

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

Reserved on : 24.02.2023

Pronounced on : 26.04.2023

1. CWP-19505-2014

B.S. Rana

..... Petitioner

versus

Punjab State Warehousing Corporation

..... Respondent

2. CWP-11237-2015

Ravinder Kumar

..... Petitioner

versus

Punjab State Warehousing Corporation

..... Respondent

3. CWP-7489-2015

Varinder Kumar

..... Petitioner

versus

Punjab State Warehousing Corporation

..... Respondent

4. CWP-7581-2015

Surjit Singh Saini

..... Petitioner

versus

Punjab State Warehousing Corporation

..... Respondent

5. CWP-7596-2015

Ramesh Walia

..... Petitioner

versus

Punjab State Warehousing Corporation

..... Respondent

6. CWP-1507-2015

Raghbir Singh

..... Petitioner

versus

Punjab State Warehousing Corporation

..... Respondent

7. CWP-7169-2021**Balwinder Singh****..... Petitioner****versus****Punjab State Warehousing Corporation****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. J.P. Rana, Advocate
for the petitioner(s).

Mr. Vikas Singh, Advocate
for the respondent(s).

Mr. A.P. Singh, Advocate
for the respondent in CWP-7169-2021.

Mr. Jagjit Singh, Advocate
for respondent No.1 in CWP-7489-2015.

PANKAJ JAIN, J. (Oral)

Bunch of these seven writ petitions involved same question of law in the background of identical set of facts and are thus being adjudicated by common order. For convenience, facts are being culled out from CWP-19505-2014.

2. Petitioner after serving Corporation for considerable period, retired as Godown Assistant on 31.05.2008 on attaining the age of superannuation. The terminal benefits of the petitioner were withheld. It is an admitted case that as on 31.05.2008 when the petitioner retired, no chargesheet/departmental proceedings were pending against him. After his retirement, he was served with show cause notice dated 18.09.2009 placed at Annexure P-3 for the time period from 1999-2000 upto 2003-2004, seeking recovery of loss of Rs.1,15,382.31. Another show cause notice was served upon him on 19.03.2012 for less storage gain in the wheat stocks for recovery of Rs.1,634.16 pertaining to the year 1999-2000. Also the petitioner was served with chargesheet dated 22.05.2012 for less delivery of

storage gain in wheat stocks during the period 1999 to 2005-2006. The aforesaid departmental proceedings are being registered by the petitioner by relying upon Rule 2.2(b) of the Punjab Civil Service Rules, Vol-II, Part-I claiming that the action of the respondent-Corporation is against the bare provision of law and the charges beyond 04 years from the date of issuance of chargesheet/issuance of show cause post retirement cannot be allowed to sustain.

3. Per contra, respondent in his written statement has taken a stand that the issue w.r.t. less storage was subject matter of CWP-3230-1993 filed at the behest of Punjab State Welfare House Employees Union. Writ petition filed by the Union was allowed on 20.07.1994. Intra Court Appeal filed by the Corporation in LPA No.935 of 1994 was preferred by the Corporation wherein there was an interim order to the following effect:-

“Notice of motion.

Mr. M.H.S. Bedi, Advocate accepts notice.

To come up for arguments on October 5, 1994.

Meanwhile, operation of the judgment would not authorize the appellants to effect recoveries on the basis of orders impugned in the writ petition.

14.9.1994

sd/- R.P. Sethi
Acting Chief Justice

sd/- Sat Pal
Judge”

Resultantly, the matter w.r.t. storage gain/loss was pending before this Court. The same was decided on 12.02.2009. Further writ petition was filed by the employee-Union i.e. CWP-11967-2009 and it is on account of interim order passed in the LPA, no action was taken.

4. I have heard counsel for the parties and have gone through the records of the case.

5. There is no denial to the fact that on the face of it the action of the respondent is hit by Rule 2.2(b) and the Corporation is barred from initiating disciplinary proceedings against the petitioners based on the events which had already happened 04 years prior to the institution of proceedings as all the petitioners have been proceeded against post retirement. The question is can the respondent-Corporation take refuge under the interim order passed in LPA No.935 of 1994 to justify its action. The issue has already been dealt with Coordinate Bench in the case of ***D.K. Kaushal vs. Punjab State Welfare Housing Corporation and another CWP No.10042 of 2013 decided on 20.08.2014***, wherein it was held as under:-

“5. Counsel for the Corporation, on the other hand, sought to justify the delay by taking the plea that LPA No.935 of 1994 was decided on 12.02.2009, in favour of the Corporation and thereafter, the stocks were checked and it was found that there was less storage gain and loss has been caused to the Corporation and therefore, the chargesheet dated 02.12.2009 has been served. The petitioner had also filed reply on 17.12.2009 but without waiting, the present writ petition has been filed.

6. In the replication, the petitioner clarified that in the said LPA, while staying the order of the Learned Single Judge, the Division Bench had not authorized the respondents to effect recoveries and had never granted any stay from issuing the chargesheet, so as to avoid the bar under Rule 2.2(b) of Punjab Civil Services Rules, Volume II.

7. Similarly, in the connected case, i.e., CWP No.4327 of 2013, also pertaining to the petitioner, the last date pertaining to the incident which would be relevant is 18.01.2005 which was beyond 4 years from

the date of issuance of the chargesheet which was 11.12.2009 in the said case.

8. The issue is no longer res integra as has been noticed in the case of the petitioner himself in CWP No.3312 of 2009, in which case, the Learned Single Judge had relied upon the Division Bench judgment of this Court passed in **CWP No.10456 of 2007** titled **Raghubir Singh Vs. Punjab State Warehousing Corporation & another** decided on 11.09.2008 (Annexure P7). The Division Bench, therein, noticed the earlier Division Benches of this Court in **L.B Gupta Vs. Punjab State Electricity Board, 2001 (4) RSJ 127** and **Baldhir Singh Vs. State of Punjab & others 2008 (2) ILR (Punjab & Haryana) 163**. In **R.C.Gupta Vs. P.S.E.B. 2002 (1) RSJ 509**, a Division Bench of this Court had quashed the chargesheet dated 26.03.1999 pertained to the allegations of 1984 and the employee had retired on 30.06.1998. Similarly, in **O.P.K arab Vs. HVPN Ltd. & others 2007 (1) ILR (Punjab & Haryana) 613** chargesheet which was issued after 4 years, i.e., on 30.10.2003, in respect of the events commencing from May, 1994 to July, 1994, was quashed by holding that the date of institution was date of the departmental proceedings, especially the date when the chargesheet was issued to the petitioner, as per the explanation to Rule 2.2 (b)(4). Relevant observations read as under:

“(7) A perusal of the afore-mentioned Rule shows that the respondents could order the recovery from pension of the whole or part of any pecuniary loss caused to the government if a pensioner is found in a department of judicial proceedings to be guilty of grave misconduct or he had caused pecuniary loss to the government by mis-conduct or negligence during his service provided that such an enquiry has been instituted during the period when the officer was on duty. However, if such an enquiry has not been

instituted while the officer was on duty and before his retirement then it cannot be instituted in respect of an event which took place more than four years preceding the institution of such proceedings. In other words, an enquiry can only be instituted in respect of an event which has occurred four years before the date of the institution. The explanation appended to Rule 2.2(b)(4) further clarifies that departmental proceedings would be deemed to have been instituted when the charges framed are issued to him. In other words, the date of institution of departmental proceedings would be the date when the charge sheet is issued to the petitioner.”

9. The observations of the Division Bench, while taking into consideration the fact that the purpose of the rules, would go on to show that it is only to avoid undue hardship to the retirees who may not be in a position to defend themselves after having settled at one place. Relevant observations from **Baldhir Singh** (supra) read as under:

"6. A bare perusal of the aforementioned Rule makes it clear that Rules 2.2(b)(ii) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by efflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree.

The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end. Moreover, the learned State counsel has not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner."

10. Recently, the Apex Court in **SLP (Civil) No.29589 of 2009** titled *Punjab State Power Corporation Ltd. Patiala & others Vs. Atma Singh Grewal* decided on 17.09.2013, also upheld the quashing of the chargesheet by this Court wherein the chargesheet was issued more than 4 years after the retirement on 30.04.2004 for allegations pertaining to May, 2002 to December, 2002 and the chargesheet was already issued on 10.01.2008."

6. Another plea raised on behalf of the respondent that needs to be noticed to be rejected is that there is a difference between the proceedings involving major penalty and minor penalty. The precise contention that has been raised is that wherever there is a minor penalty, the institution of the proceedings is of no consequence and thus Rule 2.2(b) will not be attracted. The plea raised is misconceived. Rule 2.2(b) deals with departmental proceedings. It does not distinguish between the proceedings involving minor penalty or major penalty. The only difference is that in the cases involving minor penalty, the departmental proceedings are deemed to have been initiated on the date notice is served upon the petitioner, whereas in the cases involving major penalty, the departmental proceedings are deemed to have come into being on the day the chargesheet is issued in terms of law laid down by Apex Court in '*Union of India vs. K.V. Jankiraman*, reported as **1991(4) SCC 109**'.

7. In view of the above, this Court find that Rule 2.2(b) is applicable in all the departmental proceedings post retirement. Reference can be made to law laid down by Division Bench in the case of ***Gurdev Singh vs. State of Punjab and others***, reported as ***2004(2) RSJ 325***, wherein the retiree was served with show cause notice for recovery.

8. Consequently, this Court finds that the respondent-Corporation cannot justify its action by taking refuge and the interim orders passed by the High Court in LPA No.935 of 1994 as there was no stay in initiating departmental proceedings, though only interim was to not effect recoveries. Resultantly, show cause notices/chargesheets issued in the present cases for the charges beyond 04 years having been issued post retirement and thus hit by provisions of Rule 2.2(b) of the Punjab Civil Service Rules are ordered to be quashed. Wherever the charge pertains to a time period as permitted under Rule 2.2(b), the same shall survive and the respondent-Corporation shall be at liberty to proceed against delinquents in accordance with law.

9. Disposed off accordingly.

(PANKAJ JAIN)
JUDGE

26.04.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes