

CWP-10138 of 2020

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-10138 of 2020
Reserved on: 29.11.2024
Pronounced on: 12.12.2024

Kulbhushan Gupta

.....Petitioner

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Harsh Chopra, Advocate,
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Ms. Brea Sandhu, Advocate,
for Ms. Deepali Puri, Advocate,
for respondent No.4.

NAMIT KUMAR, J.

1. Instant writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking quashing of charge-sheet dated 11.06.2020 (Annexure P-4).

2. Brief facts, as have been pleaded in the petition, are that petitioner retired from the service of respondents-department as Municipal Engineer on attaining the age of superannuation on 29.02.2016. During his service, petitioner remained posted at various places. He remained posted at Municipal Council, Nawanshahr from 10.01.2014 to 01.07.2015. On 11.06.2020, respondent No.1-Additional Chief Secretary, Local Government, under Rule 8 of the Punjab Civil

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Services (Punishment and Appeal) Rules, 1970 issued charge-sheet (Annexure P-4) to the petitioner. The impugned charge-sheet dated 11.06.2020 has been issued on the complaint of one Jatinder Kumar, Cashier of M.C. Nawanshahr, dated 03.08.2016 alleging therein that irregularities were committed by the Municipal Council, Nawanshahr in relation to purchase of electrical material for the repairs of streetlights and purchase of stationary items during 06.04.2015 to 29.05.2015. On 07.07.2020, petitioner sent a representation to the respondent-department in relation to the impugned charge-sheet thereby requesting to drop the same being issued in violation of Rule 2.2(b) of the Punjab Civil Services (Volume II) but to no avail. Hence, the present writ petition.

3. Pursuant to notice of motion, respondents No.1 & 2 and respondent No.4 have filed their separate replies. It is averred in the written statement of respondent No.4 that charge-sheet has been issued to the petitioner on the basis of complaint of Jatinder Singh, Cashier, dated 03.08.2016 for the irregularities committed by the Municipal Council, Nawanshahr in purchase of electrical materials for repair of street lights and stationary items during 06.04.2015 to 29.05.2015. It is further averred that purchase in which irregularities were committed by the petitioner, was dated 03.05.2015, therefore, it cannot be said that the charge-sheet is in violation of the rules.

4. Learned counsel for the petitioner contended that petitioner retired as Municipal Engineer on 29.02.2016 and no departmental/disciplinary proceedings were initiated against him during

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the said period of service. He further contended that respondent No.1 – Additional Chief Secretary, Government of Punjab, Local Government Department, has issued charge-sheet dated 11.06.2020 (Annexure P-4), which is not permissible in the light of provisions of Rule 2.2(b) of the Punjab Civil Services Rules, Volume II as the alleged misconduct is beyond the period of four years from the date of issuance of chargesheet. In support of his contention, he has placed reliance upon the judgment of this Court in ***Raj Pal v. State of Haryana and others, 2023(1) Law Herald 62*** and ***Sukhjinder Singh v. Punjab State Civil Supplies Corporation Ltd. and another, 2016(2) Law Herald 1322***.

5. *Per contra*, learned counsel for the respondents contended that charge-sheet issued to the petitioner is in conformity with the rules as complaint with regard to irregularities committed by the petitioner from 06.04.2015 to 29.05.2015, pursuant to which charge-sheet has been issued, was made on 03.08.2016 and petitioner retired on 29.02.2016, therefore, the charge-sheet is well within the period of four years.

6. I have heard learned counsel for the parties and perused the record.

7. Rule 2.2(b) of the Punjab Civil Services Rules reads as under: -

“(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

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Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment 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 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 final orders are passed.”

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8. This Court in ***Sukhjinder Singh's*** case (supra) while considering the same issue has held as under: -

*“11. Similarly contention of the respondents that the matter having come to light in April, 2011, the impugned charge-sheet should be held to have been issued within the time frame prescribed under Rule 2.2 CSR, is untenable hence, rejected. A Division Bench of this Court in **R.C.Gupta v. PSEB, 2002(1) SCT 1136** has held as under:-*

“..... Faced with this difficulty the learned counsel for the respondent submitted that earlier it was not to the knowledge of the respondent with regard to the illegalities committed by the petitioner as the matter was pending with the Vigilance Department and on coming to know from the Vigilance Department the respondent authorities had initiated the action against the petitioner. But we are not convinced with the submission raised by the learned counsel for the respondent in view of Rule 2.2(b) of the Punjab Civil Services Rules which states that the departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall not be in respect of any event which took place more than four years before such institution.

A reading of the rule would show that the defence taken up by the respondent is not open to it. Admittedly, the petitioner has been charge-sheet for the events of 1984 vide charge sheet dated 26.03.1999. Therefore, such charge sheet cannot be sustained in the eyes of law.”

12. The stipulation in the retirement order dated 31.10.2012, Annexure P1, that the petitioner's retirement

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is subject to decision of any pending/future department/recovery case cannot, in any manner, vest the department with any right to proceed in flagrant violation of the express provisions of Rule 2.2 (b) CSR. Such a stipulation would enable the employer to by-pass the specific provisions of law with impunity. Accepting such an interpretation would mean that the employer would be at liberty to initiate action against an employee after a lapse of any number of years of the event in question simply because of such a stipulation in respect to any proceeding which may be initiated by the department in future. Such an interpretation is clearly not permissible. Pendency of any other proceedings against the petitioner has not been brought to my notice.

13. Action of the respondent-Corporation in issuing the impugned charge-sheet dated 24.03.2015, Annexure P2, is clearly in violation of Rule 2.2 CSR.

14. Keeping in view the facts and circumstances of the case, this writ petition is allowed. Charge-sheet dated 24.03.2015, Annexure P2 and any further proceedings arising therefrom are, hereby, quashed. Consequently, retiral benefits, if any withheld on this account, be released to the petitioner in case there is no other impediment thereto.”

9. Further, dealing with similar issue, this Court in **Raj Pal's** case (supra), has held as under: -

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

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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.

9. *In Punjab State Power Corporation Ltd. Patiala's case (supra) the respondent before the Supreme Court retired from service on 30.04.2004 and was issued a charge-sheet on 07.01.2008 through which he was sought to be departmentally proceeded against for events which had allegedly taken place between 15.05.2002 to 03.12.2002. Since these events were beyond four years from the date of issuance of the charge-sheet to the respondent therein, he assailed the same through a petition filed before this Court by relying on the second proviso to Rule 2.2(b) of the Punjab Civil Services Rules (Vol. II) (for short, the Punjab Rules). The second proviso to Rule 2.2(b) of the Punjab Rules is similar to Rule 12.2(b) of the Rules and is reproduced below for reference: -*

"Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

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(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.”

10. A single judge of this Court after relying on the afore quoted proviso quashed the charge-sheet served upon the respondent therein. In a intra Court appeal such order of the Single Judge was upheld by a Division Bench occasioning the challenge by the respondent's employer before the Supreme Court which challenge was rejected as the Supreme Court was of the opinion that the High Court had rightly applied the afore quoted proviso to quash the charge-sheet.

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

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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 efflux 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

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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.”

13. In the case in hand the facts are not in dispute that the petitioner retired on 30.06.2019 and was issued a charge-sheet on 05.10.2021 through which he was sought to be departmentally proceeded against for an alleged misconduct by him between the years 1986-88. The alleged misconduct by the petitioner is prior to four years from the date of issuance of the charge-sheet. Since by that time he had retired, such action on the part of the State is barred under Rule 12.2(b) read with Rule 12(5)(a) of the Rules and therefore unsustainable. Resultantly, the impugned departmental proceedings against the petitioner are quashed.

14. The petition is allowed in the above terms.”

10. Undisputedly, in the present case, petitioner retired from service on 29.02.2016 and was issued charge-sheet on 11.06.2020 vide which he is sought to be departmentally proceeded against for an alleged misconduct committed by him during service from 06.04.2015 to 29.05.2015. The action of the respondents in issuing impugned charge-sheet dated 11.06.2020 is in clear violation of Rule 2.2(b) of the Rules as the alleged mis-conduct by the petitioner relates to the period prior to four years from the date of issuance of the charge-sheet. There is nothing on record that departmental proceedings against the petitioner were initiated by the respondents within four years prior to his retirement.

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11. In view of the above, present writ petition is allowed.
Charge-sheet dated 11.06.2020 (Annexure P-4) and any further proceedings arising therefrom are hereby quashed and set aside.

12.12.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No