IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19204 of 2021O&M)
Date of Decision: 21.04.2023

Nanak Chand

......Petitioner

Vs

Haryana Agro Industries Corporation Ltd. and another
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for the respondents.

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<u>RAJ MOHAN SINGH, J.(Oral)</u>

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari for quashing the orders dated 08.02.2018 (Annexure P-3), 28.03.2018 (Annexure P-3A) and 27.08.2018 (Annexure P-3B) passed by the respondents being illegal.

[2]. With reference to the legal position, learned counsel for the petitioner submits that the petitioner was initially appointed

as Helper on regular basis in the respondent-Corporation on 21.05.1986. In due course, he was promoted to the post of Plant Operator on 13.08.1992. The petitioner had retired from the post of Plant Operator on 31.01.2014. Thereafter, he was engaged by the respondent-Corporation on contract basis for a period of three months on fixed remuneration of Rs.10,000/- per month on 20.02.2014. The first chargesheet was issued to the petitioner on 04.06.2014 i.e. after the retirement of the petitioner and even after his re-engagement on contract basis. The charge was levelled against the petitioner that he was liable for causing wrongful loss of Rs.95,80,250/- to the Corporation on account of shortage in standard weight, less realization than FCI realization value, loss assessment statement (LAS) deduction by the FCI and abnormal expenses incurred by him in wheat stock crop year 2009-10 at Indri Mandi. After holding the enquiry, the order of punishment dated 08.02.2018 was passed, thereby ordering recovery of Rs.90,85,508/- from the petitioner. The petitioner was again chargesheeted on 06.04.20115 for causing wrongful loss of Rs.2,77,16,726/- to the Corporation and recovery of the financial loss in the aforesaid sum of amount was ordered vide order dated 28.03.2018. Similarly, third chargesheet was also issued on 24.03.2017 with the allegation that the petitioner was responsible for 70% of the total loss of 808.79 qtl. wheat on account of less moisture gain than the prescribed norms and recovery of Rs.11,24,577/- was ordered vide order dated 27.08.2018.

[3]. The basic issue involved in the present case is that whether Rule 2.2 (b) of the Civil Services Rules Volume-II can be resorted to for effecting recovery towards loss after retirement of the petitioner that too, by chargesheeting the petitioner after his retirement, particularly in the absence of any adoption of Rule 2.2(b) of Civil Services Rules Volume-II by the respondent-Corporation. There was no chargehsheet pending at the time of retirement of the petitioner, rather the petitioner was re-employed on 20.02.2014 even before issuance of three chargesheets to him.

[4]. The issue whether the proceedings can be initiated against the petitioner after his retirement came to be decided by this Court in ***CWP No.6981 of 2015*** titled ***Prem Singh Bhardwaj Vs. Haryana Agro Industries Corporation Limited and another*** on 18.01.2016, holding that in the absence of any specific Rule and if the employee is permitted to retire, the proceedings thereafter cannot be initiated for effecting recovery. The department cannot withhold the retiral benefits of the petitioner in the absence of any disciplinary proceedings merely on the information given by someone for the loss caused by the employee. While passing the aforesaid order, this Court has

also taken note of decision rendered in ***CWP No.15247 of 2011*** titled ***S.C. Jain Vs. Managing Director, The Haryana State Federation of Consumers Co-operative Wholesale Stores Limited and another*** decided on 22.05.2013 and ***Chandra Singh Vs. State of Rajasthan and another, (2003) 6 SCC 545,*** wherein it was opined that in the absence of specific Rule and once the employee is permitted to retire, the proceedings cannot continue thereafter.

[5]. This Court in ***CWP No.2137 of 2018*** titled ***Swaran Lal Kansal Vs. Haryana State Federation of Consumers' Co-operative Wholesale Stores Limited and another*** decided on 24.02.2023 has taken note of the aforesaid legal position and also noticed that the controversy in question stands crystallized in ***CWP No.8825 of 2015*** titled ***Shamsher Singh Malik Vs. Haryana State Federation of Consumer Co-op. Wholesale Stores Ltd. and another*** decided on 18.05.2016 on the basis of ratio of ***CWP No.1873 of 2014*** titled ***Jogi Ram Vs. Haryana State Federation of Consumers Co-op Wholesale Stores Ltd. and another*** decided on 23.05.2014. Even in ***Ranbir Singh Dahiya vs. Haryana State Federation of Consumers Co-operative Wholesale Stores (CONFED) and Anr.*** i.e. ***CWP No.31311 of 2018*** decided on 23.02.2023, this Court while considering the ratio of ***S.C. Jain's case (supra), Chandra***

Singh's case (supra), S.S. Arya Vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others, 2009(8) SLR 53, Shamher Singh Malik and ***Jogi Ram's cases (supra)*** decided inaffirmative that there is no rule framed in respect of chargesheeting a retired employee after his retirement for the loss allegedly caused to the Federation prior to his retirement. The liability of the retired person has been authoritatively answered to the effect that the punishment can only be awarded to the serving employee and even in case of chargesheet issued prior to retirement of the employee, no order of punishment can be passed after retirement of the employee in view of ratio laid down in ***Shamsher Singh Malik's case (supra).***

[6]. In the instant case, Rule 2.2 (b) of CSR Volume-II has not been adopted by the respondent-Corporation as on date of issuance of chargesheet. The adoption of the aforesaid Rule, if any, has taken place only after issuance of the chargesheet.

[7]. In ***Magadh Sugar and Energy Limited Vs. State of Bihar and others, 2021 SCC Online SC 801,*** the Hon'ble Apex Court has laid down the principles of law for exercising the powers by the High Court in certain cases i.e.

> *(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other*

purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

[8]. For the reasons recorded hereinabove, this writ petition is allowed. Impugned orders are accordingly set aside. The petitioner is entitled for the release his dues along with interest @ 6% per annum from the date of accrual of those benefits till final realisation of the same. The needful in the aforesaid context shall be done by the respondent-Corporation within two months from the date of receipt of certified copy of this order. The delay, if any, would entail enhanced rate of interest to the tune of 12% per annum till final realisation of the amount.

(RAJ MOHAN SINGH)
21.04.2023 **JUDGE**
Prince

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