

CWP-7304-2022

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2023 : PHHC: 145741

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

CWP-7304-2022

Date of decision : 16.11.2023

Rajwant Singh Bajwa

...Petitioner

Vs.

**The Registrar, Cooperative Societies,
Punjab and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Tahaf Bains, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

Mr. Ashwani Prashar, Advocate
for respondent No.2.

None for respondent No.3.

DEEPAK MANCHANDA, J.(Oral)

1. Petitioner-Rajwant Singh Bajwa has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari seeking quashing of the impugned charge-sheet dated 28.09.2021 (Annexure P-6), whereby disciplinary proceedings have been initiated by the respondent no.2 against the petitioner after his retirement. Further, the prayer has been made for directing the respondent No.2 for payment and release of retiral benefits and other arrears payable to him on account of his superannuation as well as for staying the impugned charge sheet dated 28.09.2021 (Annexure P-6).

2. The facts in brief leading to the present petition are that the

petitioner was appointed on 19.01.1989 as a Cooperative Education Instructor and continued to serve with the respondents No.2-Federation and on attaining the age of 58 years, retired as such on 31.12.2021 vide retirement order dated 31.12.2021 (Annexure P-3). At the time of his retirement, no disciplinary proceedings were initiated or pending against the petitioner but the retirement order (Annexure P-3) contained a condition that “in case any departmental proceeding/court case or due of any kind is found then proceedings shall be taken against him under Rule 2.2 of Punjab Civil Services Part-2/Puncofed Common Cadre Rules”. The petitioner had not been paid his salary w.e.f. 19.09.2019, thereafter, he made several representations for release of his pending salary, alongwith enhanced/revised dearness allowance etc, however, no action has been taken upon the same. Therefore, petitioner along with five other co-employees served a legal notice (Annexure P-4) for payment and release of his past and future salary which is not being paid to him. But no action has been taken upon the same, therefore, petitioner for redressal of his grievance filed CWP-22975-2019, which was disposed of vide order dated 31.08.2021 (Annexure P-4) with direction to competent authority to consider and decide the claim of the petitioners as contained in the legal notice within a period of four months, but the above order has not been complied with. The petitioner was issued a charge-sheet dated 28.09.2021 (Annexure P-6), whereby proceeding against the petitioner were initiated under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules with the following allegations:-

- 1.Regarding not intimating PUNCOFED about the Education Fund deposited at D.C.U.Ludhiana.*
- 2. Regarding financial loss caused to PUNCOFED.*
- 3. Not complying with the objections raised by the Audit*

Department in the balance sheets of D.C.U.

4. Negligence in performance of duties.

5. Mis-using his authorities.

3. On 12.10.2021, petitioner filed his reply to the charge-sheet, but no reply has been received from the Federation and on 31.12.2021, petitioner retired from the services of the Federation. However, on 04.03.2022, respondent No.2 passed orders appointing respondent No.3 as Enquiry Officer, to which petitioner submitted detailed objections to the charge sheet and appointment of Enquiry officer on 11.03.2022, but respondent No.3 issued notice to petitioner to come present on 04.04.2022 for enquiry proceedings. Aggrieved by the same the petitioner had approached this Court as vide impugned charge-sheet dated 28.09.2021 (Annexure P-6), disciplinary proceedings against the petitioner have been initiated by respondent No.2 after his retirement.

4. Learned counsel for the petitioner contends that as the post on which the petitioner was working is a non-pensionable post, therefore, provisions of Rule 2.2 (b) of the Punjab Civil Services Rules Vol.II Chapter II are not applicable to the service conditions of the employees of the Federation. He further contends that the petitioner retired from the service on 31.12.2021 and the relationship of master and servant ceased to exist and Federation ceased to have any authority to continue disciplinary proceedings against the petitioner. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court rendered in "*Dev Parkash Tiwari Vs. U.P.Co-Cooperative Institutional Service Board, Lucknow and others*", 2014 (3)SCT 387.

5. Learned State counsel appearing for respondent No.1 vide reply

dated 22.07.2022 submitted that the disciplinary proceedings against the petitioner were initiated by respondent No.2-PUNCOFED, which is an apex Cooperative Institution which runs its affairs through its supervisory Committee and the Managing Director. Thus, this matter does not relate to respondent No.1.

6. Learned counsel for respondent No.2 vide its reply dated 04.07.2022 submitted that a perusal of Rule 6.2 of the PUNCOFED Common Cadre Rules, 1989 clearly shows that any case which is not covered by the above Rules would be regulated and governed by the Punjab Civil Service Rules and the Punjab Financial Rules. In this way provisions of Rule 2.2 of the Punjab Civil Services Vol. II will apply in the instant case. In this way, no prejudice has been caused to the petitioner by the issuance of the chargesheet and he can take up all the grounds available to him before the Inquiry Officer to prove his innocence. He further submitted that vires of Rule 6.2 of 1989 Rules is not under challenge, thus, petitioner is bound by 1989 Rules, which are statutory in nature and for this reason only, condition was imposed in the order of retirement that proceedings under Rule 2.2 of the Punjab Civil Services Vol. II will be carried out against the petitioner in case departmental proceedings/court case is found against the employee or any type of due is found.

7. Learned counsel for respondent No.2 has placed reliance on the judgment passed by a Division Bench of this Court in Civil Writ Petition No. 11662 of 2004 titled as *Mohinder Pal Dogra Versus Markfed and others* decided on 23.05.2007, wherein it has been held as under:-

"When the facts of the present case are examined in the light of the principle laid down by the Hon'ble the Supreme Court

in the aforementioned judgment, it becomes evident that the question of opining on the correctness of charge sheet or its vagueness, cannot be gone into at the threshold because evidence may substantiate those charges. Ordinarily, no judicial review of charges is possible because it would involve deciding the case on merit, which is well nigh impossible because the courts lack any mechanism, which could be substituted for the departmental inquiry. Therefore, we express our inability to accept the prayer made by the petitioners for quashing the charge sheets."

8. He submits that vide this order, 30 writ petitions were disposed of by this Court and in all the writ petitions, charge sheets issued by the Markfed were under challenge. In the instant writ petition, the petitioner has also challenged the charge sheet. The correctness or vagueness of which cannot be gone into at the threshold.

9. Having heard the learned counsel for the parties and after perusing the material available on record with their able assistance.

10. The question in present petition which has been raised by the petitioner is whether action of respondent No.2 is justified in issuing the impugned charge sheet after retirement of the petitioner without any authority/provision in Service Rules. A perusal of the pleadings and material available on record shows and even has been admitted by the respondent-Corporation that since petitioner was retired on 31.12.2021 and he was served upon a chargesheet dated 28.09.2021 (Annexure P-6) under Rule 2.16. The Punjab State Cooperative Dev. Fed. Ltd., (PUNCOFED) Common Cadre Rule, 1989 and Rule 1.1 of Discipline, Punishment and Appeal Rules on the allegations of not intimating PUNCOFED about the Education Fund deposited

at D.C.U.Ludhiana, causing financial loss to PUNCOFED, not complying with the objections raised by the Audit Department in the balance sheets of D.C.U., negligence in performance of duties and for mis-using his authorities. The petitioner pleaded that it is neither the duty of an Education Inspector to collect the Education Fund nor sent the same to PUNCOFED or get the audit conducted, that would be the duty of DCU itself with regard to passing the appropriate resolution and sending the education fund and also the audit of the Union is to be conducted by the officials of the Cooperative Department and not by the employees of PUNCOFED. But without appreciating the ground raised by the petitioner, the petitioner was held liable for misconduct which resulted into stoppage of his salary w.e.f. 19.09.2019.

11. By way of admission by the respondent-department as well as in view of the factual aspect as above, at the time of retirement, there was no departmental/judicial proceedings pending against the petitioner. It is only after retirement of the petitioner that the impugned chargesheet dated 28.09.2021 was issued. It is well settled that no chargesheet could be issued against the employee after his retirement because the relationship of an employer and employee comes to an end with the superannuation of the employee subject to payment of his retiral benefits. After retirement only those proceedings are allowed to continue which have been initiated during the course of employment and if any employee is found guilty then either a cut in his pension could be imposed or recovery could be effected from his gratuity. It is not a disputed fact that the petitioner retired from service on 31.12.2021. As such, the order imposing the punishment is totally cryptic and non-speaking and does not give the detail as to how, the petitioner has been found liable that

too after his retirement. Not only this, the question of law which also arises in the present proceedings is whether after retirement an employee can be proceeded against. It is a settled principle of law that after the retirement, the employee can only be proceeded against in case, the rules governing the service permit of the said action. No such provision of law has been brought to the notice of this Court by learned counsel appearing on behalf of the respondents so as to justify its authority to serve a show cause notice so as to initiate disciplinary proceedings against the retired employee. In the absence of any authority shown by the respondents, it can be safely held that the respondent did not have any authority to initiate disciplinary proceedings against a retired employee.

12. The Hon'ble Supreme Court while deciding ***Civil Appeal No.2101 of 1999*** titled as ***Bhagirathi Jena v. Board of Director O.S.F.C.*** has held that in case, there is no provision under the rules governing the service for continuation of disciplinary proceedings after retirement of an employee, no punishment or no deduction from the retiral benefit can be done as the proceedings after the retirement automatically lapses. Relevant paragraph is as under:-

"In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of

imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

13. The Hon'ble Supreme Court of India in ***Chandra Singh v. State of Rajasthan and another 2003 (3) SCT 694*** also held that any proceedings, which have been undertaken after the retirement becomes without any authority or jurisdiction and any order passed in pursuance to the said proceedings initiated or continued after retirement, without there being any provisions giving jurisdiction to an employer to the said effect, are nullity in law. Relevant paragraph of the said judgment is as under-

"We also cannot accept the contention of Mr. Rao that in the case of Mata Deen Garg, the departmental proceedings could be kept pending despite the passing of the impugned order. The High Court had not passed any order in the departmental proceedings. It sought to invoke the jurisdiction which was conferred on the High Court and the State by reason of a statutory rule. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer the employee cannot be made to retire. There must exist specific provision in the pension rules in terms whereof, whole or a part of the pension can be withheld or withdrawn where for a proceeding has to be initiated. Furthermore, no rule has also been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. In absence of such a proceeding, the High Court or the State cannot contend that the departmental proceedings against the appellant Mata Deen Garg could continue."

14. The Hon'ble Supreme Court of India in *Dev Prakash Tiwari Vs. U.P. Cooperative Institutional Service Board, Lucknow and others, 2014 (7) SCC 260* also held that once the employee had retired from service, there was no authority vested with the employer for continuing the disciplinary proceedings even for the purpose of imposing any reduction in the retiral benefits payable. The relevant paragraph of the said judgment reads as under:-

"9. Once the appellant had retired from service on 31.03.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits."

15. This Court has also also decided the same question of law as to whether an employee who is already retired from service can be charge-sheeted or the charge-sheet issued to an employee while in service can continue after his retirement while deciding CWP No.2795 of 2016 decided on 12.09.2023, titled as *Kashmir Singh Vs. The Punjab State Power Corporation Ltd., Patiala and others* held as under :-

"14. Secondly, the charge sheet issued eight months after retirement without jurisdiction. It is an admitted fact that on the date when the petitioner attained the age of superannuation and retired on 28.02.2014, there were no proceedings pending against him. In the present writ, the charge-sheet which was served to the petitioner on 30.10.2014, which has been made the ground to pass the impugned order dated 21.08.2015 was issued to the petitioner on 30.10.2014. which is approximately eight months after his retirement.

15. It is a settled principle of law that position with regard to the pendency of the disciplinary proceedings or proceedings before any Competent Court of Law, is to be

seen on the date of retirement. In case there are no proceedings pending against the employee on the date of retirement, respondents do not have the jurisdiction to withhold the pensionary benefits of the employee. No rule has been cited by the learned counsel for the respondents that the charge-sheet, which has been issued without any notice and holding regular inquiry has been served after the retirement, will give the respondents the right to withhold the pensionary benefits, which right has already been accrued to an employee for the release of the same upon his retirement. In the absence of any rule, the position is to be seen on the date of retirement and any charge-sheet or disciplinary proceedings, initiated against the employee after retirement, will not give the jurisdiction to the respondents to withhold the pensionary benefits by virtue of the impugned order dated 21.08.2015."

16. It has been held in a catena of judgments that no proceedings can be continued/initiated once an employee is permitted to retire. The present petition has been filed for quashing of the impugned chargesheet dated 28.09.2021 whereby disciplinary proceedings have been initiated by the respondent no.2 against the petitioner after his retirement. Moreover, the judgment on which learned counsel for the respondent No.2 has relied upon is not applicable to the facts of the present case. The sole question which has been raised for determination in the present petition is whether post retirement, the disciplinary proceedings initiated against the petitioner is valid under that law which resulted into the passing of the impugned order Annexure P-6, but learned counsel for the respondents was not able to controvert the settled proposition of law with regard to action taken post retirement of the petitioner. The another plea by respondent No.2 has been relied upon the Rule 2.2 (b) of the Punjab Civil Services Rules Vol.-II Part 1, with the submissions that and the principles enshrined under the Rule are applicable to the petitioner. It is an admitted fact that there is no departmental proceedings having been initiated during the period the petitioner was in service.

17. As per Rule 2.2 (b) of the Punjab Civil Services Rules, in reference to the same, the Co-ordinate Bench of this Court in case CWP-13134-2015 titled as ***Sukhjinder Singh Vs. Punjab State Civil Supplies Corporation Ltd. & Anr.*** decided on 04.03.2016. The relevant portion is reproduced as under:-

"12. The stipulation in the retirement order dated 31.10.2012, Annexure P1, that the petitioner's retirement is subject to decision of any pending/future department/recovery case cannot, in any manner, vest the department with any right to proceed in flagrant violation of the express provisions of Rule 2.2 (b) CSR. Such a stipulation would enable the employer to by-pass the specific provisions of law with impunity. Accepting such an interpretation would mean that the employer would be at liberty to initiate action against an employee after a lapse of any number of years of the event in question simply because of such a stipulation in respect to any proceeding which may be initiated by the department in future. Such an interpretation is clearly not permissible. Pendency of any other proceedings against the petitioner has not been brought to my notice.

13. Action of the respondent-Corporation in issuing the impugned charge-sheet dated 24.03.2015, Annexure P2, is clearly in violation of Rule 2.2 CSR."

18. A bare perusal of the above cited law would show that question of law raised in the present petition has already been decided more than once by the Hon'ble Supreme Court as well as by this Court holding that without there being any specific Rule or jurisdiction to an employer to initiate disciplinary proceedings after retirement or to continue the disciplinary proceeding after retirement, the employer cannot initiate disciplinary proceedings against an employee, who has already retired from service.

19. Keeping in view of the above, the impugned order dated 28.09.2021 (Annexure P-6) is hereby quashed. The respondents are directed to recalculate the retiral benefits after making adjustment of the amount already

paid, including the interest @ 6% due qua delayed payment shall be paid to the petitioner. The recovery, if any, made from the petitioner(s) be also refunded to him, within a period of 08 weeks from the date of receipt of copy of this order.

20. The petition is allowed in above terms.
21. All pending miscellaneous application(s), if any, also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

16.11.2023
vanita

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