

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

**CWP No.11049 of 2015(O&M)
Date of Decision: 23.02.2023**

Bhagat Ram Aggarwal

.....Petitioner

Vs

Haryana Warehousing Corporation and others

.....Respondents

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

Present: Mr. D.S. Rawat, Advocate
for the petitioner.

Mr. Lekh Raj Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the impugned order dated 06.11.2009 (Annexure P-3) passed by the respondent No.3 and also the order dated 05.06.2014 passed by the respondent No.2 in appeal. The challenge has also been made to the order dated 05.01.2015,

vide which the second appeal of the petitioner was dismissed on the ground of non-maintainability and order dated 17.03.2015 passed by the respondent No.3, vide which even balance amount has been ordered to be recovered from the pension of the petitioner. The writ in the nature of mandamus is also sought, directing the respondents to release all the retiral benefits recovered from the petitioner along with interest in terms of instructions dated 20.02.2002 issued by the Finance Department.

[2]. The petitioner was working in the respondent-Department. He got his age of superannuation on 30.06.2005 and ultimately, superannuated from the services of the respondent Corporation. After the retirement, the petitioner being a retired employee is governed by the Haryana Warehousing Corporation Employees Pension Regulations, 1996. Regulation No.10 of the aforesaid 1996 Regulations is reproduced hereasunder:-

“Regulation 10. Recoveries of losses from the pension.

(1) The competent authority reserves to himself 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 recoveries from pension of the whole or part of any pecuniary loss caused to the Corporation, if in a departmental or judicial proceedings, the pensioner is found guilty for grave

mis-conduct or negligence during the period of his Service.

Provided that such departmental proceedings, if instituted while the employee was in Service, whether before his retirement, shall after the final retirement of the employee, be deemed to be proceeding under this regulation and shall be continued and concluded by the authority by which it was commenced, in the same manner, as if the employee had continued in Service. Final order under this regulation shall be passed by the competent authority.

(2) Such departmental proceedings, if not instituted, while the employee was in Service, before his retirement,

(i) Shall not be instituted save with the sanction of the Executive Committee;

(ii) Shall not be instituted 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 executive committee 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 employee during the Service.

(3) No such judicial proceedings, if not instituted while the employee 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

(4) The Executive Committee shall be consulted before final orders are passed.

(5) (i) Where any departmental or judicial proceedings is instituted under these regulations or where a departmental proceedings is continued under these regulations against an employee 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 of conclusion of such proceeding, when final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date or immediately preceding the date, on which he was placed under suspension.

(ii) Payment of provisional pension made under clause (i) shall be adjusted against the final retirement benefits sanctioned to such employee 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.”

[3]. Bare perusal of the aforesaid regulation would show that under Regulation 10(2)(ii), a retired employee of the respondent-Corporation cannot be charge-sheeted for any event, which took place more than four years before such institution. A memorandum was served upon the petitioner on 18.09.2009 after more than four years of retirement of the

petitioner for recovery of losses due to acts and omissions of the petitioner for the period ranging from 1999 to 2003 from the gratuity amount of Rs.2,98,839/- payable to the petitioner in full under the provisions of Regulation 3(4) of the HWC Employees Gratuity Regulations, 1992. The relevant part of the aforesaid memorandum is reproduced hereasunder:-

"The total losses suffered by the Corporation due to your misdemeanour amount to Rs. 46, 00, 437-(Rs. 40, 77, 995 + Rs. 5, 22, 442). It is now tentatively proposed to partly recover the losses of Rs. 46, 00, 437/- suffered by the Corporation due to your misconduct between the years 1999 and 2003 from the gratuity amount of Rs. 2, 98, 839/- payable to you in full under the provisions contained in Regulation 3 (4) of the HWC Employees Gratuity Regulations, 1992. However before taking a final decision in the matter, I hereby give you an opportunity to show cause against the proposed action. Any representation which you may like to make in this connection will be considered by the undersigned. Such representation, if any, should be made in writing and submitted to me so as to reach not later than October 19, 2009. Personal hearing will be afforded to you on October 21, 2009 at 2:00 PM in case you so desire."

[4]. On being served the memorandum, the petitioner filed a detailed reply to the aforesaid memorandum dated 18.09.2009, thereby taking plea *inter alia* that the Corporation has failed to initiate any disciplinary proceedings within the stipulated limits of

four years, therefore, no financial liability can be fasten upon the petitioner and no recovery can be effected. Reference to Regulation 10(2)(ii) of the Haryana Warehousing Corporation Employees Pension Regulations, 1996 was made to the effect that the disciplinary proceedings, if not instituted while the employee was in service before his retirement, then it shall not be instituted save with the sanction of Executive Committee and shall not be instituted in respect of any event, which has taken place more than four years of such institution.

[5]. Vide order dated 06.11.2009 passed by the respondent No.3, the reply filed by the petitioner was considered unsatisfactory and the petitioner was held guilty of the charge of causing business losses of Rs.46,00,437/- to the Corporation due to his misconduct between the years 1999 and 2003. The respondent No.3 ordered that 25% of the total losses of Rs.46,00,437/- suffered by the Corporation, shall be effected from the gratuity payable to the petitioner under the provisions of Regulation 3(4) of the HWC Employees Gratuity Regulations, 1992.

[6]. Feeling aggrieved against the aforesaid order, the petitioner preferred an appeal before the Appellate Authority/Executive Committee. The Appellate Authority dismissed the appeal vide order dated 05.06.2014 even by enlarging the scope of the impugned order for recovery of

balance amount from the dues of the petitioner. Vide order dated 05.06.2014, the Appellate Authority has exceeded its jurisdiction even by ordering recovery of balance amount, which was not granted by the respondent No.3 in the order dated 06.11.2009 while ordering recovery of 25% of the total loss suffered by the Corporation.

[7]. The petitioner filed second appeal before the Appellate Authority. The second appeal filed by the petitioner was dismissed on the plea that the Executive Committee in its 95th meeting held on 23.05.2014, has not increased the penalty inflicted by the respondent No.3 vide order dated 06.11.2009, therefore, the second appeal was dismissed as not maintainable. After passing of the aforesaid order dated 05.01.2015 by the Executive Committee, the respondent No.3 even proceeded to recover the entire amount from the dues of the petitioner vide order dated 17.03.2015.

[8]. Learned counsel for the petitioner submitted that the appeal filed by the petitioner and appeal of other similarly situated retired employees in different cases, who were also served with notice of recoveries after retirement for the event which took place more than four years before such institution were placed before the executive committee. In 93rd meeting dated 02.09.2013, the Executive Committee allowed the appeals of the similarly situated employees like Sh. R.N. Chugh,

D.M (Retd.), Sh. P.C. Pachauri, Manager (Retd.) and Sh. J.P. Sharma, Manager (Retd.), on which the punishment of recovery was imposed by the respondent No.3 despite the event being four years prior to institution. The appeal of the petitioner was deferred to be considered in 95th meeting. The appeals of similarly situated aforesaid employees were accepted on the ground that event for which they were charge-sheeted was four years prior to the institution, whereas similar treatment was declined in case of the petitioner.

[9]. In the first appeal decided by the respondent No.2 on 05.06.2014 even the scope of the order dated 06.11.2009 passed by the respondent No.3 was enhanced for the balance amount to be recovered and action be taken as per law. The order dated 06.11.2009 passed by the respondent No.3 was in the context of recovery to the tune of 25% of the total loss from the gratuity payable to the petitioner. The gratuity of the petitioner was Rs.2,98,839/- and the amount was recovered. The respondent No.2 ordered for recovery of Rs.7,84,717/- more from the petitioner besides the already recovered amount of Rs.2,98,839/- from the gratuity of the petitioner, therefore, the Appellate Authority/respondent No.2 has exceeded its jurisdiction beyond the memorandum dated 18.09.2009, which was served upon the petitioner by the respondent No.3.

[10]. Precisely, in this context, the petitioner ventured to file

second appeal on 09.07.2014 before the Board of Directors and the same was dismissed vide order dated 05.01.2015 on the ground that the Executive Committee has not increased the penalty inflicted by the Managing Director/respondent No.3, therefore, the second appeal was not maintainable. This was factually wrong keeping in view the order dated 05.06.2014 passed by the respondent No.2 in which Appellate Authority has exceeded its jurisdiction even by going beyond the scope of memorandum dated 18.09.2009.

[11]. Evidently, the respondent No.3 had ordered to recover Rs.2,98,839/- from the gratuity of the petitioner, whereas the Appellate Authority/respondent No.2 vide order dated 05.06.2014, increased the aforesaid recovery and ordered to recover Rs.7,84,717/- from the petitioner besides the already recovered amount of Rs.2,98,839/- from the gratuity of the petitioner. The rejection of the second appeal by simply observing that the second appeal does not lie as the Executive Committee had not increased the penalty imposed by the respondent No.3 was *per se* a wrong observation, which is evident from the record of the case. As a consequence of dismissal of the second appeal of the petitioner, the respondents vide order dated 17.03.2015, recovered an amount of Rs.7,84,717/- besides the already recovery of Rs.2,98,839/- from the gratuity of the petitioner and the aforesaid amount of

Rs.7,84,717/- was recovered from the retiral benefits of the petitioner, which came to the petitioner on account of the judgment passed by the High Court in CWP No.5475 of 2010, which was filed by the petitioner for grant of *pro rata* pension and other admissible retiral benefits for the period 12.04.1966 to 08.02.1980 i.e. service rendered by the petitioner with the PWD (B&R) Department, Haryana.

[12]. The petitioner seeks to annul the impugned actions of the respondents on the strength of Regulation 10(2)(ii) of the Haryana Warehousing Corporation Employees Pension Regulations, 1996, which is mandatory in nature.

[13]. Evidently, the departmental proceedings, if not instituted for the recoveries of losses while the employee was in service before his retirement, then it shall not be instituted in respect of any event which took place more than four years before such institution.

[14]. *Per contra*, learned counsel for the respondents vehemently opposed the arguments of the learned counsel for the petitioner on the premise that even during service of the petitioner, the action was initiated and Regulation 10(2)(ii) of the Haryana Warehousing Corporation Employees Pension Regulations, 1996 is in the context of time limit of four years for the purpose of withholding or withdrawing the pension for retired employee. His pension is not being adversely effected in any

manner in these proceedings. The notice was issued to the petitioner for effecting recovery from gratuity payable to him under Regulation 3(4) of the HWC Employees Gratuity Regulations, 1992 and the action of the Corporation is not barred. Learned counsel for the respondents has objected that it is mandatory for the Corporation to adopt the proceedings under HCS (P&A) Rules 1987 in order to effect recoveries from the gratuity.

[15]. By referring to Agenda Item No.9 of the Executive Committee in its 66th meeting dated 23.08.2005, learned counsel for the respondents submitted that it was ordered to charge-sheet the petitioner for the acts of omission and commission, which he had allegedly committed during his tenure as Executive Manager in the Corporation. Further in its 78th meeting held on 14.01.2009, Managing Director was directed to fix responsibility of such officer, which has caused delay in initiating the disciplinary proceedings against the petitioner.

[16]. Submissions made by the learned counsel for the respondents will not tilt the requirement in terms of Regulation 10(2)(ii). Admittedly, the petitioner had retired on 30.06.2005. The memorandum was issued on 18.09.2009 for recovery of losses due to misdemeanor for the period ranging from 1999 to 2003 and loss was ordered to be recovered from the gratuity of

Rs.2,98,839/- payable to the petitioner in full under the provisions of Regulation 3(4) of the HWC Employees Gratuity Regulations, 1992. The impugned order dated 06.11.2009 passed by the respondent No.3 is in utter disregard to the mandatory requirement of Regulation 10(2)(ii) of the Haryana Warehousing Corporation Employees Pension Regulations, 1996. The Appellate Authority/respondent No.2 has exceeded its jurisdiction even by enhancing the scope of memorandum dated 18.09.2009 and the order dated 06.11.2009. On being further challenged, the second appeal was held to be not maintainable and thereafter, the respondents again proceeded to recover additional amount of Rs.7,84,717/- from the petitioner in addition to recovery already effected from the gratuity of the petitioner.

[17]. The entire facts and circumstances of the case would show that in similarly situated circumstances, employees namely Sh. R.N. Chugh, D.M (Retd.), Sh. P.C. Pachauri, Manager (Retd.) and Sh. J.P. Sharma, Manager (Retd.) were given benefits under Regulation 10(2)(ii) of 1996 Rules, whereas the case of the petitioner was discarded wholly on illegal grounds.

[18]. For the reasons recorded hereinabove, this writ petition is allowed. The impugned orders are hereby set aside. The amount so recovered from the gratuity and pensionary benefits

of the petitioner is ordered to be refunded to the petitioner along with the interest @6% per annum from the date of respective recoveries till final realisation of the amount. Let the needful be done within a period of two months from the date of receipt of certified copy of this order.

23.02.2023

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No