



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212) CWP-18125-2015 (O&M)
Date of Decision : 11.09.2024

Shiv Raj Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

(212/2) CWP-26811-2015(O&M)

Shiv Raj Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manu K. Bhandari, Advocate for the petitioner
in both cases.

Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. By this common order, two writ petitions, the details of which have been given in the heading, are being decided as both these petitions involve the same question of law on similar facts.
2. In the present petitions, the challenge is to the order dated 19.09.2014 having endorsement No. AYU-P1-PB-2014/9460-62 dated 15.12.2014 (Annexure P-21) impugned in CWP-18125-2015 by which, the petitioner has been made liable to reimburse the financial loss caused to the



State Exchequer to the tune of ₹9,46,780/- and also the charge-sheet which has been issued to the petitioner on 30.09.2015 (Annexure P-31) impugned in CWP-26811-2015 on the same allegation on which, the recovery order dated 19.09.2014 has been passed.

3. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

4. The petitioner while working as Ayurvedic Medical Officer retired from service on attaining the age of superannuation on 31.01.2013. After the retirement, it is the allegation of the petitioner that without giving any opportunity of hearing, the respondents passed an order dated 19.09.2014 having Endorsement No. AYU-P1-PB-2014/9460-62 dated 15.12.2014 (Annexure P-21) making the petitioner liable for reimbursement to make good financial loss caused by him to the State to the tune of ₹9,46,780/-. Thereafter, when the petitioner raised a query that the recovery has been imposed upon the petitioner without giving any opportunity of hearing by passing an order unilaterally, the respondents decided to issue a charge sheet to the petitioner for the same allegation vide charge-sheet dated 30.09.2015 (Annexure P-31).

5. The question which has been raised in the present petitions is that whether in the facts and circumstances of the present cases, the charge-sheet (Annexure P-31) could be issued to the petitioner or even a recovery order (Annexure P-21) can be passed after the retirement of the petitioner.

6. Upon notice of motion, the respondents have filed the reply, wherein, the respondents have stated that as the petitioner while in service,



acted unethically on various occasions, the department considered all the facts and assessed the loss is caused to the State Exchequer by the act of omission and commission of the petitioner and it was decided to recover a sum of ₹9,46,780/- (Annexure P-21) from him and as the petitioner raised a grievance that he has not been heard before passing the recovery order, the charge-sheet dated 30.09.2015 (Annexure P-31) has been issued on the same allegation, hence, the petitioner cannot raise any grievance.

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

8. It may be noticed that both the impugned orders dated 19.09.2014 having Endorsement No. AYU-P1-PB-2014/9460-62 dated 15.12.2014 (Annexure P-21) in CWP No. 18125 of 2015 and the charge-sheet dated 30.09.2015 (Annexure P-31) which has been impugned in CWP No. 26811 of 2015 have been passed by the respondents after the retirement of the petitioner. The question which arises is whether, in the facts and circumstances of the present cases, the respondents could have passed the order of recovery or could have issued a charge-sheet to the petitioner after his retirement.

9. Before proceeding further, it may be noticed that as per the Punjab Civil Services Rules, Volume-II, Chapter-II, the only jurisdiction which the State has qua the retired employee is to issue a charge-sheet but the charges should not relate to the allegations which are more than 04 years old on the day when the charge-sheet is issued. The relevant Rule 2.2(b) of Punjab Civil Services Rules, Volume-II, Chapter-II 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 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, the pensioner is found guilty of grave misconduct or negligence, during his service, including service rendered on 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 proceeding in which an order of dismissal from service could be made in relation to the officer during his service.”

10. The claim of the petitioner raised in the present petitions is to be adjudicated in terms of the Rules, which give power to the State to initiate



disciplinary proceedings against a retired employee. Qua the impugned order dated 19.09.2014 having Endorsement No. AYU-P1-PB-2014/9460-62 dated 15.12.2014 (Annexure P-21) in CWP No. 18125 of 2015, the Charge No. 1 relates to the period 1996. Similarly, Charge No. 2 relates to the period 2004 and 2005. It is only the Charge No. 3, which relates to the period 2011-2012. Once, the Charge Nos. 1 and 2 which relate to a period, which is more than 04 years old on the date on which the charge-sheet is issued, charge-sheet cannot be sustained in the eyes of law keeping in view the provisions of rules governing the issue as already discussed.

11. Learned counsel for the respondents has not been able to rebut that no charge-sheet could have been served upon the petitioner qua Charge Nos. 1 and 2 qua which charges the recovery is being made, keeping in view the said Rules governing the service, which has been reproduced here-in-before. Learned counsel for the respondents concedes the factum that while imposing the punishment by the impugned order dated 15.12.2014 (Annexure P-21) or before issuing the charge-sheet later on on the said charges on 30.09.2015, the rules governing the service has not been kept in mind.

12. From the facts and law stated here-in-before, it is clear that there is no jurisdiction with the State to enquire into the Charge Nos. 1 and 2 for which the petitioner has been made liable to pay a sum of ₹8,97,766/-, hence, the recovery being done in pursuance to Charge Nos. 1 and 2 is beyond jurisdiction of the respondent-State keeping in view the rules governing the said aspect, hence, the same could not have been done and the said recovery is accordingly set-aside.



13. Qua Charge No. 3 for which recovery of ₹49,014/- has been imposed, learned counsel for the petitioner submits that he has no objection in case the same is recovered so as to bury the issue in order to live peacefully though, the petitioner has due explanation even for the same.

14. The Charge No. 3 in the charge-sheet dated 30.09.2015 (Annexure P-31), which has been impugned in CWP-26811-2015 could have been enquired into by the respondents. That being the position, learned counsel for the petitioner has already submitted that the recovery of ₹49,014/-, which is being done from the petitioner qua Charge No. 3, the same will be deposited. No further finding needs to be recorded on the said issue as the petitioner has undertaken to deposit the sum of ₹49,014/-. In case, the said amount has not been deposited/recovered so far, appropriate action can be taken by the respondents in this regard.

15. The present petitions are allowed in above terms.

16. Pending miscellaneous application, if any, also stands disposed of.

17. A photocopy of this order be placed on the file of connected cases.

September 11, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No