# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

286 (10)

**CWP-3188-2019**
**Date of decision: 25.07.2023**

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

VERSUS

STATE OF HARYANA AND ANOTHER .......Respondents

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

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Present: - Mr. Ankur Bharti, Advocate and
Mr. Amit Bansal, Advocate for
Mr. K.K. Goel, Advocate
for the petitioner.

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)**

1. The claim of the petitioner in the present case is that he has been served with a Memorandum for initiating disciplinary proceedings against him after a period of more than 04 years of his superannuation and for an act which is even prior thereto, in breach of the governing Rules.

2. Counsel for the petitioner has vehemently relied upon Rule 12 (2)(b) of the Haryana Civil Services (Pension) Rules, 2016 which prohibit initiation of any departmental proceedings, if not instituted while the Government employee was in service, whether before his retirement or

during his re-employment after his superannuation for an act which is more than 04 years old. Rule 12 is extracted 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*
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> *(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 *Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of minimum pension prescribed from time to time.*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."*

3. Counsel for the petitioner 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.*
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> *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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> *Xxx xxxx xxxx xxxx xxxx xxxx xxx xxx xxx*
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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.*
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> *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).*
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> *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."*

4. The factual aspects are not disputed or denied by the respondents. 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 Rule 12(2) (b) prohibits initiation of disciplinary proceedings after expiry of a period of 04 years against a retired employee. The ratio of the aforesaid judgment is also not disputed.

5. Counsel for the respondents further submits that a departmental proceeding was already pending against the petitioner, which is still in existence, when the second charge sheet that is subject matter of dispute in the present case had been issued. The agreement fails to impress the expression used in the Rules is "the Departmental proceedings" and the

restriction under Rule 12 (2)(b) is operative with respect to the proceedings that have been initiated and are a subject matter of challenge. Hence, the departmental proceeding that is sought to be initiated/instituted must over come the restriction imposed under the statute and pendency of any other proceeding cannot come to protect initiation of any other proceedings which are otherwise in conflict of law. The statute being specific to the departmental proceedings and imposes prohibition on initiation thereof, right advanced to an employee cannot be permitted to be defeated by liberal interpretation of the restriction and facilitate denial of such right to a employee. Counsel for the respondent could not refer to any law or precedent to support the said argument.

6. In view of the above, the impugned communication as well as the proceedings that have been initiated by the respondents for period beyond 04 years of its accrual, after superannuation is hereby set aside.

The present writ petition is allowed.

**(VINOD S. BHARDWAJ)**

**JULY 25, 2023** **JUDGE**

*Vishal Sharma*

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