been withdrawn in respect of recovery sought to be made in pursuance to the charge sheet. The needfull shall be done within a period of two months from the date of receipt of a certified copy of this order."

Further this Court in the CWP-11495-2009 titled as S.S. Julka vs. Punjab State Warehousing Corporation and another, decided on 8.4.2015 observed:-

"A perusal of aforesaid Rule shows that a complete embargo has been imposed prohibiting holding of an inquiry against a retired employee for any event which has occurred four years prior to initiation of an inquiry, meaning thereby a departmental proceeding cannot be initiated against a Government employee in respect of an event, which has taken place more than four years prior to date of initiation of such inquiry. The same issue was for consideration before a Division Bench of this Court in Baldhir Singh Vs. State of Punjab and others (C.W.P. No. 17458 of 2007) decided on 18.7.2008 and also in case of M.P. Goswami Vs. State of Punjab (C.W.P. No. 17382 of 2005) decided on 7.8.2007. The aforesaid two judgments have also been relied upon by the Division Bench of

> this Court in Raghubir Singh's case (supra) and the same has been upheld by Hon'ble the Apex Court as SLP filed by respondent-Corporation was dismissed on 7.1.2009 in special leave to appeal (Civil)...../2008 CC 17193/2008. This view was also held in Nanak Chand's case (supra), wherein, also an appeal filed by the Punjab State Warehousing Corporation was dismissed by Hon'ble the Apex Court on 5.10.2009.
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> In view of facts and law position as discussed above, the present petition is allowed and impugned chargesheet dated 15.7.2009 (Annexure P-1) is quashed."

The argument that the cause of action arose when the report came to notice, is of no consequence. The long period of four years is normally provided from the date of the offence to include the period when the same comes to knowledge and action taken thereafter. In the present case, the enquiry report was submitted on 15.5.2015 but still they took two long years to issue the charge-sheet and that too after the retirement of the petitioner and four years from the date of the alleged act.

In view of the above, the present writ petition is allowed and charge-sheet dated 13.9.2017 (Annexure P-6) is quashed. The respondents are directed to release all the pensionary benefits of the petitioner which have been withheld or recovered in respect of recovery sought to be made in pursuance to the charge-sheet. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.

(NIRMALJIT KAUR)
JUDGE

10.2.2020
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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No