

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(116+213)

CM-10871-CWP-2022 in/and
CWP-5563-2016
Date of Decision : July 27, 2022

Pawan Kumar Sharma (now deceased) through his LRs
.. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kshitij Sharma, Advocate, for the petitioner.

Mr. R.S. Budhwar, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-10871-CWP-2022

Present application has been filed for impleading legal representatives of the petitioner, who unfortunately died on 20.05.2021, during the pendency of the writ petition.

Notice of the application to the counsel opposite.

Mr. R.S. Budhwar, learned Additional Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondent-State. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. Legal representatives of the petitioner, the details of whom are given in para 2 of

the application, are allowed to be impleaded in the present writ petition and the amended memo of parties attached with the present application is taken on record.

CWP-5563-2016

In the present writ petition, the challenge is to the order dated 11.02.2016 (Annexure P-5) by which, the punishment of recovery of Rs.15,586/- has been imposed upon the petitioner.

As per the facts mentioned in the present petition, the petitioner, who was working in Haryana Civil Services (Executive Branch) retired on attaining the age of superannuation on 28.02.2014. After the petitioner had already retired, this Court while deciding RFA No.7940 of 2014, a direction was given that the difference of amount of compensation for which the claimants have been found entitled for, be recovered from the officials, who are found guilty by fixing their responsibility.

Keeping in view the said order passed by this Court, the petitioner, who was already retired, received a notice from the Director General, Urban Estate Department as to why, keeping in view the order passed by this Court in RFA No.7940 of 2014, the recovery of the amount be not made from the petitioner. The petitioner immediately replied that before effecting the recovery, he has to be found guilty of the misconduct and for which, the appropriate rules governing the service needs to be followed and since the Director General, Urban Estate Department, Haryana, is not the appointing authority of the petitioner in respect of the post held by him at the relevant time, Director General, Urban Estate Department, has no jurisdiction to serve a notice upon him.

Ignoring the said reply, a recovery order was passed by the Director General Urban Estate, Panchkula holding the petitioner liable for recovery of Rs.15,586/-. The said order is under challenge.

After notice of motion, the respondents have filed the reply stating that keeping in view the order passed by this Court in RFA No.7940 of 2014, the recovery of the difference in compensation was to be recovered from the guilty employees after fixing their responsibility and as the petitioner was also posted at the relevant time at the station concerned, after issuing him a show cause notice, the recovery order has been passed, which is in consonance with the order passed by this Court and therefore, the claim of the petitioner may kindly be declined.

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

As per the facts stated hereinbefore, the action, which was being initiated against the petitioner is keeping in view the order passed by the Coordinate Bench of this Court while deciding RFA No.7940 of 2014. As per the said order, the responsibility of the guilty officer was to be fixed first in accordance with law and whosoever was found responsible for the misconduct, the recovery was to be made from the said official. For following the direction of this Court, it was obligatory upon the respondents to follow the rules as envisaged under law to hold an employee or a retired person guilty or a misconduct.

Concededly, by the time the order was passed by the Coordinate Bench of this Court in RFA No.7940 of 2014, the petitioner had already retired. That being so, the action could have been taken against the petitioner under Rule 2.2 B of the Punjab Civil Services Rules as applicable

to the State of Haryana. According to the said Rule 2.2. B, a charge sheet can only be issued to an employee after obtaining approval from the competent authority. In the present case, concededly for taking action against a retired HCS Officer, only the Chief Secretary is competent being the appointing authority. Nothing has been brought to the notice of this Court that requirement of Rule 2.2 B of the Punjab Civil Services as applicable to Haryana were followed.

In the present case, the show cause notice, which was served upon the petitioner, was by an authority not competent to do so. The respondents merely under the garb of implementation of the order passed by this Court in RFA No.7940 of 2014, cannot ignore the rules governing the service, for finding out whether an employee has committed misconduct or not. It has been conceded by the respondents that at the relevant time, petitioner was working as HCS (Executive) for which appointing authority is Chief Secretary of the State and no authority lower than the appointing authority can be punishing authority so as to initiate disciplinary proceedings. In the present case, Director General, Urban Estate Haryana issue show cause notice, who was not competent to do so.

As the respondents failed to adhered to the rules governing the said aspect imposing the punishment upon the petitioner in a hurried manner so as to show this Court the order dated 01.09.2014 passed in RFA No.7940 of 2014, has been complied with, the impugned order cannot be sustained in the eyes of law. Though the order is being set aside on the ground that the same has been passed by an authority not competent to do so and the respondents could have been given another chance to take action against the petitioner in accordance with the rules governing the service but

as the petitioner, unfortunately has passed away, no enquiry against a dead employee can be undertaken. Therefore, the punishment imposed upon the petitioner, on the basis of the impugned show cause notice, which was issued by the authority not competent to do so, punishment cannot be sustained in the eyes of law and the same is accordingly quashed.

As the recovery was already stayed by this Court while passing the interim order, no further orders are required to be passed.

The present writ petition is allowed in above terms.

July 27, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No