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

**CWP-21815-2018
Date of decision : 16.02.2023**

Shingara Singh ....Petitioner

Versus

Punjab Agro Industries Corporation and another
...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Naresh Kumar Manchanda, Advocate
for the petitioner.

Mr. Aruz Khan, Advocate for respondent No.1.

Mr. Ajay Pal Singh Madaan, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Challenge is to the charge-sheet dated 18.06.2018 (Annexure P-2). The contention raised is that the petitioner retired from the services on attaining the age of superannuation on 30.04.2016 and there being no power vested with the authority to charge-sheet the petitioner thereafter, the same cannot be sustained.

Counsels are *ad idem* that the issue in dispute is no more *res integra* and stands squarely covered by the judgment passed by the Coordinate Bench pertaining to the same set of rules in ***'CWP-25369-2018'*** titled as ***'Shaminder Singh Vs. The Punjab Agro Industries Corporation and another'*** and other connected cases, wherein it has been held as under:-

"*By this common order, the bunch of writ petitions, details of which have been given in the heading, are being disposed of as all the writ petitions involve the same question of law and similar facts.*

The grievance, which is being raised by the petitioner(s) in the present writ petitions, is that all the petitioners have been charge sheeted for conducting disciplinary proceedings after their retirement by alleging that while they were in service, they have failed to give the storage gain in respect of wheat, which was under their custody as well as that wheat which was in the custody of the petitioner got damaged due to long storage, due to which respondent/Corporation suffered monetary loss, which monetary loss is attributable to the petitioner(s). The sole contention which is being raised by the learned counsel for the petitioner(s) is that keeping in view the rules governing the service, there is no jurisdiction with the respondent Corporation either to initiate disciplinary proceedings against the petitioners after they have already retired or to continue the disciplinary proceedings after their retirement.

*For the purpose of this order, facts are being taken from CWPNo.25369 of 2018 titled as **Shaminder Singh vs. Punjab Agro Industries Corporation and another**. The grievance, which is being raised by the petitioner in this writ petition is that the petitioner retired from service on attaining the age of superannuation on 31.1.2017 and after retirement, a charge sheet has been served upon him on 26.09.2017 under clause 23 (1) (b) and (h) of the standing orders of Punjab Agro Industries Corporation Ltd alleging acts of omission and commission, due to which Corporation has suffered loss. The employees of the Corporation are governed by the Punjab Agro Industries Corporation Ltd. Recruitment and Promotion Rules, 2015, (hereinafter referred as '2015 Rules') Rule 13 of the said Rules deals with penalties which is as under:-*

> *"13. Discipline, Penalties and Appeals: The employee so appointed by direct recruitment or department promotion shall be liable to disciplinary action as per the provisions of the certified standing orders of the Corporation and as per Punjab Civil Services Rules."*

The grievance of the petitioner is that the petitioner has been issued a charge sheet after his retirement, initiating disciplinary proceedings, which is beyond jurisdiction of the respondent/Corporation as there is no rule which grants power to the respondent to issue a charge sheet to conduct disciplinary proceedings against any retired employee under the rules governing service, especially, when the post on which the petitioner was working, is a non-pensionable post.

Upon notice of motion, respondents have filed reply, in which it has been stated that apart from Rule 13 of the '2015 Rules', Punjab Civil Services (Punishment and Appeal) Rules, are also applicable upon the employees of the respondent/Corporation and, therefore, issuance of charge sheet to the petitioner after his retirement is well within the jurisdiction of the respondent/ Corporation as Rule 2.2 (b) of the Punjab Civil Services (Punishment and Appeal) Rules authorises the employer to issue charge sheet to a retired employee as well. Rule 2.2(b) of the Punjab Civil Services (Punishment and Appeal) Rules, Chapter I Volume II, upon which the reliance is being placed by the respondent/Corporation is as under:-

" 2.2 (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 the pensioner is 2 of 5 found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on 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 reemployment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service.*

(2) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment,:-

(i) shall not be instituted save with the sanction of the Government:

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places 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;

(3) such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his employment, shall be instituted in respect of an event as is mentioned in Clause (ii) of proviso (2); and

(4) The Public Service Commission shall be consulted before final orders are passed. Explanation- For the purpose of this rule-

(1) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been instituted- (i) in the case of criminal proceedings, on the date which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court;".

Counsel for the petitioner(s) rebuts the contention raised by the counsel for the respondent/Corporation that Rule 2.2(b) of the Punjab Civil Services (Punishment and Appeal) Rules, Chapter I, Volume II grants the jurisdiction to the respondent to issue charge sheet to a retired employee so as to hold the disciplinary proceedings or to continue with the disciplinary *proceedings even after retirement. Learned counsel for the petitioner(s) argues that the said Rule is applicable only where an employee is getting pension as under Rule 2.2(b), only pension of retired employee can be stopped. Counsel for the petitioner argues that Rule 2.2.(b) of the Punjab Civil Services (Punishment and Appeal) Rules, cannot be made applicable upon the petitioner as the post on which the petitioner was working is non pensionable post, therefore, in the facts and circumstances of this case, Rule 2.2.(b) does not give any power/jurisdiction to the respondent/Corporation to initiate proceedings against the petitioner after his retirement*

I have heard learned counsel for the parties and have gone through the record with their able assistance.

*A Co-ordinate Bench of this Court has already considered a similar question of law while deciding CWP-26728 of 2014 titled as **Gurinder Singh vs. Punjab Agro Industries Corporation (PAIC) Ltd** decided on 24.01.2017. In the said writ petition, the petitioner Gurinder Singh was issued a charge sheet after his retirement and after enquiry into the charge sheet, he was imposed with a punishment of recovery by this very respondent-Corporation, which order was challenged by Gurinder Singh by filing CWP No.26728 of 2014. The charge sheet as well as order of punishment was challenged by the petitioner therein on the ground that respondent/Corporation was not competent to issue charge sheet upon an employee after his/her retirement to conduct disciplinary proceedings and impose punishment, keeping in view the rules governing the service, as under no rule of the rules governing the service, respondents have power to initiate disciplinary proceedings after retirement.*

This Court, after considering the stand taken by the respondents/Corporation, which is the same as taken in the present writ petition that Rule 2.2 (b) of the Punjab Civil Services (Punishment and Appeal) Rules, Chapter I, Volume II gives power to the respondents to issue charge sheet after retirement, it has been held by this Court that Rule 2.2 (b) is not applicable in case of the employees of the respondent-Corporation as the post *on which the employee was working, is non-pensionable. It has been further held by this Court that there is no other rule, which gives power/jurisdiction to the respondent/Corporation to initiate proceedings against an employee after his/her retirement, hence, issuance of charge sheet to a retired employee and effecting recovery by conducting disciplinary proceedings, was beyond the jurisdiction of the Corporation. This Court gave the liberty to the respondent/Corporation to effect recovery in accordance with law by filing a civil suit. Relevant paragraph of the judgment is as under:-*

The petitioner was working as Executive with the Punjab Agro Industries Corporation Ltd. (PAIC). He retired from service on 31.07.2012. After his retirement, a charge-sheet was issued on 17.08.2012. The Enquiry Officer was appointed, who recorded the findings against the petitioner. Consequently, a show cause notice was issued to the petitioner and thereafter, the impugned order dated 10.11.2014 (Annexure P-8) was passed, vide which, recovery of Rs.14,04,05,831/- was ordered to be recovered from the petitioner. The petitioner has challenged this order on the ground that under the service rules applicable to him, he could not be charge-sheeted after his retirement and such a penalty could not be imposed. The respondent on the other hand has taken the stand that under Clause 34 of the Standing Order, the appeal lies before the Chairman of the Corporation and the petition is, therefore, premature. It is further stated that service condition of the petitioner are governed under the Punjab Agro Industries Corporation Ltd. in Recruitment and Promotion Rules 1991. Rule 13 of the said Rule of 1991, provides that the petitioner is liable to disciplinary action not only under the Standing Orders as relied upon by the petitioner, but the Punjab Civil Services Rules are also applicable. It is stated that under Punjab Civil Services Rules 2.2 (b), Chapter-I, Vol-II, the department is competent to initiate the departmental proceedings after the retirement of the employee provided that the event did not take place more than four years before the institution of such proceedings. I have heard learned counsel for the parties and have gone through the records.

Rule 13 of the Rules of 1991 is reproduced as under:-

"13.Discipline, Penalties and Appeals: The employees so appointed by direct recruitment or department promotion shall be liable to disciplinary action as per the provisions of the certified Standing Orders of the Corporation and as per Punjab Civil Services Rules."

It shows that for the purpose of disciplinary proceedings in the Standing Order, Punjab Civil Services Rules are applicable.

Clause 34 of the Standing Order provides that the Appointing and Punishing Authority will be the Managing Director and Chairman of the Corporation shall be the appellate authority. Learned counsel contends that after filling of the written statement now the rules have been amended and now the appellate authority is the Board of Directors.

Rule 2.2(b) is reproduced as under:-

"2.2 (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 the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on 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 rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service.

(2) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment,:-

(i) shall not be instituted save with the sanction of the Government:

(ii) shall be in respect of an event which took place not more than

four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places 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;

(3) such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his employment, shall be instituted in respect of an event as is mentioned in Clause (ii) of proviso (2); and

(4) The Public Service Commission shall be consulted before final orders are passed. Explanation- For the purpose of this rule-

(1) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been instituted-

(i) in the case of criminal proceedings, on the date which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court;".

Now, the original charge-sheet shows that the allegations were leveled against the petitioner regarding being negligent in discharge of his duty and due to his negligence after release of some wheat for the year 2008-2009, 2009-2010, and 2010-2011 to FCI, loss to the tune of Rs.79,48,12,246/- has been suffered by the Corporation. It is not disputed that the job of the petitioner is not pensionable. Rule 2.2 (b) relied upon by the respondent to initiate the proceedings, shows that under the said rule, the Government after holding an inquiry, can order to withdraw the pension or part of it, permanently or for a specified period. Since the job of the petitioner is not pensionable, no recovery from the pension can be made from it.

Learned counsel for the respondent states that on the basis of report of the inquiry, the respondent will file a civil *suit.*

I am of the view that holding a inquiry to fix the liability is one thing and passing the punishment order under a particular rule is another thing. Since, the order of recovery could not be passed under rule 2.2 (b), as the job of the petitioner is not pensionable, therefore, the impugned order 10.11.2014 (Annexure P-8) is set aside only to the extent of imposing the recovery. However, it shall always be open to the respondent to rely upon the inquiry report and file a civil suit for recovery, subject to various provisions of the law including limitation.

Petition is accordingly, partly allowed."

*Learned counsel for the respondents very fairly concedes that judgement in **Gurinder Singh's case (supra)** has already attained finality and has also been implemented.*

Even otherwise, after retirement, there exists no master and servant relationship between the petitioner and Corporation and until and unless, there is no specific rule, which empowers the respondent/Corporation to issue charge sheet to a retired employee, no charge sheet can be issued or even the charge sheet issued to an employee during service, cannot continue after his retirement, unless rules governing the service extend jurisdiction to the Corporation in that regard.

*It is a settled principle of law that in order to issue a charge sheet to a retired employee or to continue proceedings after retirement, there should be a specific rule under the rules governing the service. The Hon'ble Supreme Court of India while deciding Civil Appeal No.2101 of 1999 **Bhagirathi Jena vs. Board of Director O.S.F.C**. 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 of the said judgement 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."*

Hon'ble Supreme Court of India in ***Chandra Singh vs. 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 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 wherefor 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."*

This Court has also decided the question of law, as to whether, an employee who is already retired from service can be charge sheeted or the charge sheet issued to an employee while in service can continue after his retirement, while deciding CWP No.15247 of 2011 titled as ***S.C. Jain vs Managing Director***

Confed and other, *and held as under:-*

> *"A perusal of the aforesaid provisions clearly shows that the penalties, as provided for under the Rules, can be imposed only on an employee, who is drawing salary, either appointed on temporary or permanent basis. The penalties, which can be inflicted, show that the same are also of the kind which can be on an employee in service. None of the punishments, as extracted above, suggest that it can be imposed after an employee has retired from service. The issue as to whether departmental proceedings, even if initiated against an employee during service, can continue after retirement was gone into by Hon'ble the Supreme Court in Chandra Singh's case (supra), wherein it was opined that in the absence of specific Rule to that effect and once an employee is permitted to retire, the proceedings cannot continue. In view of my aforesaid discussion, once no provision in the Rules has been cited, in terms of which the proceedings against retired employee can be initiated, in my opinion, the action of the authorities in issuing charge-sheets to the petitioners after their retirement is without jurisdiction and is liable to be set aside. Ordered accordingly. Withheld retiral benefits of the petitioners be released within one month."*

Further, a co-ordinate Bench of this Court by relying upon judgement in ***S.C. Jain's Case (supra)*** *while deciding* ***Jogi Ram Vs. Haryana State Federation of Consumer's Co-operative Wholesale Stores, 2014 (4) PLR 460*** *held as under:-*

> *"7. On perusal of aforesaid provisions, it is clear that the penalties, as provided under the Rules, 1975, can be imposed upon an employee, who is drawing salary, either appointed on temporary or permanent basis. It is also clear that the penalty can be imposed only on an employee but after retirement, the petitioner cannot be termed as an employee and as such, no penalty can be inflicted upon him.*
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> *8. The issue as to whether the departmental proceedings can be initiated against an employee after retirement was gone into by Hon'ble the Supreme Court in* ***Chandra Singh vs State of Rajasthan and another 2003(6) SCC 545*** *and of this Court in* ***S.S. Arya vs Uttar Haryana Bijli Vitran Nigam, Panchkula and others 2009(8) SLR 53****.*
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> *9. It was held in the aforesaid judgements that in the absence of any specific Rule to this effect, no proceedings can be continued/initiated, once an employee is permitted to retire. Similar view was also held in the judgement of* ***S.C. Jain's case***

> ***(supra)***.
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> *10. In view of the facts and law position as mentioned above, it is clear that when there is no provision in the Rules as to the issuance of charge sheet or imposing a penalty upon an employee after retirement, the charge sheet issued to the petitioner is without jurisdiction and the same is liable to be set aside.*
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> *11. Accordingly, the present petition is allowed and the impugned charge sheet dated 12.09.2012 as well as the statement of allegations with the charge sheet dated 10.12.2012 are set aside. The respondents are directed to release the retiral benefits to the petitioner within a period of two months from the date of receipt of certified copy of this order."*

A bare perusal of the above would show that question of law raised in these petitions has already been decided more than once by the Hon'ble Supreme Court of India as well as by this Court holding that without there being any specific rule giving jurisdiction to an employer to initiate disciplinary proceedings after retirement or to continue the disciplinary proceedings after retirement, employer cannot initiate disciplinary proceedings against an employee who has already retired from service and cannot continue the proceedings against him after his retirement though, the same have been issued during his service career.

Counsel appearing on behalf of the Corporation/respondents very fairly concedes that there is no rule, as of now, which empowers the respondent/Corporation to issue charge sheet to a retired employee and hold disciplinary proceedings. Once there is an admission on behalf of the respondent/Corporation that there is no rule, which empowers the Corporation to issue charge sheet to a retired employee or to continue the proceedings after retirement, the charge sheets issued to the petitioner(s), which have been impugned in these writ petitions is without jurisdiction and no disciplinary proceedings can be held in pursuance to those charge sheets to impose punishment.

Counsel for the respondent/Corporation argues that it might not be within their jurisdiction to initiate disciplinary proceedings against the retired employee to impose punishment but Corporation will have the liberty to recover the loss in case *any employee has caused so, by his/her act of omission/commission, by filing appropriate proceedings before the Civil Court for the recovery of the same and this right has already been upheld while deciding CWP No.26728 of 2014 by this Court. This Court is in agreement with the said argument as Corporation cannot be remediless in case it has suffered monetary loss at the hands of any employee during his/her service career prior to their retirement.*

Keeping in view the above, the charge sheets, which have been issued to the petitioner(s) initiating disciplinary proceedings for imposing punishment under the rules, are set aside only to the effect that no disciplinary action be taken against the petitioner(s) on the basis of the said charge sheets. The disciplinary proceedings to enquire into the allegations alleged in the charge sheet, if already completed shall be treated as a fact finding enquiry only and the said fact finding enquiry shall not be treated as disciplinary enquiry for imposing punishment. If any order of punishment has been passed by the respondents on the basis of the impugned charge sheet, the same shall also be not given effect to.

In order to safeguard the interest of the Corporation, disciplinary proceedings which are pending or already concluded in respect of the charge sheets shall be treated as fact finding enquiry and in case, in the said fact finding enquiry, it is proved against any particular employee that due to his/her act of commission or omission, the Corporation has suffered any monetary loss, the Corporation will be at liberty to have its remedy to recover the said amount of loss in accordance with law by filing a civil suit

With regard to the retiral benefits, which might have been withheld by the respondents on the basis of the pendency of the charge sheets, as there is no prayer for the release of the same in these writ petitions, the petitioners will be at liberty to approach the respondent/Corporation for the release of those benefits. Learned counsel for the respondent/Corporation very fairly states that in case, any such representation is filed by the petitioner(s) seeking any relief of release of the pensionary benefits, which *have been withheld due to the pendency of the charge sheet, they will consider the same and pass an appropriate order in accordance with law within a period of three months from the date of receipt of said representation keeping in view this order passed today.*

At this stage, counsel for the respondent/Corporation states that Corporation is in process of amending the rules so as to have jurisdiction to initiate disciplinary proceedings against the retired employee as well as to continue the disciplinary proceedings after retirement. Be that as it may, as and when the said amendment to the rules is effected and brought into force, the position will be examined at that relevant time. The present order is being passed keeping in view the provisions of rules governing the service as it exists today.

All the writ petitions stand disposed of in above terms."

In view of the above, the present writ petition stands allowed and the Charge-sheet hereby stands quashed.

16.02.2023 **(PANKAJ JAIN)**
ps-I **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No