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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-514-2021(O&M)

Date of Decision: 28.02.2024

Roop Lal

....Petitioner(s)

Versus

Uttar Haryana Bijli Vitran Nigam and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Naveen Daryal Advocate, for the petitioner.

Mr. Jagbir Malik, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 21.10.2020 (Annexure P-1).

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner retired as Junior Engineer from the respondent-Nigam on 30.11.2013 and he was granted all the pensionary benefits/retiral benefits. However, suddenly in the year 2018, the respondents issued a charge-sheet but no such charge-sheet was received by the petitioner because he already stood retired and master and servant relationship also ceased to operate. However, vide Annexure P-1, the Chief Engineer issued an order while referring to the aforesaid charge-sheet dated 19.01.2018 that the petitioner has not submitted any reply to the charge-sheet and therefore an *ex parte*

decision is taken and it was decided to recover 40% of the compensation amount to the tune of Rs. 4,80,763/- from the petitioner. He further submitted that recovery was started from the pension of the petitioner and thereafter, the present petition was filed and an interim order was granted on 11.02.2021. He submitted that the aforesaid impugned order Annexure P-1 is absolutely unsustainable in view of the fact that the petitioner already stood retired on 30.11.2013 and the aforesaid charge-sheet is dated 19.01.2018 which was after a lapse of more than 4 years and in view of Rule 2.2 of Punjab Civil Services Rules and Rule 12.2 of Haryana Civil Services Rules, no such charge-sheet could have been issued pertaining to an event which was four years preceding the date of issuance of the charge-sheet. He submitted that after more than four years of retirement the aforesaid charge-sheet dated 19.01.2023 was issued and that too, the petitioner was proceeded as *ex parte* and there is nothing on record to show that the petitioner was ever served with the aforesaid charge-sheet. He submitted that not only because of the aforesaid reason that the issuance of charge-sheet and imposition of the aforesaid penalty was violative of the Service Rules as aforesaid but even otherwise also, no recovery could be effected from the petitioner after his retirement in view of the judgment of Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih, 2015(4) SC 344*.

3. On the other hand, Mr. Jagbir Malik, learned counsel appearing on behalf of the respondents stated that so far as the facts of the present case as stated by the learned counsel for the petitioner are concerned, the same cannot be disputed because the petitioner did retire on 30.11.2013 and at that point of time, there was no charge-sheet against the petitioner and it was

only in the year 2018 that a charge-sheet was issued to the petitioner which was more than four years after the retirement. He submitted that Rule 2.2 of Punjab Civil Services Rules and Rule 12.2 of Haryana Civil Services Rules are fully applicable to the respondent-Nigam. He has however submitted that the judgment of Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (supra)* will not apply in the present case because the impugned order has been passed by way of a punishment. He also submitted that the petitioner has not challenged the charge-sheet but has only challenged the punishment order.

4. I have heard the learned counsel for the parties.

5. The petitioner admittedly retired on 30.11.2013 and at the time of his retirement, there was no disciplinary proceeding started against the petitioner. It was after more than four years i.e. on 19.01.2018 a charge-sheet was issued to the petitioner. Learned counsel for the respondents has argued that the charge-sheet itself has not been challenged and only the punishment order is under challenge is not sustainable in view of the fact that as per learned counsel for the petitioner, the aforesaid charge-sheet was never served upon the petitioner and there is nothing on record to show that he was served with the aforesaid charge-sheet particularly in view of the fact that he already stood retired. Even otherwise also the charge-sheet culminated into issuance of punishment order which is under challenge and therefore even if the charge-sheet was not challenged the challenge to the punishment order will still survive. The master and servant relationship also ceased to operate. However, as per Rule 2.2 of Punjab Civil Services Rules and as now Rule 12.2 of Haryana Civil Services Rules, the aforesaid disciplinary proceedings were issued at the time when the charge-sheet is issued and the same could

not have been done for an event which was more than four years preceding the issuance of a charge-sheet. Admittedly, the charge-sheet was issued after more than 4 years after retirement and as per allegations, the incident was about 7 years preceding the date of issuance of the charge-sheet. Therefore, this Court is of the view that the aforesaid charge-sheet could not have been issued to the petitioner for an event which was more than 4 years in view of the aforesaid Statutory Rules which are applicable to the parties. The applicability of Rule 2.2 of Punjab Civil Services Rules and Rule 12.2 of Haryana Civil Services Rules as applicable to the petitioner has not been disputed by the learned counsel for the respondents and according to him, the aforesaid rules are fully applicable to the respondent-Nigam.

6. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order date 21.10.2020 (Annexure P-1) is hereby set aside. In case any recovery has been effected from the petitioner in pursuance of the aforesaid impugned order (Annexure P-1) which has been now set aside, the same shall be refunded to the petitioner alongwith interest @ 6% per annum within a period of three months from today.

7. All the miscellaneous applications, if any, shall be deemed to be disposed of since the main case has been allowed.

28.02.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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