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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3591-2022

Date of Decision: 07.02.2023

Parmeshwari Hooda

.....Petitioner

Vs

State of Haryana and Another

.....Respondents

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

Present: Mr. Nikhil Lather, Advocate for
Mr. Anurag Goyal, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has preferred this writ petition for the issuance of a writ in the nature of ***Certiorari*** quashing the impugned charge-sheet (Annexure P-9) dated 29.12.2021, being in violation of the Statutory Rule, i.e. Rule 12(2)(b)(ii) of the Haryana Civil Services(Pension) Rules, 2016.

Learned counsel for the petitioner submits that the petitioner was initially appointed as Math Mistress on temporary basis on 31.10.1984 and her services were regularized on 01.11.1986 and thereafter, she was promoted as District Education Officer. The petitioner was transferred to Rohtak on 8.03.2019 and in pursuance thereof, she joined the post on 9.03.2019. The petitioner was to

superannuate on 31.05.2020. Eight months prior to her retirement, the petitioner was ordered to be transferred from Rohtak to Charkhi Dadri, vice an officer whose most of the service remained at Rohtak only. The petitioner has alleged malafides and foul play against the Department by using colourable exercise of power as the order of transfer was not uploaded on the website of the Department under the head of daily orders after the enforcement of Model Code of Conduct, whereas the official, who was transferred in place of the petitioner was shown to have joined as District Education Officer Rohtak on the forenoon of 21.09.2019. De hors the aforesaid factual matrix of the case viz-a-viz the allegations, counter allegations, this Court proceeds to appreciate the controversy on legal parameters.

In the writ petition, the petitioner has assailed the issuance of charge-sheet dated 29.12.2021 being in violation of Statutory Rules. As per written statement filed by the Respondents No.1 and 2, the same is totally silent on the issue of entitlement of the petitioner to seek quashing of the charge-sheet, which has been issued after four years of the alleged occurrence. The petitioner has already retired on 31.05.2020. Statement of allegation was issued to the petitioner only on 29.12.2021 in respect of occurrence for which FIR No.904 was registered on 14.11.2015 for the offences under Sections 420, 467, 468, 471, 201, 216, 120-B IPC, Section 66 of Information and Technology Act and Sections 7, 8, 13, 49, 88 of Prevention of Corruption Act,

1988. No Departmental proceedings were initiated within a period of four years as mandated under Rule 12(2)(b)(ii) of the Haryana Civil Services(Pension) Rules, 2016. For ready reference the provisions are reproduced here as under.

“Right of appointing authority to withhold or withdraw pension.

(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

(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 pending at the time of retirement.

(2)(a) The departmental proceedings referred to in sub-rule (1), if institute 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.”

In view of the aforesaid provisions, the departmental proceedings if not instituted while the Government employee was in service, shall not be instituted save with the sanction of the Government and the departmental proceedings shall not be in respect of any event, which took place more than four years prior to such institution of charge-sheet.

Vide order dated 24.01.2023, learned State counsel sought time to verify whether there was any contemplation on the official file in respect of initiation of departmental proceedings with the sanction of the competent authority. In compliance thereof, learned State counsel informs the Court that sanction was accorded to proceed against the petitioner departmentally on 23.10.2018, but the said contemplation was never implemented and the petition was allowed to retire on 31.05.2020.

In view of the aforesaid legal position, the impugned

departmental proceedings initiated after four years of the alleged Act are in utter violation of Rule 12(2)(b)(ii) of the Haryana Civil Services(Pension) Rules, 2016 and are not legally sustainable. Consequently, this writ petition is allowed. Impugned order is quashed. Normal consequences to follow.

7th February, 2023
sapna

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No