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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2795-2016
Date of decision : 12.09.2023

Kashmir Singh **...Petitioner**

Vs.

The Punjab State Power Corporation Ltd., Patiala and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Pankaj Sharma, Advocate for the petitioner.
Mr. M.K.Dogra, Advocate for the respondents.

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DEEPAK MANCHANDA, J.(Oral)

1. By way of present petition, petitioner-Kashmir Singh has sought quashing of the order dated 21.08.2015 (Annexure P-9) passed by respondent No.2, whereby 10% deduction in his pension for three years has been imposed without issuing any show cause notice or holding any regular inquiry at the charge-sheet, which was issued to him on 30.10.2014.

2. Brief facts emanated from the present case are that a charge sheet dated 30.10.2014 was issued to the petitioner for committing omissions/irregularities while he had been posted as A.E.E. at Sub Division (Tech.), Islamabad with the allegations that Addl. S.E. Enforcement-II, Amritsar checked connection of one Anil Kumar bearing A/c No. MS-01/114 vide E.C.R. No. No. 98/2087 dated 19.09.2013 and it was noticed that this very connection was also checked by the petitioner himself vide L.C.R. No. 60/303 dated 17.07.2013. Accordingly on the basis of this report, after making calculation sheet by SDO/Islamabad Commercial Office and further approved

by XEN Civil Line/Commercial Division, Amritsar, a notice dated 26.07.2013 was served upon the consumer namely Anil Kumar, with instructions to deposit an amount of Rs. 3,93,708/- as penalty and Rs. 2,16,502/- as compounding fee. To this effect an FIR No. 355 dated 03.08.2013 against the said consumer was also got registered. The said consumer did not raise any objection to the imposed penalty. However, later on the petitioner vide letter dated 13.01.2014 stated that this is not a case of theft as this case is authenticated by AEE Commercial, Islamabad, Addl. S.E. Civil Lines, Commercial Division, Amritsar and Deputy Chief Engineer, City Circle Amritsar, whereas imposing of penalty on account of theft on the said consumer was held correct by A.E.E./Commercial, Islamabad, Addl. S.E. Commercial, Civil Lines, Amritsar, Internal Auditor, Deputy Chief Auditor, Border Zone, Amritsar and Deputy Chief Engineer, Operation, City Circle, Amritsar. In this way, the petitioner was held liable for mis-interpretation of his own report at a later stage, which could have caused huge financial loss to the department if the said consumer might have filed any appeal before any office or Court regarding said penalty, the case of the department could have weaken. The petitioner received the charge sheet and submitted reply thereto. The reply submitted by the petitioner and comments/recommendations of concerned officers were considered by the competent officer and vide the impugned order dated 21.08.2015 (Annexure P-9) issued with the approval of respondent no.2, a cut/deduction of 10% from pension of the petitioner for a period of three(3) years has been imposed under the provisions of Rule 5(1 to ix) of P.S.E.B.(presently P.S.P.C.L.) Punishment & Appeal Regulation, 1971. Hence the present writ petition.

3. During the pendency of the present petition in view of the directions issued vide order dated 28.04.2016, respondent/corporation ensured that the Corporation would continue to pay pension to the petitioner to await the outcome of the present petition.

4. Learned counsel for the petitioner *inter alia* contends that the impugned order has been passed without assigning any show cause notice, initiating any inquiry/departmental proceedings and in negation of the principles of natural justice. He submits that in case anything wrong was done by the petitioner, then proper inquiry into the matter should have been initiated against the petitioner. Since the petitioner was regular employee of the Corporation, regular inquiry must have been taken place whereas no inquiry officer was appointed and even before the passing of the final order of punishment no show cause notice was ever issued to the petitioner, who stood retired from the service of the respondent-Corporation on 28.02.2014. In the absence of proper inquiry and procedure having been followed, the punishment order imposing cut/deduction in pension is not sustainable and is liable to be set aside.

5. Learned counsel for the petitioner further contends that the petitioner was retired on 28.02.2014 and the charge-sheet dated 30.10.2014 was issued after the gap of more than eight months as there were no proceeding pending against the petitioner on the date of his retirement, which is also against the settled proposition of law as no charge-sheet can be issued after attaining the age of superannuation, whereas in the present case, the charge-sheet was issued eight months after retirement without jurisdiction. He also submits that the case of consumer being a sole base, the petitioner was charge-

sheeted where actually no case of theft was made out, which resulted in to passing of impugned order by imposing penalty causing financial loss to the Corporation was passed against the petitioner, but while passing the order dated 21.08.2015, the said fact was not at all considered.

6. On the other hand, learned counsel for the respondents submits that Addl. SE Enforcement-II, Amritsar checked connection of the consumer(Sh. Anil Kumar) bearing A/C No.MS-01/114 vide ECR No. 98/2087 dated 19.09.2013 and it was noticed that this very connection was also checked by the petitioner himself on 17.07.2013 vide LCR No.60/303 and accordingly on the basis of this report, after making calculation sheet a notice dated 26.07.2013 was served upon the said consumer asking him to deposit an amount of Rs. 3,93,708/- as penalty and Rs. 2,16,052/- as compounding fee. In this regard FIR No. 355 dated 03.08.2013 was also lodged against the consumer. After receiving the above notice dated 26.07.2013 and even after lodging the above FIR, the consumer did not approach the concerned office or filed any court case in respect of the said notice dated 26.07.2013. From the conduct of the consumer, it can be clearly understood that the consumer has nothing to say in his defence and has impliedly admitted his commission of offence of theft of energy. However, later on the petitioner issued a letter No. 18 dated 13.01.2014 in which he at his own stated that this is not a case of theft as this case is authenticated by AEE Commercial, Islamabad, Addl. SE, Civil Line Commercial Divn., Amritsar, Internal Auditor, Dy. Chief Auditor Border Zone, Amritsar and Dy. Chief Engineer, City Circle Amritsar and in this way, the petitioner tried to help the consumer by creating evidence in his favour and as such made himself liable for the penalty, which has been rightly imposed

upon him. He submits that due to issuing of fabricated report by the petitioner, action was rightly initiated against him and only after finding him guilty after holding enquiry, the punishment of deduction of 10% in pension for three years was rightly imposed as the petitioner found guilty of making an illegal effort to cause substantial loss to the respondent Corporation. He submits that as punishment has been imposed on the basis of undisputed facts and the facts when admitted, it was not necessary to hold an enquiry and that since minor punishment of 10% cut in pension for three years has been imposed, the procedure adopted is correct and prays for dismissal of the writ petition.

7. I have heard the learned counsel for the parties and have gone through the case file.

8. For the adjudication of the present matter, two questions are before this Court for consideration; firstly- Whether without holding proper inquiry into the allegations, the impugned order is sustainable in the eyes of law? and secondly- Whether the issuance of charge-sheet eight months after retirement without serving show cause notice to the petitioner and on the basis of the same imposition of 10% cut in pension is valid or not?

9. A perusal of pleadings and the material available on record shows that the action of the respondents in passing the impugned order of punishment without holding the inquiry as envisaged under the rules governing the same cannot be sustainable in the eyes of law. The prime allegation against the petitioner is of misconduct. It is a conceded position that there are rules which govern the aspect as to how, the disciplinary authorities is to act in case of allegations regarding misconduct against a regular employee. It is a conceded position that the service rules in this regard envisage an enquiry into the

allegations and that too by following proper process and giving due opportunity of hearing to the delinquent employee to defend himself/herself as the case may be. That being so, no other procedure, other than the one envisaged under the rules, can be resorted to for taking punitive action against an employee much less the one which denies the delinquent right to defend himself/herself properly. No rule envisaging such kind of exception that the disciplinary authority had the right to pass the impugned order without holding an enquiry has been brought to the notice of this Court. In absence of any such exception, envisaged under the rules, the same cannot be claimed as a matter of right. All the authorities have to act in accordance with the rules governing the service without there being any relaxation unless and until the same is envisaged within the rules itself.

10. Even otherwise, wherever, the rules provide exception of doing away with the enquiry for instance in case of Article 311 (2) (b) of the Constitution of India, the same can be done only after giving an explanation in writing and there is no absolute power to the authorities to do away with the enquiry. Even the reasoning for doing away with the enquiry proceedings is also subject to the judicial review keeping in view the facts and circumstances of each case.

11. In the present case, in reply dated 30.01.2018, respondent-Corporation has candidly admitted in para 18 of the reply that there was no need to hold an inquiry which itself supports the stand taken by the petitioner in pleadings and no show-cause was issued before inflicting punishment of imposing 10% cut in pension for three years. Hence, as per the admission made by respondent/Corporation for doing away with the inquiry before passing the

order of punishment itself falsified the stand taken by the respondent/corporation and in such a situation, the impugned order dated 21.08.2015 passed by the respondent/corporation is not sustainable in the eyes of law.

12. The issue in hand has already been dealt by the Coordinate Bench of this Court in CWP-18632-2020, titled as "***Gurbachan Singh Vs. Shrimoni Gurudwara Parbandhak Committee and another***", wherein reliance has been placed on the Apex Court's judgment, which is extracted below:-

> *"9. The Hon'ble Supreme Court of India even while interpreting Rule 311 (2) (b) of the Constitution of India in Civil Appeal No.10587 of 1983 titled as "**Jaswant Singh versus State of Punjab and others**", decided on 27.11.1990 held as under:-*
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> > *"....... insofar as clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable"; and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of passing of the order. Although clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a Court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry. Also see: Shivaji Atmaji Sawani Vs. Union of India; Shivaji Atmaji Sawani Vs. State of Maharastra and Ikrammuddin Ahmed Borah Vs. Superintendent of Police Darrang."*
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> *10. The Apex Court further held in the above judgment that clause (b) of second proviso to Article 311 (2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold enquiry. Further satisfaction has to be based on certain objective facts and not the*

outcome of whim or caprice of concerned officer. Following was laid down in paragraph-5 of the said judgment:

> *"5......................it was incumbent on the respondents to disclose to the Court the material in existence at the date of passing of the impugned order in support of the subjective satisfaction recorded by respondent no. 3 in the impugned order. Clause (b) of the second proviso to Article 311 (2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram's case : [SCC p. 504 para 130]. "A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the Government servant is weak and must fall." The decision to dispense with the departmental enquiry cannot therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law it is incumbent on those support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer..........."*

13. In the present case, no rule has been brought to the notice of the Court which gives the power to the disciplinary authority to do away with the inquiry proceedings.

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.

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.

16. The Coordinate Bench of this Court in "***Satbir Singh Vs. State of Haryana and others" 2020 (2) S.C.T.393*** has held as under:-

> *"This question of law has already been settled by this Court in **L.R. Dhawan Vs. State of Haryana and others, 1996(3) S.C.T. 11**, wherein, it has been held that the gratuity can only be withheld if there is an enquiry pending on the date of retirement. The relevant part of the said judgment is as under: -*
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> > *"4. Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. If no inquiry or judicial proceeding is pending on the date of retirement of the employee, the Government/employer does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to an employee can be withheld during the pending of the departmental inquiry or judicial proceedings. The Government is also possessed with the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the*

> *pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an inquiry which may be initiated against the employee after his retirement but subject to the fulfilment of the conditions enumerated in proviso to Rule 2.2(b). However, proceedings initiated against an employee under proviso to Rule 2.2 (b) cannot be made a ground for withholding of death-cumretirement gratuity or the pension payable to an employee on the date of his retirement. In the case in hand, no inquiry was pending against the petitioner on the date of his retirement. The proceeding have been initiated against him after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery therefrom in terms of Rule 2.2(b) but there does not appear to be any legal justification for withholding of death-cum-retirement gratuity payable to the petitioner on the ground that inquiry has been initiated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986."*

In the present case, there was no charge-sheet, which was pending against the petitioner on the date of retirement and therefore, withholding of the pensionary benefits by the respondents on the basis of a charge-sheet issued 11 months after the retirement, was without jurisdiction.

This question again came up for consideration in ***Amarjit Singh Vs. Punjab State Civil Supplies Corporation Limited and another, 2016(4) PLR 191****, wherein, this Court after relying upon L.R. Dhawan's case (supra) this Court held that the retiral benefits can only be withheld on the basis of a charge-sheet, which has been issued prior to the date of the retirement of an employee. The relevant part of the said judgment is as under: -*

> *"To the extent gratuity is claimed by the petitioner, this petition must succeed. To claim such benefit, learned counsel for the petitioner relies appropriately on the case law in Narinder Dev Sharma Vs. State of Punjab & another, 1996 (1) SCT 623; L.R.Dhawan Vs. State of Haryana & others, 1996 (3) SCT 11 and Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2007 (1) SCT 161. This is because the respondents admit that no charge-sheet was served on the petitioner prior to his retirement and therefore, gratuity could not have been withheld. Neither can gratuity be withheld by initiating inquiry under Rule*

> *2.2 (b) of the Punjab Civil Services Rules, Volume II after employee retires and departmental proceeding were not contemplated during service. This is for the reason that gratuity is a one-time payment which falls due and payable on the date of retirement and is not a recurring right like pension. However, an enquiry based on a charge-sheet issued after retirement under Rule 2.2(b) can be conducted and concluded. The charge-sheet was issued in this case on 02.04.2013 for an incident of alleged misconduct which occurred during the period 2009-10, while the petitioner retired from service on 30.04.2011. To that extent no court directions are called for in this petition to draw the curtains on the departmental proceedings.*
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> *For the foregoing reasons, this petition is allowed while setting aside the impugned decision withholding gratuity for no rhyme or reason. Since the amount of gratuity has been withheld for the wrong reason, the petitioner would be entitled to interest on delayed payment @ 8.7% p.a. i.e. the rate payable on long term fixed deposits sitting invested in nationalized Banks."*

*While deciding **CWP-13449-2014** titled as '**Hans Raj Vs. Registrar, Cooperative Societies, Punjab and others**', decided on 24.05.2017, this Court once again held that the gratuity cannot be withheld on the basis of the charge-sheet, which has been served after the retirement. The relevant portion of the judgment is as under: -*

> *"Now, the further question would arise as to whether the gratuity of the petitioner could be withheld or not? The petitioner retired from service on 30.9.2012. Charge sheet was served upon him on 11.4.2014 i.e. after more than one and half years of the said retirement. The gratuity is otherwise required to be released immediately on the retirement. It goes to show that the gratuity of the petitioner was probably not released immediately on account of the impending charge sheet. Petitioner is getting provisional pension and if the department finds that the charges are proved, they are always at liberty to impose a cut in the pension. However, the gratuity of the petitioner cannot be withheld for indefinite period on the basis of the charge sheet which is issued after more than one and half years of his retirement.*
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> *Accordingly, the present writ petition is partly allowed to the extent that the gratuity of the petitioner is ordered to be released with interest @ 9% per annum starting three months from the date of retirement till the date of actual payment."*

*Also the Division Bench of this Court in '**Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and others, 2007(1) S.C.T. 161**, has held that gratuity payable to an employee cannot be withheld on account of allegations which have emanated after the date of* *retirement of the employee. The relevant paragraph of judgment is as under: -*

> *"2. Having heard the learned Counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegation which have been emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Ha ns Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and Ors. 2004(4) SCT 117 (P&H), Civil Writ Petition No. 152 of 2004, decided on October 28, 2004 has allowed the writ petition by following the judgment of Hon'ble the Supreme Court in P.R. Naik v. Union of India, AIR 1972 SC 554. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.*
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> *3. In view of the above, we allow the writ petition and quash the impugned order dated March 1, 2005 (P-15). We further direct the respondents to release the 100% pension, arrears of pension, gratuity and commutation of pension amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents. In case, the needful is not within one month, then the petitioner shall be entitled to interest at the rate of 6% per annum from the date the amount is payable till its actual payment."*

17. In view of the above, present petition is allowed, the impugned order dated 21.08.2015 (Annexure P-9) is hereby quashed and respondents are directed to restore full pension to the petitioner without imposing any cut in the pension. The amount, if any, withheld/recovered in pursuance to the impugned order shall be paid back to the petitioner with interest @6% per annum within a period of three months from the receipt of the certified copy of this order.

(DEEPAK MANCHANDA)
JUDGE

12.09.2023

vanita	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No