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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3794 of 2016 (O&M)
Date of decision : 23.01.2023

Jagir Chand Jossan ...... Petitioner

versus

The State of Punjab & ors. ...... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Peeyush Gagneja, Advocate
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

None for respondent No.4.

PANKAJ JAIN, J. (ORAL)

The short issue involved in the present writ petition is as to whether the disciplinary proceedings initiated against the petitioner by way of charge-sheet dated 21.05.2014 can be sustained.

2. The petitioner was allowed to retire on attaining age of superannuation on 31.05.2009.

3. Facts are not much in dispute. The petitioner retied on 31.05.2009. Chargesheet to the petitioner was issued on 21.05.2014. As per the affidavit filed on behalf of respondent No.1 to 3 it has been claimed as under -

> "1. That the present writ petition filed by the petitioner is liable to be dismissed in view of the submission made herein.

Rule 2.2(b) of Punjab Civil Services hereinafter called (The Rules), deals with initiating disciplinary proceedings against the retired employees which is as under:

"No such judicial proceedings, if not instituted while the officer 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 even which took place more than four year before such institution."

In this connection, it is respectfully submitted that Municipal Council, Abohar approved the building plan No. 184 dated 7.11.2007 of M/s Piccadily infrastructure private limited after getting technical approval from Senior Town Planner,Ludhiana. M/s Piccadily infrastructure private limited again submitted a revised building plan of the building in which 100% area of the plot was shown to be covered, which was against the building bye-laws. Municipal Council, Abohar passed a resolution no. 83 dated 6.6.2008 regarding the revised building plan of the above company. But this Department vide letter no. 1GB-DLG-09/25312-14 dated 3.07.2009 annulled the above resolution under section 236 of Punjab Municipal Act. 1911 being against the rules and instructions. Moreover the Municipal Council, Abohar did not get technical approval of revised map from Senior Town Planner as provided in the rules/instructions. Inspite of the above orders of the department, M/s Piccadily infrastructure private limited constructed the said building which was against the building bye-laws. This matter was highlighted when a Civil Writ Petition no. 3435 of 2010 was filed in the Hon'ble High Court and the erring officials of Municipal Council, Abohar were charge sheeted vide order dated 21.05.2014 and the petitioner Sh. Jagir Chand Joshan, Assistant Municipal Engineer (Retd.) was one of the accused officials. Chargesheet was issued to the petitioner after bringing this matter into the notice of Hon'ble High Court in CWP No.3435 of 2010. The copy of the interim order dated

> 22.5.2014 is annexed as Annexure R-2/1. In view of this, the department did not violate the Rule 2.2(b) of Punjab Civil Services Vol. II. in initiating the above disciplinary proceedings."

4. Thus, in view of the aforesaid admitted fact the cause of action in favour of the respondent-Department to proceed against the petitioner, if any, arose on 06.06.2008. In view of the law laid down in ***Union of India Vs. K.V.Jankiraman (1991) 4 SCC 109*** date of charge-sheet is the deemed date on which the proceedings can be said to have been instituted. Thus in the present case the proceedings are deemed to have been instituted on 21.05.2014.

5. It will be apposite to peruse Rule 2.2 (b) of the Punjab Civil Services Rules (for short 'the PCS Rules') which reads 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, in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment 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 Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his reemployment -

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

(ii) shall not be 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 Government may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made in relation to officer during his service.

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

the public Service commission should be consulted before final orders are passed.

Explanation - For the purpose of this rule -

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date on such date; and

(b) a judicial proceeding shall be deemed instituted -

(i) in the case of criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance is made; and

(ii) in the case of civil proceeding, on the date of presentation of the plaint in the Court.

Note : As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institute such proceedings should without delay intimate the fact to the Accountant General. The amount of the pension withheld under clause (b) should not ordinarily exceed one- third of pension originally sanctioned, including any amount of the pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

(c) (i) Where any departmental or judicial proceeding is instituted under clause (b) of Rule 2.2.or where a departmental proceeding is continued under clause (i) of the provision thereto against an officer 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 on which upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding the date on which he was placed under suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority :

Provided that where Departmental proceedings have been instituted under rule no of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of the gratuity or death-cum-retirement gratuity, as the case may be, shall to (not ?) be withheld.

(2) Payment of provisional pension made under sub-clause (i) shall be against the final retirement benefits sanctioned to such officer 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 period.

> Note :- The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings."

6. The question with respect to continuation of such proceedings in violation of Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II is no more *res-integra* and has been answered by Division Bench in ***Sub Inspector Puran Chand (Retd.) Vs. State of Punjab & ors. (2000) 3 SCT 515*** holding as under :-

> "7. Pointed attention of this Court has been drawn to clause (2) of the aforesaid rule 2.2(b). A careful perusal of the same would show that in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event which took place more than four years from the date when the proceeding is initiated. It is clear that the charge sheet was issued to the petitioner in the instant case on 24.11.1998, whereas the incident in question in respect to which he has been proceeded against relates to the year 1988 i.e. one decade prior to the issuance of the charge sheet. It is obvious that issuance of the aforesaid charge sheet is wholly unacceptable in law, as the same is clearly barred by the provision of clause (2) of rule 2.2(b) extracted above."

7. As per the mandate of Rule 2.2 (b) in case a departmental proceeding is to be initiated against an employee after his retirement it cannot be in respect of an event which took place more than 4 years from the date the proceedings is initiated. In the present case the incident is of the year 2008 whereas the charge-sheet has been issued in 2014 i.e. after more than 6 years. It is thus clear that issuance of charge-sheet on

21.05.2014 is clearly barred by the provisions as contained in Clause 2 of Rule 2.2 (b) of the PCS Rules.

8. As a sequel of the aforesaid discussion held hereinabove, the present writ petition is allowed. Charge-sheet dated 21.05.2014 (Annexure P-1) and all proceedings subsequent thereto are held to be bad in law and are thus ordered to be quashed. Petitioner is entitled for release of benefits admissible to him along with interest @8% p.a. from the date of accrual of the terminal benefits till the date of actual realization *vis-a-vis* the amounts withheld on the pretext of charge-sheet dated 21.05.2014 pending against the petitioner.

(PANKAJ JAIN)
JUDGE

23.01.2023
Dpr/Pooja sharma-I

Whether speaking/reasoned	:	Yes
Whether Reportable	:	No