

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-643-C-2023 in/&
RSA-3326-2015 (O&M)
Date of Decision :01.02.2023

Charan Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Kaith, Advocate for the appellant.

Mr. Gurvinder Singh, AAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-643-C-2023

Present application has filed for placing on record requisite documents in compliance of order dated 06.02.2020 passed in RSA-510-2020 by this Court.

Application is allowed. Documents are taken on record.

RSA-3326-2015

In the present regular second appeal, challenge is to judgment and decree dated 19.07.2012 passed by the trial Court by which, the suit filed by the appellant-plaintiff challenging the imposition of punishment by the respondent-department vide order dated 06.03.2007 and also the rejection of his appeal against the said order of punishment vide order dated 05.12.2007, was dismissed as well as order dated 18.03.2015 passed by the Lower Appellate Court by which, the judgment and decree of the trial Court dated 19.07.2012 has been upheld.

Certain facts need to be mentioned to appreciate the controversy in the present regular second appeal.

The appellant was working as driver with the Punjab Roadways, Chandigarh and while he was on duty on 02.07.1997 on bus No.PB-12-A-8846 he met with an accident, in which accident, a person lost his life. A claim was raised by the widow of the deceased before the Motor Accident Claims Tribunal, Karnal and vide order dated 01.06.2002, the appellant/plaintiff was held guilty of the rash and negligent driving and a sum of Rs.2,32,000/- along with 9% interest was awarded by the Motor Accident Claims Tribunal in favour of the claimants and in pursuance to the said award of the tribunal, the respondent-State had paid a sum of Rs.3,36,149/- to the claimants.

After attaining the age of superannuation, the appellant-plaintiff retired on 31.03.2006 and he was paid his pensionary benefits. After the retirement of the appellant-plaintiff, a departmental enquiry was initiated and a show cause notice dated 10.02.2007 was issued to the appellant-plaintiff for the recovery of the amount as awarded by the tribunal in favour of the claimants, which the State had to pay in respect of the accident, which had occurred on 02.07.1997 on the ground that the accident occurred due to the negligent driving of the appellant.

The appellant-plaintiff filed reply to the said show cause notice and vide order dated 06.03.2007, a sum of Rs.1,00,000/- was ordered to be recovered from the gratuity of the appellant-plaintiff. Against the said order of punishment of recovery dated 06.03.2007 passed by the punishing authority, the appellant-plaintiff had filed appeal, which appeal was rejected

by the respondent-department vide order dated 05.12.2007 and ultimately both the orders i.e. order dated 06.03.2007 imposing punishment of recovery of Rs.1 lac from the pensionary benefits of the appellant as well as order dated 05.12.2007 dismissing his appeal against the said order of recovery, were challenged by the appellant-plaintiff by way of filing a civil suit.

In the civil suit, challenge to the impugned orders dated 06.03.2007 and 05.12.2007 was on the ground that as the appellant-plaintiff had already retired from service and cause of action in pursuance to which recovery was ordered, was more than 04 years old from the date of issuance of the show cause notice and keeping in view the Rule 2.2 (b) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, the said notice was time barred. Keeping in view the evidence, which had come on record, the trial Court dismissed the suit of the appellant-plaintiff on the ground that once the plaintiff was held negligent in driving and due to the said negligence the State had paid compensation to the claimants, the State is entitled to recover the said amount from the appellant-plaintiff even by serving a show cause notice after his retirement. The judgement and decree of the trial Court dated 19.07.2012 was assailed by the appellant before the Lower Appellate Court, which appeal also came to be dismissed vide order dated 18.03.2015 of the Lower Appellate Court. Hence, the present regular second appeal.

The only argument which has been raised by the learned counsel for the appellant-plaintiff is that the Courts below have not appreciated Rule 2.2(b) of the Punjab Civil Services (Punishment and

Appeal) Rules, 1970 in correct perspective so as to hold that State was not within its power to issue show cause notice to a retired employee to recover the amount in respect of the incident which took place during the service career which incident was more than 04 years old at the time of the issuance of show cause notice. Learned counsel for the appellant-plaintiff submits that as appellant/plaintiff has retired, no departmental proceedings could have been initiated against the appellant-plaintiff in respect of an incident which was more than four years old at the time of issuance of show cause notice dated 10.02.2007 hence, initiation of departmental proceedings was beyond the jurisdiction of the respondent-department as per the rules governing the service and consequent punishment imposed vide order dated 06.03.2007 by the respondent-department was also beyond their jurisdiction and the same was liable to be set aside and the Courts below failed to appreciate the said rule in correct perspective so as to dismiss the claim raised by the appellant/plaintiff.

Learned counsel for the respondents submits that once the appellant-plaintiff was held negligent by the competent Court of law and due to the said negligence, department had to make payment to the claimants, assertion that the said amount cannot be recovered by initiating disciplinary proceedings after retirement, is liable to be rejected.

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

It is a conceded position between the parties that the disciplinary proceedings against the retired employee can only be initiated under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 by

operation of Rule 2.2 (b). The said rule is as under:-

“(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently 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 negligent during the period of his service, including service rendered upon re-employment after retirement:

Provided that:

(1) Such departmental proceeding, 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 re-employment-

(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 proceedings in which an order of

dismissal from service could be made in relation to the 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 the final orders are passed.”

A bare perusal of the said rule would show that there are certain restriction imposed for initiating departmental inquiry against a retired employee. As per the rule governing the service, no charge sheet can be issued to a retired employee in respect of the allegations, which are 04 years old at the time of issuance of said charge sheet/show cause notice.

In the present case, the incident relates to year 1997 and Motor Accident Claims Tribunal, Karnal award is of dated 01.06.2002. Counting the period of four years from the said date, the limitation period expired much before the date when show cause notice dated 10.02.2007 was issued to the appellant-plaintiff by the respondent-department for the recovery of amount by initiating departmental proceedings.

Keeping in view the said fact, no departmental proceedings could have been initiated against the appellant-plaintiff for recovery of the amount in respect of the incident which is more than four years old from the date when the show cause notice was issued. The Courts below have failed to consider the relevant rule governing the service on the issue of initiation of departmental proceedings while dismissing the suit vide order dated

19.07.2012 filed by the appellant-plaintiff as well as while passing order dated 18.03.2015 on the appeal preferred by the appellant/plaintiff against the judgment and decree of the trial Court.

Even otherwise, the said proposition of law has already been decided by the Division Bench of this Court in **CWP-17458-2007** titled as **Baldhir Singh vs. State of Punjab and others** decided on 18.07.2008 wherein, it has been held that a charge sheet issued after retirement of an employee relating to an incident which is four years old, the said charge sheet is liable to be quashed. Relevant paragraph of the judgment is as under:-

“8.The aforementioned discussion shows that on principle as well as on precedent it has been held that no inquiry could be initiated against a retired employee in respect of an event which has taken place more than four years preceding the date of such initiation. In the present case the event in respect of which inquiry has been initiated is more than five years old. Therefore, the same is liable to be set aside.”

Learned counsel for the respondents has not been able to controvert the interpretation being given to the Rule 2.2 (b) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 as well as to the judgement in **Baldhir Singh (supra)** is in the favour of the appellant/plaintiff that no departmental proceedings could have been initiated against the appellant/plaintiff.

Keeping in view the above, the judgments dated 19.07.2012 and 18.03.2015 passed by the trial Court as well as Lower Appellate Court respectively being contrary to the settled principle of law and have been

passed without considering the rules governing the service are accordingly set aside and consequently, the suit filed by the appellant-plaintiff is allowed. Decree sheet be prepared accordingly.

Present regular second appeal stands allowed.

February 01, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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