IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(201)

1. CWP-341-2024

Balwinder Singh ....Petitioner

Versus

The State of Punjab and others .....Respondents

2. CWP-342-2024

Bachan Singh ....Petitioner

Versus

The State of Punjab and others .....Respondents

3. CWP-369-2024

Balraj Krishan ....Petitioner

Versus

The State of Punjab and others .....Respondents

4. CWP-385-2024

Gurmeet Singh ....Petitioner

Versus

The State of Punjab and others .....Respondents

Date of Decision: - 07.03.2024

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sushil Saini, Advocate, for the petitioner(s).

Ms. Neha Sonawane, DAG, Punjab.

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VIKAS BAHL, J. (ORAL)

1. This order will dispose of the above-said four writ petitions

as common questions of facts and issues of law arise in the said writ petitions.

2. Separate replies filed on behalf of respondents No.1 to 4 in each of the cases are taken on record. Copies thereof have been supplied to learned counsel for the petitioners.

3. Primary prayer in the said four writ petitions is for setting aside the speaking orders passed by respondent No.1 and also the inquiry proceedings and the charge-sheets issued by respondent No.1, on the ground of the same being barred under Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II (hereinafter referred as "the Rules"), inasmuch as, the same have been issued after retirement of the petitioners, for an event which had taken place more than four years prior to the initiation of the disciplinary proceedings i.e. issuance of charge-sheet.

4. On 10.01.2024, this Court was pleased to pass similar orders in the above-said writ petitions. The order passed in CWP-341-2024 is reproduced herein-below: -

> *"Inter alia, contends that the petitioner has already retired prior to the issuance of the charge-sheet and the alleged incident as stated in the charge-sheet is also four years prior to the date on which the charge-sheet has been issued and thus, the proceedings initiated against the petitioner are barred under Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II. It is stated that the said plea has been wrongly rejected in the impugned order by observing that the petitioner had retired subsequently i.e. on 30.11.2020 and the financial loss caused continued till superannuation and even till today. It is argued that the charges are to be seen on the basis of the charge-sheet in which the the specific period has been mentioned and indisputably, the charge-sheet had been issued after a period of more than four years after the said period. In support of his arguments,*

*learned counsel for the petitioner has placed reliance upon a judgment of the Hon'ble Supreme Court in case titled as "**Punjab State Power Corporation Ltd. Patiala and others** Vs. **Atma Singh Grewal**, **reported as 2014(13) SCC 666**.*

Notice of motion for 13.02.2024.

To be taken up at 1.45 PM.

On the asking of the Court, Mr. Ferry Sofat, Additional Advocate General, Punjab, appears & accepts notice on behalf of the respondents-State and seeks time to file reply.

Reply, if any, be filed with the Registry, on or before the next date of hearing with an advance copy to learned counsel for the petitioner.

Learned State counsel is directed to get instructions in the matter.

Further proceedings in the departmental proceedings are stayed till the next date of hearing."

5. The undisputed facts in the present writ petitions are that the petitioners in all the writ petitions had retired prior to the issuance of the charge-sheets and the alleged incidents as stated in the charge-sheets had occurred more than four years prior to the date on which the charge-sheets had been issued. The said facts stand further fortified from the chart given herein below, the dates mentioned in which have not been disputed.

Sr. No.	**Case No.**	**Date of retirement**	**Date of charge-sheet**	**Date of occurrence**
1	CWP-341-2024	30.11.2020	23.06.2023	14.08.2018 to 20.06.2019
2	CWP-342-2024	30.04.2019 (after extension of 2 years)	23.06.2023	15.07.2016 to 22.02.2017 & 09.07.2018 to 14.08.2018
3	CWP-369-2024	30.09.2017 (after extension of 2 years)	23.06.2023	23.02.2017 to 05.06.2017
4	CWP-385-2024	28.02.2021	23.06.2023	01.04.2015 to 10.04.2018; 26.04.2018 to 02.07.2018 & 15.08.2018 to 10.12.2018

6. Rule 2.2(b) of the Rules, which is admittedly applicable in the present cases, is reproduced herein below: -

> *"**Rule 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 proceedings, t**he 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 either 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 reemployment, 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.*
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> ***Explanation.— For the purpose of this rule:-***

(a) a departmental proceedings 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 to be instituted—

(i) in the case of a 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."

7. A perusal of the above rule would show that the government has reserved the right of withholding or withdrawing a pension or any part of it either permanently or for a specified period and also the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to government in case in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service. The said right is as per proviso (2), subject to the fact that in case the said departmental proceedings are not instituted while the officer was in service whether before his retirement or during his re-employment, then, the same shall not be in respect of any event which took place more than four years before such institution. A further perusal of the explanation (a) to the Rule would show that 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.

8. In the present cases, admittedly, there were no judicial proceedings against any of the petitioners, nor the petitioners were suspended and the impugned action had been initiated subsequent to their

retirements. From the above-said undisputed facts (which have been shown in the chart), it is also apparent that the events/occurrences had taken place more than four years prior to the issuance of the charge-sheet, which is the relevant date and thus, in view of the proviso (2) of Rule 2.2 (b) of the Rules, the departmental proceedings initiated against all the petitioners deserve to be quashed/set aside.

9. The Hon'ble Supreme Court in the case titled as "***Punjab State Power Corporation Ltd. Patiala and others*** ***Vs***. ***Atma Singh Grewal***, ***reported as 2014(13) SCC 666*** had upheld the order of the learned Single Bench as well as of the Division Bench, whereby the charge-sheet was quashed by applying Rule 2.2(b) of the Rules in a case where the allegations pertained to the period from 15.05.2002 to 03.12.2002 and the charges were framed beyond the period of four years from December, 2002 and after the retirement of the employee. The relevant portion of the said judgment is reproduced herein below: -

> *"1. Petitioner No. 1 is the Punjab State Electricity Board (PSEB); Petitioner No. 2 is the Chief Engineer, HRD-cum-Inquiry Officer and Petitioner No. 3 is the Senior Executive Engineer working in PSEB. Respondent was the employee of PSEB who retired from service, with effect from 30.4.2004. He had given the notice on 27.2.2004 for voluntary retirement which was accepted. As a result, the respondent stood voluntary retired from 30.4.2004.* ***However, almost 4 years after his retirement i.e. on 7.1.2008, the respondent was served with the charge sheet levelling certain allegations against him, allegedly committed between 15.5.2002 to 3.12.2002. These charges which were for the period May 2002 to December 2002 were obviously of a period much earlier than 4 years before the serving of the charge sheet dated 7.1.2008 and much after his retirement when he had ceased to be the employee of PSEB.***
>
> ***2. The Respondent filed the Writ Petition in the High***

Court seeking quashing of the said charge sheet on the ground that it was barred in view of Rule 2.2.(B) of the Punjab Civil Service Rules 2 reserves *right with the Government to withhold or withdraw a pension or a part of it under certain circumstances viz. when in judicial proceedings or departmental proceedings, such an employee is found to have committed grave misconduct or negligence. It also provides for recovery of peculiar loss, if caused. However, second proviso to the aforesaid provision stipulates the time limit within which the departmental inquiry can be instituted, in respect of an ex-employee if it was not stated while such a Government officer was in service. The precise language of second proviso is as follows:-*

> *"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 if he has retired, the event should not be more than 4 years old.*
>
> *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. In the present case since the changes were of the year 2002 and charge sheet served in the year 2008, ***it was manifest that the alleged event took place much more than 4 years before the serving of charge sheet and after his retirement.*** *In this ground the learned Single Judge quashed the said chargesheet dated 7.1.2008. The petitioners chose to file appeal before the Division Bench which has also been dismissed by the Division Bench vide impugned judgment dated 20.8.2009.*

4. ***After hearing the Counsel for the parties we are of the opinion that in view of aforesaid admitted facts, second proviso of Rule 2 states at the face of the petitioner and no fault can be found in the judgment of the High Court."***

10. The Co-ordinate Bench of this Court in case titled as "***Raj Pal** Vs. **State of Haryana and others**, reported as 2023(1) Law Herald*

62, had observed that the date of initiation of such departmental proceedings is deemed to be the date when a charge-sheet is issued to the concerned government employee/pensioner/government employee and there was a complete embargo on the initiation of departmental proceedings in respect of events which had taken place more than four years prior to the said initiation of departmental proceedings i.e. issuance of charge-sheet. It was observed that the object behind the Rules seems to be that a retired employee, after the statutory period of four years, should be left to live in peace in the twilight zone of his life as also for the reason that it is not easy for a retiree to have access to the relevant record or his colleagues, who may have also retired and settled elsewhere, making it difficult for him to effectively defend himself. Relevant Para Nos.8, 11 and 12 of the said judgment are reproduced herein below:

> *"8. A harmonious reading of Rules 12.2(b) and 12(5)(a) leads to only one irresistible conclusion that after an employee has retired from service* ***there is a complete embargo on the initiation of departmental proceedings against him in respect of event(s) which may have taken place more than four years prior to the initiation of the departmental proceedings and that the date of initiation of such departmental proceedings is deemed to be the date when a charge-sheet is issued to the concerned government employee/pensioner/government employee placed under suspension. The apparent object behind these Rules seems to be that a retired employee, after the statutory period of four years, should be left to live in peace in the twilight zone of his life. The alleged misconduct on his part should be allowed to settle with the efflux of time. The rationale also appears to be based on the phrase 'let bygones be bygones' for retirees and because memory fades with age as also for the reason that it is not easy for a retiree to have access to the relevant record or his colleagues, who may have also retired and settled elsewhere, making it difficult for him to effectively defend***

himself.

xxx xxx xxx xxx xxx

11. To the same effect is the judgment of a ***Division Bench of this Court in Baldhir Singh's case (supra) wherein it was held as follows: -***

> ***"6. A bare perusal of the aforementioned Rule makes it clear that Rule 2.2(b) (ii) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry.*** *In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by afflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree.* ***The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end.*** *Moreover, the learned State counsel has not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner."*

12. Similarly, another ***Division Bench of this Court in Sub Inspector Puran Chand's case (supra)****, while considering a similar issue, held as follows:-*

> *"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."

11. Two grounds have been raised by learned State counsel to oppose the present writ petitions. The first ground raised is that the allegations against the petitioners that during the period, which has been mentioned in the table/chart, no attempt was made by them to recover electricity charges from the government accommodation allottees on the basis of the sub-meters installed in each house during their posting in the concerned sub-divisions, are serious and grave charges and thus, the benefit of proviso (2) of Rule 2.2(b) should not been given to the petitioners. The second ground raised is that although the charges have been framed with respect to the period which has been mentioned in the chart reproduced above, but since the loss caused to the government is a continuing one and the same has not been recovered till date, thus, the relevant event/period to be considered, should be the one continuing till date.

12. Both the arguments raised by learned State counsel deserve to be rejected.

13. A perusal of Rule 2.2(b) of the Rules, which has been reproduced herein-above would show that the right which has been reserved with the government would arise only in case in a departmental or judicial proceeding, the pensioner is found guilty of either grave mis-

conduct or negligence. Proviso (2), which saves the employee, is one appended to the main provision. The proviso would also apply in a situation where the allegations/finding against the pensioners are of grave misconduct. No law has been cited to show that in case the allegations are grave, proviso (2) of Rule 2.2(b) of the Rules would not apply. As far as the 2nd argument is concerned, it would be relevant to note that once in the charge-sheet, a specific period has been mentioned during which the petitioners who were posted in various sub-divisions, had allegedly not made recovery of the electricity charges from the allottees of government accommodations, then, the said event/occurrence cannot be stretched beyond the period which has been specifically mentioned in the charge-sheet. In case the arguments of learned State counsel to the effect that the recovery had not been made till date and thus, the event/period should be extended are accepted, then, proviso (2) of Rule 2.2(b) of the Rules would be rendered otiose, inasmuch as, in a large number of cases the alleged loss caused on account of the alleged misconduct by the employee would neither have been determined, much-less recovered. Moreover, no law has been cited by the learned State counsel in respect of the said argument. In the judgment of the Hon'ble Supreme Court in the case of Punjab State (supra), the period which was considered for applying the bar in view of the Rule 2.2(b) of the Rules was the period between 15.05.2002 and 31.12.2002 which was the period regarding which allegations had been made in the charge-sheet. The impugned action of the respondent authorities is clearly barred by proviso (2) of the Rule 2.2(b) of the Rules and accordingly, all the writ petitions are allowed and the impugned orders including the impugned charge-sheets and all subsequent proceedings arising therefrom, against the petitioners are quashed.

(VIKAS BAHL)
JUDGE

March 07, 2024
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes