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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16927-2020(O&M)
Date of decision: 25.07.2024

M.C. Aggarwal (through LRs).

...Petitioner

VERSUS

Haryana State Federation of Consumers Co-operative Wholesale Stores Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Satyam Tandon, Advocate, for the respondent.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present 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 17.09.2020 (Annexure P-7), whereby the claim for grant of interest on the delayed retiral dues has been illegally rejected despite admitting that there were four charge-sheets out of which three have been withdrawn and fourth charge-sheet dated 17.12.2001 was also finalized way back on 29.04.2009 vide Annexure P-2 and further quash order dated 10.05.2019 (Annexure P-4), whereby the recovery of Rs. 3,10,953/- was effected from the petitioner.

2. The brief facts of the present case are that the petitioner (since deceased) was working as an Accountant with the respondent-Federation. While

he was in service, four charge-sheets were issued against him which have been so depicted in the impugned order (Annexure P-7). One charge-sheet was of the year 1998, second charge-sheet was of the year 2007, third charge-sheet was of the year 2001 (however as per the learned counsel for the respondent it was of the year 2007) and fourth charge-sheet was of the year 2012. So far as the charge-sheets dated 02.09.1998 and 27.02.2007 are concerned, as per the impugned order, the same have been already dropped and filed regarding which there is no dispute. So far as the charge-sheet dated 24.08.2012 is concerned, the same has also been shown to be dropped and filed in the year 2014 itself. So far as the charge-sheet dated 17.12.2001 (2007) is concerned, a punishment order was passed against the petitioner vide Annexure P-2 on 29.04.2009 by the Managing Director in which it was so ordered that the loss caused to the Federation on this account be recovered from the petitioner on pro rata basis.

3. The petitioner (since deceased) has retired on attaining the age of superannuation on 31.05.2014. After his retirement, the aforesaid three charge-sheets have been dropped and filed and there is no punishment order pertaining to the aforesaid charge-sheets because they have been dropped. So far as the charge-sheet dated 17.12.2001 (2007) is concerned, a punishment order was passed way back in the year 2009 vide Annexure P-2 in which a direction was issued to recover the amount from the petitioner on pro rata basis. As per the learned counsel for the respondent-Federation, the petitioner had filed an appeal which was also dismissed in the year 2010. Thereafter, even as per the learned counsel for the parties, no recovery was effected from the petitioner in pursuance of the aforesaid order of punishment. In the meantime, the petitioner retired in the year 2014 and vide Annexure P-4 which is dated 10.05.2019 i.e. after about 5 years of the retirement of the petitioner, the recovery is sought to

be effected for a sum of Rs. 3,10,953/- in terms of the aforesaid order of punishment (Annexure P-2) which was passed in the year 2009 while the petitioner was in service.

4. Learned counsel appearing on behalf of the petitioner submitted that so far as the aforesaid three charge-sheets which have been dropped are concerned, the same could not have become a ground for delaying the pensionary benefits to the petitioner. He submitted that the pensionary benefits have been paid to the petitioner on 15.05.2019 and so far as the aforesaid three charge-sheets which have been dropped and filed are concerned, the delay would not be justified. He submitted that so far as the fourth charge-sheet is concerned while the petitioner was already in service and the punishment order has been passed in the year 2009 but no recovery was effected from the petitioner, the same could not have been effected from the pensionary benefits of the petitioner after his retirement and that too after 5 years of his retirement to the extent of Rs. 3,10,953/-. He submitted that the respondent was well within its rights to have recovered any amount in terms of the order of punishment from his salary while the petitioner was in service but the aforesaid order could not have been implemented after his retirement and recovery could not have been effected from his retiral benefits and no provision of law has been shown under which such recovery has been effected to the extent of Rs. 3,10,953/-. He submitted that had it been a case that the enquiry continued under any rule and enquiry concluded after the retirement of the petitioner, then it would have been justified and it was within the rights of the respondent-Federation to have recovered any amount after retirement but there is no justification for not recovering the amount during the tenure of service of the petitioner in the service from his salary and after about 9 years after the passing

of the punishment order and 5 years after his retirement, the recovery was made without the authority of law. He submitted that the petitioner is entitled for two reliefs. Firstly, interest on the delayed payments of retiral benefits and secondly, refund of the recovery which was illegally made from the retiral benefits of the petitioner as aforesaid.

5. On the other hand, learned counsel appearing on behalf of the respondent-Federation submitted that the delay in payment of the retiral benefits was because of the reason that enquiries were pending against the petitioner and so far as the three charge-sheets as stated above are concerned, there is no dispute that the aforesaid three charge-sheets were dropped. So far as the fourth charge-sheet is concerned, an order was passed vide Annexure P-4 on 10.05.2019 for recovery of the aforesaid amount and therefore, after adjusting the same, the retiral benefits have been paid on 15.09.2019 i.e. after 5 years of the retirement of the petitioner and therefore, the petitioner was not entitled for the grant of interest on the delayed payments. He also submitted that so far as the recovery aspect is concerned, the order of punishment had attained finality and therefore, the respondent-Federation was well within its rights to have recovered the aforesaid amount. He referred to Rule 60 of the Staff Service Rules, 1975 of the Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited, Chandigarh which has been reproduced in para No.6 of the reply to contend that the respondent had right to withhold and withdraw the retiral benefits or any part of it whether permanently or for a specified period and the right of ordering the recovery from retiral benefits of the whole or part of any pecuniary loss caused to CONFED, if the retiree is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to CONFED by misconduct or

negligence during his service including service rendered on re-employment after retirement either by issuing notice or through Land Revenue Department as arrear of land revenue. He submitted that in view of the aforesaid Rule 60, the respondent has rightly recovered the aforesaid amount of Rs. 3,10,953/-.

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

7. It is a case where as per the reply and the impugned order (Annexure P-4) there were four charge-sheets against the petitioner. The aforesaid four charge-sheets were issued against the petitioner at the time when he was in service. Thereafter, he retired on 31.05.2014 and it was thereafter in the year 2014 and 2019, three charge-sheets have been dropped and filed against the petitioner. Therefore, so far as these three charge-sheets which have been dropped are concerned, no action could have been taken against the petitioner and therefore, once the department themselves had dropped the charge-sheet, then it cannot become a ground for justifying the delay in payment of the retiral benefits. The remaining issue survives in the present case would be with regard to the charge-sheet which was issued to the petitioner and vide punishment order Annexure P-2 dated 29.04.2009 wherein it was so directed that the loss be recovered from the petitioner on pro rata basis. The aforesaid recovery was never made from the petitioner at the time when he was in service. After 5 years of his retirement, an order of recovery has been passed vide Annexure P-4 to be recovered from his pensionary benefit to the extent of Rs. 3,10,953/-. In other words, the order of punishment was never implemented by the respondent-Federation for a period of 10 years and for a period of 5 years after the retirement of the petitioner. Had it been a case that the aforesaid recovery of Rs.3,10,953/- was effected from the petitioner during his service, then there would have been no dispute because it was well within the rights of

the respondent-Federation to have effected recovery from the salary of the petitioner but there is no justification as to why they have waited for a period of 5 years and thereafter when the petitioner retired in the year 2014, they again waited for more than 5 years and in this way, recovery was effected from the pensionary benefits of the petitioner.

8. The relevant portion of the aforesaid Rule 60 of the Staff Service Rules, 1975 of the Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited, Chandigarh is reproduced as under:-

> *"60. The Confed further reserve to themselves the right of withholding or withdrawing retiral benefit or any part of it, whether permanently or for a specified period and the right of ordering the recovery from retiral benefits of the whole or part of any pecuniary loss caused to Confed, if the retiree is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to Confed by misconduct or negligence during his service including service rendered on reemployment after retirement either by issue notice or through Land Revenue Department as arrear of land revenue.*
>
> *Provided that:-*
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> *(1) Such departmental proceedings, if instituted while the employee was in service whether before his retirement or during re-employment shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner an as if the employee had continued in service:*
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> *(2) Such departmental proceedings, if not instituted while the employee was on duty either before retirement or during re-employment:*
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> *(i) Shall not be instituted save with the sanction of the Competent Authority.*

(ii) Shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) Shall be conducted by such authority and at such place or places as the Competent Authority may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made;

(3) Such judicial proceedings, if not instituted while the employee was on duty either before his retirement or during his re-employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2); and

(4) The Competent Authority shall be consulted before final orders are passed.

Explanation: for the purpose of this rule:-

(1) Departmental proceedings shall be deemed to have been instituted when the charges framed against the retiree are issued to him or, if the employee has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been instituted;

(i) in the case of criminal proceeding, on the date on which the complaint is made or as challan is submitted to a criminal court: and

(ii) in the case of Civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to Civil Court."

9. A perusal of the aforesaid would show that the respondent-Federation has reserved the right to withhold or withdraw the retiral benefit or any part whether permanently or for a specified period and the right of ordering the recovery from retiral benefits of the whole or part of any pecuniary loss caused to the CONFED, if the retiree is found guilty of grave misconduct or to have caused pecuniary loss to the CONFED in departmental or judicial

proceedings. A specific query was raised to the learned counsel for the respondent-Federation as to whether in pursuance of the aforesaid Rule any order was passed for withholding or withdrawing the retiral benefits of the petitioner to which he submitted that the only order which is on the record is Annexure P-4. The aforesaid Annexure P-4 has been passed in the year 2019 after 5 years of the retirement of the petitioner. In other words at the time when the petitioner had retired the right to get retiral benefits accrued to the petitioner and the respondents have not passed any order for withholding the retiral benefits of the petitioner. In this way, the retiral benefits of the petitioner have been withheld without any authority of law and without passing any order. Had it been a case that the recovery was effected from the petitioner while he was in service, then the petitioner would not have any case with regard to the aforesaid amount but after 5 years of his retirement, no such recovery could have been effected from the petitioner. Even otherwise also the aforesaid Rule 60 would apply when disciplinary proceedings are pending at the time of retirement or initiated after retirement and not when punishment order is passed much prior to retirement.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 10.05.2019 (Annexure P-4) is hereby set aside. The respondent-Federation is directed to calculate and pay interest to the petitioner @ 6% per annum on the retiral benefits from the date of the retirement of the petitioner plus three months thereafter till the date of actual disbursement to the petitioner within a period of three months from today. In case the aforesaid amount is not paid within a period of three months from today, then the petitioner shall be entitled for a future rate of interest @ 9% per annum. The recovery of Rs. 3,10,953/- which has been made from the

petitioner is also held to be illegal as aforesaid. The respondent-Federation is directed to refund the aforesaid amount to the petitioner through their legal heirs within the aforesaid period of three months.

25.07.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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