IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2137 of 2018 (O&M)
Date of Decision: 24.02.2023

Swaran Lal Kansal ......Petitioner

Vs

Haryana State Federation of Consumers' Co-operative Wholesale Stores Limited & Anr......Respondents

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

Present: Mr. Dhiraj Chawla, Advocate
for the petitioner.

Mr. Ashish Yadav, Advocate
for the respondents.

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<u>RAJ MOHAN SINGH, J. (Oral)</u>

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari quashing the order dated 17.07.2014 passed by the respondent No.2 and order dated 07.07.2014 and order dated 08.06.2017 passed by the respondent No.2 vide which appeal of the petitioner has been rejected being illegal and against the Rules and the petitioner laid challenge to the order dated 16.08.2017 vide which recovery has been effected from the retiral dues of the petitioner by means of punishment which according to the learned counsel for the petitioner is wholly without jurisdiction as

the respondents have no power to order recovery after the retirement of the petitioner and the impugned orders of recovery are bad in law.

[2]. The petitioner was appointed as General Manager in the respondent-Federation in the year 1980 and had superannuated from the said post w.e.f. 30.04.2012 subject to outcome of pending disciplinary proceeding arising out chargesheet dated 27.06.2008 and 04.08.2011.

[3]. The petitioner submitted his reply to the chargesheet that the case of Khem Chand s/o Sh. Bailakh Ram transporter was pleaded by the Advocate in District Consumer Dispute Redressal Forum, Yamuna Nagar and all the circumstances were brought to the notice of the Advocate as required. The charge alleged against the petitioner in respect of non-producing the documents before the District Consumer Forum was not true and the petitioner was not at fault for the decision rendered by the District Consumer Forum, Yamuna Nagar. Regarding note given on 16.11.2007 on the file of Legal Branch, the petitioner had signed the note as per guidelines of the Business Manager G.M. Legal Sh. V.K. Gupta. The note was signed by the petitioner in good faith without reading the same. Sh. V.K. Gupta told the petitioner that there is no weight in the case and it was useless to file the same with the State

Commission Redressal Forum and the petitioner was advised to sign the note which was prepared by him so that the approval for not filing the case may get through from the Managing Director.

[4]. An appeal against the decision of the Consumer Forum dated 15.10.2007 was filed by the respondents before the State Consumer Commission as well as National Consumer Disputes Redressal Commission, however decision of the Consumer Forum was upheld by the Appellate Forum and further cost(s) of Rs.10,000/- was imposed upon the Federation. The respondent-Federation decided to recover the same from the petitioner despite the fact that the petitioner had rightly advised the respondent-Federation that there was no good ground to file the appeal. An Enquiry Officer was appointed vide order dated 01.08.2008, who conducted the enquiry and proved the charges of negligence against the petitioner and subsequently show cause notice dated 19.06.2012 was given to the petitioner proposing to impose the punishment of Recovery of Rs.1,15,300/- which was duly replied by the petitioner. However the respondent No.1 did not appreciate the contention raised therein and vide the impugned order dated 17.07.2014, recovery of Rs.65,300/- was ordered from the retiral dues.

[5]. Another chargesheet dated 04.08.2011 was issued to

the petitioner for causing losses to the respondent-Federation. The petitioner replied the same by submitting that during 03.03.2010 to 02.05.2010, he was on earned leave and the stock for the crop year 2010-2011 was purchased by Sh. Anil Malik, District Manager and prior to him Sh. S.K. Dhanewal, D.M. was having the additional charge and the petitioner joined the duty on 03.05.2010. An Enquiry Officer was appointed by the respondent No.1 and during the course of enquiry proceedings, the petitioner specifically made a statement denying the charges and rebutting the allegations on 12.03.2012. However, the Enquiry Officer proved the charges against the petitioner and submitted the enquiry report to the respondent No.1. The petitioner also filed detailed comments to the enquiry report, however the same were not accepted by the respondent No.1 and the petitioner was issued a show cause notice dated 11.02.2014 whereby it was proposed to impose punishment of recovery of loss @ 10% of the total loss of Rs.35,85,593/ by relying upon the instructions dated 29.03.2013 issued by the Board of Administrators. The allegations in the chargesheet dated 04.08.2011 relate to the period August-September, 2010 and the chargesheet was issued year later i.e. 04.08.2011. The subsequent decision taken by the Board dated 29.03.2013 cannot be possibly applied retrospectively.

[6]. The petitioner filed his reply and was subsequently called for personal hearing on 30.05.2014 and again the petitioner specifically stated that the loss caused to the respondent-Federation was not attributable to him. However, the respondent No.1 held the petitioner guilty of negligence and further ordered recovery of Rs.3,58,559/- against the petitioner vide the impugned order dated 07.07.2014.

[7]. The petitioner filed collective appeal against the impugned orders dated 17.07.2014 and 07.07.2014, however the same were rejected by the respondents in the meeting held on 17.03.2017 in a non-speaking manner qua impugned order dated 07.07.2014 and impugned order dated 17.07.2014 was modified to the extent that only the interest @ 12% on the security amount to be recovered from the petitioner along with Rs.10,000/- cost besides imposing the punishment of recovery of Rs.16,440/-.

[8]. The respondent-Federation sanctioned the gratuity and leave encashment of the petitioner to the tune of Rs,7,22,862/- and Rs.3,91,550/- respectively. However, a sum of Rs.62,000/- and Rs.3,58,559/- were deducted out of the said amounts in view of punishment of recovery imposed vide the impugned orders. Consequently, an amount of Rs.6,14,323/- has been released to the petitioner vide order dated 16.08.2017 and a

sum of Rs.5,00,089/- was deducted on account of the aforesaid recoveries.

[9]. It has been further pleaded that the retiral dues such as leave encashment, gratuity, LTC increments and cash security along with interest have been withheld merely on account of pendency of the chargesheets. There is no allegations with regard to the misappropriation of funds of the respondent-Federation. The petitioner has also made representation dated 30.10.2012.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. The core issue involved in the present case is to whether under the Staff Service Rules, 1975 of the respondent-Federation, the enquiry could have been initiated against the petitioner after his retirement or not. Under the aforesaid Rules, the enquiry could have been initiated only against the employee, who is in service and is drawing salary. In case of retired employee, the enquiry cannot be initiated nor even continue after his retirement. The punishment can only be awarded to the employee in service and not on the retired employee.

[12]. The aforesaid controversy stands crystallized in ***CWP No.8825 of 2015*** titled ***'Shamsher Singh Malik vs. Hry. State***

Fed. of Consumers Co-op Wholesale Stores Ltd. & Anr., decided on 18.05.2016 on the basis of ratio of '***Jogi Ram vs. Hry. State Fed. of Consumers Co-op Wholesale Stores Ltd. & Anr.,*** passed in ***CWP No.1873 of 2014*** decided on 23.05.2014. Even in identical case of the same respondent-Federation titled ***'Ranbir Singh Dahiya vs. Haryana State Federation of Consumers Co-operative Wholesale Stores (CONFED) and Anr., CWP No.31311 of 2018*** decided on 23.02.2023, this Court after placing reliance upon ***'CWP No.15247 of 2011*** titled ***'S.C. Jain vs. Managing Director, The Haryana State Federation of Consumers Co-operative Wholesale Stores Federation and another'*** decided on 22.05.2013 and ***Chandra Singh vs. State of Rajasthan and another, (2003) 6 SCC 545*** and ***S.S. Arya vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others, 2009(8) SLR 53, Shamher Singh Malik*** and ***Jogi Ram's*** cases (supra) has taken a view that there is no rule framed in respect of chargesheeting a retired employee after his retirement for the loss allegedly caused to the Federation prior to his retirement. The liability of the retired person has been authoritatively answered to the effect that the punishment can only be awarded to the serving employee and even in case of chargesheet issued prior to retirement of the employee. No order of punishment can be passed after retirement of the employee in view of ratio of ***Shamsher Singh Malik's*** case (supra).

[13]. For the reasons recorded in the order dated 23.02.2023 passed in ***Ranbir Singh Dahiya's*** case (supra), this petition is also allowed in the same terms. The cumulative effect of the case would have the nullification of the impugned action against the petitioner. The impugned orders are set aside. The petitioner is entitled for the release of his dues along with interest @ 6% per annum from the date of its accural till final realisation of the same. Let the needful in the aforesaid context be done within a period of two months from the date of receipt of certified copy of this order.

(RAJ MOHAN SINGH)
JUDGE

February 24, 2022
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No