

2023:PHHC:166547

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

**CWP-5704-2019(O&M)
DECIDED ON: 28th JULY, 2023**

DALEL SINGH

.....PETITIONER

VERSUS

HARYANA STATE WAREHOUSE CORPORATION BAYS & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Wazir Singh, Advocate
for the petitioner.

Mr. R.S. Budhwar, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* to quash the impugned charge sheet dated 29.11.2017 (Annexure P-6) along-with impugned order dated 15.01.2019 (Annexure P-8) vide which enquiry officer was appointed to hold enquiry against the petitioner, being contravention of the provision of Rule 2.2 (b) of Haryana Civil Services (P&A) Rules with further prayer for issuance of a writ in the nature of *Mandamus* directing the respondents to release retiral benefits as full pension, gratuity and leave encashment accrued to the petitioner on account of his retirement along-with interest @ 12% per annum from the date of retirement till the date of actual payment.

2. Brief facts of the case are that the petitioner was appointed as Godown

Attendant-Cum-Watchman, S/W, Nigdhu in Haryana State Warehousing Corporation (hereinafter referred to as HSWC), thereafter, he was promoted as a Dusting Operator and Godown Keeper. The petitioner retired from service on attaining the age of superannuation on 31.08.2017, from Nigdhu District Karnal. On 13.08.2012 a complaint was submitted by the employee of FCI to the Manager FCI with regard to the damages of wheat in bags by sprinkling water on the wheat stock. The Manager FCI, Karnal wrote a letter dated 04.09.2012 to the District Manager, HSWC, Panipat for inspection of the stocks as well as taking necessary action. As such the District manager HSWC, Panipat made inspection after detection of damages in the wheat stock from 30.06.2012 to 03.01.2013 and some inspection was made on 27.08.2012 and 20.09.2012. A committee was constituted by District Manager, HSWC, Panipat on 07.02.2013. The petitioner was transferred from Nissing to SWH, Nigdhu and joined duty there as GK and was directed to assist the committee to dispatch the wheat stock of crop year 2012-13, he performed his duty as per order of the higher officer sincerely without any kind of negligence. In the report it was mentioned that the damage of wheat stocks was noticed on 03.01.2013 first time during loading export special by FCI officials, it was also mentioned that Six inspections were made by District Manager, HSWC, Panipat after detection of damages in the wheat stock between the date 30.06.2012 to 03.01.2013 as per inspection register and on 20.09.2012, District Manager, HSWC, Panipat warned Sh. Balbir Singh T.A. for not allowing the stock to be wet. The impugned charge sheet under Rule 7 of Haryana Civil Service (P&A) Rules was issued by Managing Director, HSWC, Panchkula against the petitioner alleging that the department has suffered a financial loss to the tune of Rs. 31,02,337/- due to his gross negligence in discharging his duties while posted at State Ware House, Nigdhu. The petitioner

replied the charge sheet on 08.12.2017 stating that he has not committed any misconduct, as alleged in the charge sheet and the same is completely vague, non-specific and ambiguous,

3. Learned counsel for the petitioner has contended that the impugned charge sheet dated 29.11.2017 is not sustainable in eyes of law, as the same is violative of the statutory provisions of Rule 2.2 (b) (2) of the HCS rules, which stipulates that no departmental proceedings against an employee could be initiated in respect of any event which took place more than 4 years before such institution. It is further contended that the petitioner was made member of the Segregation Committee only with a view to segregate the damaged wheat and the wheat which was fit for human consumption. The Committee did its obligation and the petitioner was not in any manner responsible for causing damage to the wheat at any time prior to such segregation. It is submitted that neither any show cause notice nor any charge sheet was ever served upon the petitioner till his retirement i.e. 31.08.2017. The petitioner has been charge sheeted under Rule 7 of Haryana Civil Services (Punishment & Appeal) Rules , which provides proceedings for major penalty, it was mandatory to supply all the documents with regard to the allegations levelled against him for filing reply to the charge sheet. However, the regular inquiry was ordered to be conducted without considering the reply to the charge sheet. In fact, the stock of rice loses the weight due to passage of time and percentage of dryage for different long period has not been spelled in the charge sheet. There is no allegation against the petitioner regarding case of pilferage or misappropriation of stock.

4. Learned counsel for the respondents has vehemently argued that the present petition is not maintainable being pre-mature, as only charge sheet has been

issued to the petitioner and inquiry officer has been appointed. No punishment has been given to him by the Competent Authority. He has further argued that the extraordinary writ jurisdiction of this Court, under Article 226 of the Constitution of India can be invoked only when no effective alternative remedy is available to the petitioner but in the present case, various remedies like appeal, second appeal and revision are available, under the Haryana Civil Services (Punishment & Appeal) Rules, 2016, with the petitioner. A perusal of the statutory rules, which govern the service condition of the petitioner, clearly states that he without exhausting the available statutory remedy has filed the present petition. The assertion is that as per Regulation 10 of the Haryana Warehousing Corporation Pension Regulations 1996, the competent authority is competent to take departmental action against the erring retired officer/official, in respect of the incident which is within 4 years of issuing of charge sheet. Therefore, after getting approval from the Executive Committee, the present charge sheet was served upon the petitioner. Moreover, the petitioner was charge-sheeted for the book losses observed in wheat stocks and not for storage losses in rice stock. The Corporation initiated disciplinary proceedings against the petitioner on the basis of norms applicable on wheat stocks only. As such the plea taken by the petitioner that he was charge sheeted for storage losses in rice stocks is wrong. As far as the supply of documents with regard to the allegations levelled against the petitioner is concerned, the petitioner was advised vide letters dated 10.04.2018, 15.05.2018 and 30.07.2018 to inspect the documents as required by him to submit the reply to the charge-sheet, failing which disciplinary proceedings would be concluded *ex-parte* on the basis of record/evidence available. From the record, it is crystal clear that the respondent-Corporation has already released the pensionary benefits as well as revised pensionary benefits to the petitioner vide

office orders/letters dated 12.02.2018 and 31.05.2018 (Annexures R-1/8 and R-1/9 respectively). Thus, he prays for dismissal of the present petition.

5. No other argument has been raised by either of the parties.

6. Heard learned counsel for the respective parties.

7. It is an admitted fact that the petitioner was charge-sheeted under Rule 7 of Haryana Civil Rules (Punishment & Appeal) Rules, 2017 on 29.11.2017 i.e. after his retirement in respect of the allegations relating to the year 2012, which are more than four years old. Rule 2.2 (b) (2) of the HCS rules, which stipulates that no departmental proceedings against an employee could be initiated in respect of any event which took place more than 4 years before such institution. Rule 2.2 (b) is reproduced hereunder:-

“Rule 2.2 (b) (2) of HCS Rules, 2016:- *Such departmental proceedings, if not instituted while the officer 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.”

8. A bare perusal of the above-mentioned Rule makes it clear that Rule 2.2 (b) (ii) places a complete embargo on holding of an inquiry against a retired employee for any event which has happened four years prior to the institution of inquiry. It is not disputed on record available that the event in question relates to the period of year 2012-2013 and it was first time came into notice of the department on 13.08.2012 and inspection was done on 20.09.2012 and a committee was constituted on 07.02.2013 for dispatch of the damage stock under the supervision of the committee members. The petitioner stood retired from service on attaining the age of superannuation on 31.08.2017. The event of damages stock of wheat took place between 30.06.2012 to 20.09.2012 (as per inspection note) and

impugned charge sheet was served upon the petitioner on 29.11.2017 i.e. after more than five years from the date of event i.e. 13.08.2012, thus, as per the afore-said Rule no charge-sheet could have been issued to the petitioner after the retirement in respect of an allegation, which is four years old on the day when the charge-sheet was served. Moreover, at the time of issuance of charge-sheet neither any document was furnished to the petitioner for filing reply to the same, which was mandatory provision in the rule nor opportunity of hearing was given before issuance of charge sheet. Furthermore, the petitioner was not the custodian of the stock, his services had been utilized just to assist the Committee members.

8. This Court is fully convinced that respondent-Corporation has issued the impugned charge sheet dated 29.11.2017 (Annexure P-6) in an arbitrary manner, as such the same is hereby, quashed.

9. In view of discussions made hereinabove, the present petition is allowed. The Corporation is directed to release the retiral benefits accrued to the petitioner on account of his retirement along-with interest @ 6% per annum, in case the same is not released.

28th JULY, 2023

Sham

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

(SANDEEP MOUDGIL)
JUDGE