**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of decision: 25.07.2023

(1) CWP-2770-2019

GOPAL SINGH ......Petitioner

VERSUS

THE HARYANA STATE AGRICULTURE MARKETING BOARD AND OTHERS

.......Respondents

(2) CWP-2771-2019

GOPAL SINGH ......Petitioner

VERSUS

THE HARYANA STATE AGRICULTURE MARKETING BOARD AND OTHERS

.......Respondents

(3) CWP-29412-2019

Y.K. SHARMA ......Petitioner

VERSUS

THE HARYANA STATE AGRICULTURE MARKETING BOARD AND OTHERS

.......Respondents

(4) **CWP-29706-2019**

Y.K. SHARMA ......Petitioner

VERSUS

THE HARYANA STATE AGRICULTURE MARKETING BOARD AND OTHERS

.......Respondents

(5) **CWP-37564-2018**

S.K. SHARMA ......Petitioner

VERSUS

STATE OF HARYANA THROUGH ITS SECRETARY AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Harish Bhardwaj, Advocate
for the petitioner in CWP-2770-2019,
CWP-2771-2019, CWP-29412-2019 and
CWP-29706-2019.

Mr. Ankur Bharti, Advocate and
Mr. Amit Bansal, Advocate for
Mr. K.K. Goel, Advocate
for the petitioner in CWP-37564-2018

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Piyush Bansal, Advocate and
Mr. Rahul Dev Singh, Advocate
for the respondents/HSAMB.

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VINOD S. BHARDWAJ, J. (Oral)

A batch of 05 writ petitions is being decided by a common order since counsel representing the respective parties agree that identical question of law arises for consideration in the present batch of writ petitions.

2. The claim of the petitioners in the present case is that they have been served with a Memorandum initiating disciplinary proceedings against them after a period of more than 04 years of their superannuation.

3. Counsel for the petitioners have vehemently relied upon Rule 12 (2)(b) of the Haryana Civil Services (Pension) Rules, 2016 which prohibit initiation of any departmental proceedings against the Government employee for an event which is more than 04 years old, after his retirement. No govt. sanction had also been obtained. Rule 12 of the Rules 2016 reads as under:-

> ***12. Right of appointing authority to withhold or withdraw pension.-***
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> *(1) The Appointing Authority reserve 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 to make good of the whole or part of any pecuniary loss, if any, caused to Government, if the pensioner is found in departmental or judicial proceedings, to have-*
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> *(a) been guilty of grave misconduct or negligence committed by him but there is no pecuniary loss to Government; or*

(b) caused pecuniary loss to Government by misconduct or negligence: during his service including service rendered on re-employment after retirement:

Provided that the Haryana Public Service Commission or Haryana Staff Selection Commission or any other approved Recruitment Agency, as the case may be, shall be consulted before final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of minimum pension prescribed from time to time.

Note.- *Pensionary benefits shall be withheld if departmental proceedings under rule 8 of Haryana Civil Services (Punishment and Appeal) Rules, 2016 involve any financial loss to Government are ponding at the time of retirement.*

(2) *(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:*

(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.

(3) In the case of Government employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided shall be sanctioned.

(4) Where the appointing authority decides not to withhold or withdraw pension but orders for recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government employee.

(5) For the purpose of this rule

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government employee or pensioner, or if the Government employee has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.

Note 1. *As soon as proceedings of the nature, referred to above, are instituted, the authority which institutes such proceedings shall without delay intimate the facts to the Principal Accountant General (Accounts & Entitlement), Haryana and Treasury Officer concerned.*

Note 2.- *In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which shall have been commuted."*

4. Counsel for the petitioners has also placed reliance on the judgment of this Court in the matter of ***"Jogi Ram versus Haryana State Federation of Consumer's Co-operative Wholesale Stores"*** decided on ***23.05.2014*** passed in ***CWP-1873-2014*** as well as the judgment dated ***22.05.2013*** bearing ***CWP-15247-2011*** titled as ***"S.C. Jain versus Managing Director, the Haryana State Federation of Consumers Co-operative Wholesale Stores Limited and another".*** The relevant extract of the judgment of Jogi Ram (Supra) is as under:-

"Learned counsel for the petitioner submits that the controversy in the present case is squarely covered by the judgment of this Court in case S.C. Jain vs Managing Director, The Haryana State Federation of Consumers Co-operative Wholesale Stores Limited and another

passed in CWP No.15247 of 2011, decided on 22.05.2013, wherein, it was held that when there is no provision in the rules that disciplinary proceedings can be initiated against the retired employees and on this ground, the charge sheet issued after his retirement was set aside being without jurisdiction and the directions were issued to release the retiral benefits to the petitioner.

Learned counsel for the respondent has also not disputed the judgment relied upon by learned counsel for the petitioner in S.C. Jain's case (supra)

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On perusal of aforesaid provisions, it is clear that the penalties, as provided under the Rules, 1975, can be imposed upon an employee, who is drawing salary, either appointed on temporary or permanent basis. It is also clear that the penalty can be imposed only on an employee but after retirement, the petitioner cannot be termed as an employee and as such, no penalty can be inflicted upon him.

The issue as to whether the departmental proceedings can be initiated against an employee after retirement was gone into by Hon'ble the Supreme Court in Chandra Singh vs State of Rajasthan and another 2003(6) SCC 545 and of this Court in S.S. Arya vs Uttar Haryana Bijli Vitran Nigam, Panchkula and others 2009(8) SLR 53.

It was held in the aforesaid judgments that in the absence of any specific Rule to this effect, no proceedings can be continued/initiated, once an employee is permitted to retire. Similar view was also held in the judgment of S.C. Jain's case (supra).

> *In view of the facts and law position as mentioned above, it is clear that when there is no provision in the Rules as to the issuance of charge sheet or imposing a penalty upon an employee after retirement, the charge sheet issued to the petitioner is without jurisdiction and the same is liable to be set aside."*

5. Counsel for the respondents have not been able to controvert the factual assertion as well as the incident in question is more than 04 years before the superannuation & that no sanction from Government has been made. Although an attempt was made to defend their action by averring that the petitioners were able to secure NOC from the Department in connivance with certain other officials and the above said misconduct was concealed, however, they could not dispute the fact that the provisions of Rule prohibit initiation of disciplinary proceedings against a retired employee for an act which is beyond a period of 04 years when the proceeding is initiated. The ratio of the aforesaid judgment is also not disputed.

6. In view of the above, the impugned communication as well as the proceedings that have been initiated by the respondents after an expiry of a period of more than 04 years since their superannuation are hereby set aside.

The present writ petitions are allowed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 25, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No