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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.31311 of 2018 (O&M)
Date of Decision: 23.02.2023

RANBIR SINGH DAHIYA
......Petitioner

Vs

HARYANA STATE FEDERATION OF CONSUMERS COOPERATIVE WHOLESALE STORES(CONFED) AND ANR
.....Respondents

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

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

Ms. Aditi Sharma, Advocate for Mr. C.S. Bakshi, Advocate for the respondents.

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RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the charge sheet dated 10.10.2012 and consequential order passed by the Authorities in hierarchy i.e. order dated 24.07.2013 passed by the respondent No.1 and order dated 16.11.2017 passed by the respondent No.2 as Appellate Authority of which Managing Director was one of the Board of Governors. He was the Chairman of Board of Administrators.

[2]. The petitioner was appointed as Clerk on 02.02.1976 by the Rohtak Co-operative Store and was posted at Super

Bazar, Rohtak till his superannuation on 31.03.2012. While in service the petitioner was chargesheeted under Rule 26.1 of the Confed Staff Service Regulations 1975 for negligence in the performance of his duty thereby causing loss to the Federation.

[3]. The petitioner filed his reply. The Enquiry Officer was appointed, who recorded findings of guilt against the petitioner however exact loss allegedly caused to the Federation could not come forth on record. In the meanwhile, the petitioner got his age of superannuation on 31.03.2012 and thereafter second chargesheet was issued to the petitioner on 10.10.2012 by showing the exact amount towards the loss caused to the Federation on account of negligence of the petitioner and others. In the second chargesheet, the Enquiry Officer was appointed and on the same line of action, the second enquiry also culminated in finding guilt against the petitioner alone thereby showing that the petitioner was instrumental in causing loss to the tune of Rs.45 lakhs to the respondent-Federation.

[4]. Learned counsel for the petitioner submits that under the Staff Service Rules, 1975 of the respondent-Federation, the enquiry could have been initiated only against the employee in service, who was drawing salary. In case of retired employee, the enquiry cannot be initiated nor even continue after his retirement. The punishment can only be awarded on the employee in service and not on the retiree. In support of his

contention, learned counsel relies upon ***CWP No.15247 of 2011*** titled '***S.C. Jain vs. Managing Director, The Haryana State Federation of Consumers Co-operative Wholesale Stores Limited and another'*** decided on 22.05.2013. Learned counsel for the petitioner further relies upon the judgment of the Hon'ble Apex Court in ***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.***

[5]. Learned counsel for the petitioner further relies upon the judgment passed 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 1873 of 2014*** decided on 23.05.2014.

[6]. Admittedly the second chargesheet was issued to the petitioner after his retirement and quantification of amount came to fore only in the second enquiry conducted on the basis of second chargesheet. In case of ***Shamsher Singh Malik'***s case (supra), the chargesheets were issued on 21.07.1993, 15.04.2002, 27.10.2004 and 23.08.2012. The recoveries were imposed in the relevant chargesheet on 26.07.2013,

06.09.2012, 13.12.2011 and 16.02.2015 respectively. Accordingly the amount was also quantified towards each of the chargesheet and imposition of recovery made by the respondents. The employee in that case had retired on 31.12.2010. The issuance of chargesheets prior to his retirement was writ large, however the recoveries were ordered only after retirement. This Court by relying upon ***Jogi Ram*** and ***S.S. Arya's*** cases (supra) held that in the absence of any rule for imposition of penalty upon the retired employee in terms of Staff Service Rules of the respondent-Federation, no such recoveries can be ordered after retirement of the employee. In ***Shamsher Singh Malik's*** case (supra), the factum of no rule of imposition of penalty upon the retired employee has come to fore.

[7]. The second contention raised by learned counsel for the petitioner is that the order of penalty was passed by the Managing Director/respondent No.1 vide order dated 24.07.2013. The said order was assailed in appeal before the Board of Administrators of the respondent-Federation for which the Managing Director was the Chairman of the Board of Administrators, who participated in the composition of Board and the appeal was dismissed vide order dated 16.11.2017. The order is shown to have been passed by the Managing Director.

This fact has been admitted by the respondents in para no.26 of the reply. In appeal liability of the petitioner was shown to have been reduced from 100% to 35% .

[8]. Evidently, I find from the record 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 ratio of the aforesaid precedents is in the context of liability of a retired person which has been authoritatively answered to the effect that after retirement, the punishment can only be awarded to the serving employee and even in case of chargesheet issued prior to the retirement of the employee, no order of punishment can be passed after his retirement in view of ratio of ***Shamsher Singh Malik's*** case (supra).

[9]. On second count also, the Managing Director being the prescribed authority was not supposed to the be the judge of his own cause by participating in the proceedings of Board of Administrators where the appeal of the petitioner was dismissed.

[10]. The cumulative effect of the aforesaid facts would make the petitioner entitled for espousing his grievance successfully. Resultantly, this writ petition is allowed. The impugned orders are set aside. Normal consequences to follow.

[11]. The retiral dues of the petitioner be released within a

period of two months from the date of receipt of certified copy of this order along with interest @ 6% per annum from the date of accrual till final realization of the same.

(RAJ MOHAN SINGH)
JUDGE

February 23, 2023
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No