IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision : 22.08.2023

(1) CWP-12310-2019

Prem Kumar Kansal **Petitioner**

VS.

Punjab State Power Corporation Ltd.and others **Respondents**

(2) CWP-12357-2019

Prem Kumar Kansal **Petitioner**

VS.

Punjab State Power Corporation Ltd.and others **Respondents**

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Sherry K.Singla, Advocate for the petitioners.

Mr. Rishabh Gupta, Advocate
for the respondents-PSPCL in CWP-12310-2019 and
Ms. Sarita, Advocate for Mr. Abhishek Grover, Advocate
for the respondents-PSPCL in CWP-12357-2019

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<u>DEEPAK MANCHANDA, J.(Oral)</u>

1. This judgment shall decide the aforementioned two writ petitions where the issue involved in both the petitions is common but to decide the controversy the facts of CWP-12310-2019 have been extracted for adjudication of both the writ petitions.

2. Both the petitions have been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 14.02.2019 (Annexure P-2) passed by

respondent No.2, vide which 5% cut in pension of petitioner has been imposed for one year in CWP-12310-2019 and impugned order dated 03.01.2019 (Annexure P-2) vide which 5% cut in pension of petitioner has been imposed for one year in CWP-12357-2019 in pursuance of the disciplinary proceedings initiated against the petitioner after his retirement.

3. The facts emanating from the pleadings of the present case are that petitioner was working as Revenue Accountant in the respondent-department and was posted at Mansa Sub-Station. The petitioner retired on the same post i.e. Revenue Accountant on 31.01.2016 on attaining the age of superannuation.

4. After a year of his retirement, the petitioner was served with charge-sheet dated 14.03.2017 under Punjab State Electricity Board Employees (Punishment and Appeal) Regulations 1971 wherein it was alleged that when he was posted at Sub-Station Mansa, he has committed negligence during his tenure and a case re: theft of electricity was registered against M.E.Lab Bathinda on 14.06.2016 in respect of Account No.DS/73-0421 and consumer charged Rs.46,300/- as a fine and Rs.15,000/- as compounding charges during the course of enquiry it was found that as the petitioner had not made sufficient arrangement for recovery of the said amount on account of theft of electricity. The petitioner replied to the charge-sheet vide letter dated 23.03.2017 (Annexure P-1) and explained that as ECR dated 17.04.2015, which was prepared by M.E.Lab Bathinda was not given by any officer to him till his retirement i.e. 31.01.2016, and, there is no entry in his accounts, therefore, no notice for electricity theft was issued to the consumer. The competent authority appointed Sub-Head Engineer/Enquiry Officer as Enquiry Officer to hold enquiry into the charges. Thereafter, by passing impugned order, respondent

No.1 held the petitioner to be guilty of the charges as he had not made requisite arrangement for the recovery of the amount for which he is straightway responsible and it was ordered to impose 5% cut in pension of the petitioner for a period of one year.

5. Learned counsel for the petitioner submits that the petitioner has been proceeded against, under the Punjab State Electricity Board Employees (Punishment and Appeals) Regulations, 1971 and raised the argument that these Regulations cannot be made applicable to the retired employees as the regulations are only applicable to the Board Employees and the term Board Employees has already been defined under Rule 3 (e) and according to the said definition, the Board Employees are only serving employees, therefore, the action of the respondents in proceeding against the petitioner under the 1971 regulations is without jurisdiction. He further submits that disciplinary proceedings undertaken against the petitioner by the respondents after his retirement is contrary to the mandate of law laid down by this Court in case titled **"Lakhbir Singh Vs. PRTC and others, 2016 (1) SCT 318,** wherein it has been held that the disciplinary proceedings cannot be initiated against the retired employee in respect of an event which took place before institution of such proceedings. As such, the impugned order dated 14.02.2019 (Annexure P-2) passed by respondent No. 2 ordering 5% cut in pension of the petitioner for one year, is arbitrary, illegal and vitiated in the eyes of Law.

6. Learned counsel for the respondents vide reply dated 05.03.2021 submitted that the petitioner has already availed the remedy of departmental appeal against the order of punishment 03.01.2019, which is pending adjudication before the respondent-department. He argues that the during the

tenure of petitioner's service, he was issued two charge sheets i.e Charge Sheet No.277 dated 18.05.2017 and Charge Sheet No.165 dated 14.03.2017, and in one of its reply, it is admitted by the petitioner that he applied wrong multiplying factor to the account of M/S Khaila Cold Storage, which caused financial loss. He further argues that the argument raised by the petitioner is that impugned order passed by the respondent is contrary to the mandate of law laid down in ***Lakhbir Singh Vs. PRTC and others***, but as per Rule 2.2(b) of Punjab Civil Services Rules, the disciplinary proceedings can be initiated within 04 years of the date of cause of action, and the petitioner has retired on 31.01.2016 and consequently, charge-sheet was issued on 14.03.2017 and the same is within one year, therefore, he prays for dismissal of the present petition.

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

8. 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 a year of retirement, without issuing the show cause notice, the petitioner was issued a charge-sheet dated 14.03.2017. It is well settled law that no charge-sheet 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 31.01.2016. As such, the order imposing the punishment is totally cryptic and non-speaking as same does not give the detail as to how, the petitioner has been found liable that too after a period of exact one year of 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, if the rules governing the service permit the said action. No other 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 initiate disciplinary proceedings against the retired employee except Rule 2.2(b) of Punjab Civil Services Rules. 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.

9. 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 and others***" 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."

10. 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."

11. This Court has also also decided the same question of law as to whether an employee who is already retired from service can be chargesheeted 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.*
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> *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."*

12. 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 order dated 14.02.2019 vide which 5% cut in pension of petitioner had been imposed for one year in pursuance to the disciplinary proceedings initiated against him. The sole question which has been raised for determination in the present petition is whether post retirement after a gap of exact one year, the disciplinary proceedings initiated against the petitioner is valid under that law which resulted into the passing of the impugned order Annexure P-2, 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.

13. Admittedly, it is a case where the petitioner had retired on 31.03.2016, and no show cause notice was issued to the petitioner after his retirement. Even as per the learned counsels for the parties, there is no specific provision with regard to imposition of any cut from the pension. It is a settled law that after the retirement of an employee, the employer-employee relationship cease to operate. The applicability of Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II by way of issuance of guidelines would not have any effect upon the present case in view of the fact that even for the purpose of imposition of any punishment, the punishment has to be specifically categorised in any of the provisions under the Regulations which according to the learned counsel for the petitioner is not categorised anywhere. Pension is a Constitutional Right under Article 300-A of the Constitution of India which cannot be deprived of without authority of law. Administrative instructions cannot take away aforesaid right. Hence, the aforesaid instructions would

therefore be liable to be ignored in view of the Regulations of 1971 which do not provide any punishment for cut in pension. In the absence of any provision for cut in the pension as per Regulations of 1971, no such order of punishment could have been passed against the petitioner. Moreover, appeal filed by the petitioner has also not been decided, which is pending since 2019, further, neither in the reply nor by the learned counsel for the respondents, nothing as such regarding status of the appeal has been apprised.

14. Keeping in view of the above, the impugned order dated 14.02.2019 (Annexure P-2) in CWP-12310-2019, whereby cut of 5% in pension of the petitioner has been imposed for one year and similarly impugned order dated 03.01.2019 (Annexure P-2) in CWP-12357-2019, whereby also a cut of 5% in pension of the petitioner has been imposed for one year, both are hereby quashed. The recovery, if any, made from the petitioner(s) be refunded to him within a period of 08 weeks from the date of receipt of copy of this order.

15. The petitions are allowed in above terms.

16. All pending miscellaneous application(s), if any, also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

August 22, 2023
vanita

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