414 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. ***CWP-9659-1998 (O&M)***
Date of Decision:12.12.2023

SHAM LAL ....*Petitioner*

V/s.

STATE OF PUNJAB AND ANOTHER .....*Respondents*

2. ***CWP-3181-1997 (O&M)***

SHAM LAL ....*Petitioner*

V/s.

STATE OF PUNJAB AND OTHERS .....*Respondents*

CORAM: ***HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA***

Present: Mr. Ram Lal Gupta, Advocate for the petitioners.

Mr. D.K. Singal, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner has preferred these two Writ Petitions which are being decided by this common order.

2. In ***CWP-3181-1997***, the petitioner has prayed for release of Death-cum-Retirement Gratuity w.e.f. 30.11.1995 till its payment and also to pay interest for the delayed payment. In ***CWP-9659-1998***, the petitioner has prayed for quashing of the order dated 13.05.1998 passed by the Deputy Commissioner, Patiala whereby a sum of ₹20/- has been ordered to be deducted from the pension of the petitioner from 01.12.1995 and also prayed for quashing of the show cause notice dated 24.04.1998, whereby recoveries have been proposed from his DCRG.

3. Learned counsel for the petitioner submits that the petitioner was posted as a part time Accountant at Temple Shri Kali Devi Ji and Temple

Shri Raj Rajeshwari Ji at Patiala vide order dated 18.04.1994 (Annexure P-1) passed by the Deputy Commissioner, Patiala. The Managing Committee of the said temples, took a decision under the Chairmanship of the IAS Officer, directing for payment of salary of ₹1100/- instead of ₹582/- to the part time Accountant and accordingly, the petitioner was paid said salary.

4. The petitioner attained superannuation and stood retired on 30.11.1995. Before his retirement, the respondents had suspended him for an impending enquiry on 31.10.1995 and he was reinstated on 29.11.1995, subject to pending enquiry. However, there were no departmental proceedings initiated against him till his date of retirement. A charge sheet was served upon him on 25.11.1997 and his gratuity was withheld.

5. Another order was passed on 24.12.1996 directing to recover the amount of ₹13,945.50 on account of additional salary given to him by the Temple Management while he was a Government Servant and it was alleged that he could not receive the additional amount in terms of the Govt. orders dated 15.03.1996.

6. Learned counsel for the petitioner submits that after the petitioner had retired on 30.11.1995, his gratuity could not have been withheld as no enquiry was pending against him before his retirement. The charge sheet dated 25.11.1997 served upon the petitioner was wholly without jurisdiction as the same was not in conformity with the Rule 2.2 of the Punjab Civil Services Rules and after retirement, the same could not have been issued. Further, it is submitted that the punishment imposed of cut of ₹20/- vide order dated 13.05.1998 is also wholly illegal as without

conducting any enquiry, punishment order has been passed. The said punishment is also illegal as the reply to the enquiry report was not taken into consideration.

7. *Per contra*, the respondents have filed their reply stating that the petitioner had wrongfully accepted the higher salary which could not have been done by him as a Government Servant. The State Government had issued circular on 15.03.1996 for recovery of amount in question and in compliance thereto, a sum of ₹13,945.50 is to be recovered from the gratuity of the petitioner. Keeping in view the Govt. instructions, and para 5 of the enquiry report, a cut of ₹20/- per month was imposed on the pension of the petitioner from 01.12.1995 and it was also decided to recover an amount of ₹13,915.50/-

8. I have carefully considered the submissions of the learned counsel for parties.

9. Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II reads as under:-

> ***Rule 2.2 (b)***
> *(b) The Government further reserve to themselves 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 of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:*
> *Provided that–*
> *(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-*

employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) 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; and

(iii) shall be conducted by such authority and in 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 officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

Explanation.–For the purpose of this rule–

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

(b) a judicial proceeding shall be deemed to be instituted–

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

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.

Note:–As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings *should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.*

(c) (1) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon. The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority: Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.

(2) Payment of provisional pension made under sub-clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

> *Note.–The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings."*

10. This Court finds that entire proceedings initiated against the petitioner after retirement are wholly illegal and unjustified. The petitioner during his service had been directed by the respondents to take charge as a part time Accountant of Temple Shri Kali Devi Ji and Temple Shri Raj Rajeshwari Ji at Patiala in place of Sh. Pritam Singh, Assistant. The order was passed by the Deputy Commissioner, Patiala. In compliance of the said order, the petitioner joined as a part time Accountant and therefore, it cannot be said that the petitioner as a Government servant has illegally joined as a part time Accountant. The Managing Committee of the said Temples was a statutory Committee formed under the presidentship of one IAS Officer who was the Chairman of the Managing Committee and he decided in the meeting to pay higher salary to the part time Accountant apart from other persons working in the Temples. After retirement of the petitioner, the charge sheet issued in the year 25.11.1997 which is based on a Government decision dated 15.03.1996 taken after retirement of the petitioner. Once the petitioner retired in November 1995, any decision of the Government taken subsequently would not be a ground to initiate departmental proceedings against him. The entire action of the respondents suffers from perversity. However, this Court would not interfere with the departmental proceedings, however, if on the face of the record, the proceedings initiated suffer from perversity and incompetency, this Court would interfere with such departmental proceedings.

11. The Supreme Court in the case of ***Union of India and others*** Vs. ***P. Gunasekaran***; *2015(2) SCC 61* held as follows:-

"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No.1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

12. The aforesaid view has been reiterated by three Judges' bench in the case of ***Central Industrial Security Force and Others*** VS. ***Abrar Ali***; *2017 (4) SCC 507.*

13. Keeping in view the aforesaid, this Court finds that the action taken based on the Government decision dated 15.03.1996 to declare the salary obtained by the petitioner as Accountant of the Temple Shri Kali Devi Ji and Temple Shri Raj Rajeshwari Ji at Patiala, is unauthorized and against the Rules being after the retirement of the petitioner which cannot be made applicable to him. The orders under which the petitioner received salary were that of the State Government or the officer authorized by the State Government who was holding the post of the Managing Committee, which had not been taken into consideration.

14. The entire actions of the respondents suffer from malice in law. Therefore, further action of the respondents in deducting ₹20/- per month from the petitioner's pension is also found to be illegal and unjustified. Even otherwise, the recovery of amount after retirement could not have been made

in terms of the judgment passed in the case of ***State of Punjab*** v. ***Rafiq Masih (White Washer)*** ; *(2015) 4 SCC 334.*

15. In view of the above, the impugned order 13.05.1998 is quashed and set aside. The respondents are directed to refund the amount, if so recovered from the gratuity of the petitioner. The petitioner would also be entitled to reimbursement of amount of ₹20/- per month which has been cut from his pension form 01.12.1995. The same shall be reimbursed along with interest @9% per annum. The delay in payment of gratuity shall also carry interest @9% per annum since there was no charge sheet issued to the petitioner at the time of retirement, his gratuity could not have been withheld.

16. Arrears shall be calculated and shall be released within a period of ***4 months***.

17. Writ Petition is ***allowed*** in the aforesaid terms.

18. No costs.

19. All pending applications filed in these Writ Petitions shall stand disposed of accordingly.

December 12, 2023 **[SANJEEV PRAKASH SHARMA]**
Ess Kay **JUDGE**

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