

CWP-19572 of 2024

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

CWP-19572 of 2024

Reserved on: 23.09.2024

Pronounced on: 21.10.2024

Harbans Singh Bhatti

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Bhavpreet S. Dhatt, Advocate,
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. Anupam Singla, Advocate,
and Mr. Lalit Goyal, Advocate,
for respondent No.2.

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court by filing instant petition under Article 226 of the Constitution of India, seeking quashing of the order dated 04.08.2023 (Annexure P-15) whereby his claim for release of the remaining retiral dues has been rejected and for quashing the chargesheet dated 26.04.2023 (Annexure P-21) and all subsequent proceedings arising therefrom.

2. The controversy involved in the present case, as emerges from the facts of the case, is that the petitioner joined the service of respondent No.2 – Pepsu Road Transport Corporation (hereinafter referred to as 'PRTC') on 31.07.1989 as Depot Manager (now termed as General Manager) and retired as such on attaining the age of superannuation of 58 years on 28.02.2019. The petitioner, in order to

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claim extension of two years in service has submitted medical certificates dated 31.05.2017 and 27.10.2017 (Annexures P-5 and P-6) issued by the Civil Surgeon, Barnala, certifying the petitioner's disability to the extent of 50%. On 03.11.2017 he applied for extension in service on the basis of instructions dated 19.11.2014 on the basis of aforesaid certificates. The petitioner further claimed extension in service for two years in terms of letter dated 23.01.2018 issued by the Directorate of Social Security and Women & Children Development Department, Punjab, which has been issued in furtherance to the instructions dated 10.06.2009, which provides that any officer/employee whose deformity is 40% or above, is eligible for getting benefit available to handicapped employees from the date he submits disability certificate issued by the competent authority. Various complaints such as dated 05.02.2018, 27.04.2018 and 31.12.2018 were received by the PRTC from various complainants, which were to the effect that petitioner has procured the disability certificate from Civil Surgeon, Barnala, by using his influence and the said certificates are forged. The said complaints were also sent by the complainants to the Vigilance Bureau as well as to the Principal Secretary, Department of Transport, Punjab. The said authorities had directed the PRTC to consider the complaints and hold inquiry. Consequently, PRTC asked the petitioner on 16.06.2018 to intimate that how and when the deformity happened to him. In response thereto, the petitioner vide letters dated 24.07.2018 and 07.08.2018 informed the PRTC that the deformity had happened to him long time back and

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he does not remember the date and no certificate is available regarding the treatment taken by him. On 16.01.2019, PRTC informed the petitioner that the percentage of deformity mentioned in the medical certificate is doubtful and, therefore, the petitioner was directed to get himself re-examined from the medical board of Civil Surgeon, Patiala and directed to produce the same within seven days. Consequently, vide letter dated 21.01.2019, Civil Surgeon, Patiala, wrote to the Principal, Government Medical College, Patiala, to examine the petitioner after constituting a team of senior doctors of orthopaedics. On 23.01.2019, petitioner appeared before the medical board of senior doctors of the department of orthopaedics, Rajindra Hospital, Patiala, constituted by the Principal of the said College. However, the said fact was not brought to the notice of the PRTC and, therefore, on 24.01.2019, the petitioner was again requested to appear before the Principal, Government Medical College, Patiala, for medical examination. Since the petitioner was continuously writing letters to the PRTC seeking extension in service, therefore, the PRTC time and again requested the petitioner to appear before the Principal, Government Medical College, Patiala, for medical examination as the petitioner never informed the PRTC that he had already got himself examined from the said medical board on 23.01.2019. Thereafter, on 25.02.2019, the petitioner filed CWP-5254 of 2019 seeking directions to the respondents to extend the service period of the petitioner from 58 years to 60 years being a disabled person on the basis of disability certificate issued by the Civil Surgeon, Barnala. He also sought



quashing of the letters dated 16.01.2019, 25.01.2019, 05.02.2019, 18.02.2019 and 21.02.2019 whereby the petitioner was directed to get himself re-examined from the Civil Surgeon, Patiala. The petitioner even concealed the said facts and did not mention anything in the writ petition, especially the fact that he has already been examined by the medical board of senior doctors of the Department of Orthopaedics, Rajindra Hospital, Patiala, on 23.01.2019 and his disability has been assessed to the extent of 30% as per medical examination report dated 30.01.2019 issued by the medical board. Notice of motion in the said petition was issued on 28.02.2019 for 15.03.2019. On 28.02.2019, a show-cause notice (Annexure P-16) was issued to the petitioner for initiating departmental proceedings against the petitioner for submitting medical certificate issued by the Civil Surgeon, Barnala, which was presented in the office vide letter No.633 dated 06.06.2017 in which his disability was shown as 50% and he sought extension in service and thereafter the petitioner was asked to submit the medical certificate issued by the Civil Surgeon, Patiala, in the prescribed proforma and produce the same in the office but he had not produced the report of the medical examination conducted by the concerned Civil Surgeon despite writing various letters to him and for not submitting the medical report issued by the Civil Surgeon, Patiala. The petitioner, instead of filing any reply to the show-cause notice, sought certain documents vide his letter dated 08.03.2019, which were duly provided by the PRTC on 22.03.2019 and thereafter the petitioner submitted reply to the show-cause notice on 22.05.2019 and since the writ petition filed by the

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petitioner seeking extension in service for two years on the basis of medical certificate issued by the Civil Surgeon, Barnala, was pending before this Court and was sub-judice, the departmental proceedings were kept in abeyance till final decision of the said case vide order dated 22.09.2021 (Annexure P-20). In the meanwhile, on coming to know that the PRTC is now aware regarding his medical examination conducted by the Board of Senior Doctors of Orthopaedics, Rajindra Hospital, Patiala, and the PRTC will bring the correct facts to the notice of the Court, petitioner filed CM-3605-CWP of 2019 in CWP No.5254 of 2019 for withdrawal of the main petition. The said application was ordered to be listed along with the main case for the date already fixed i.e. 15.03.2019. It appears that on 15.03.2019, the main case was adjourned for a longer date. The petitioner filed CM-8584-CWP of 2019 in the said writ petition for preponement of date of hearing in CM-3605-CWP of 2019, which was earlier filed by the petitioner for withdrawal of the main writ petition. The said application came up for hearing before this Court on 30.05.2019 on which date following order was passed: -

***“CM-8548-CWP-2019 in/and CWP No. 5254-2019 (O&M)
HARBANS SINGH BHATTI VS STATE OF PUNJAB
AND ORS***

*Present:- Mr. Vivek Aggarwal, Advocate
for the applicant/petitioner.*

*Mr. Anupam Singla, Advocate for
non-applicants/respondents No. 2 and 3.*

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Prayer in the application is for preponement of the date in CM No.3605 of 2019 and which in turn prayed for withdrawal of the main case.

It has been stated in the application that after filing of the main writ petition, petitioner stands retired w.e.f. 28.02.2019 and as such nothing survives for adjudication.

Be that as it may it is a matter where even though the prayer was with regard to extension of the service tenure of the petitioner from 58 years to 60 years being a disabled person on the strength of a disability certificate issued by the Civil Surgeon, Barnala, yet during the proceedings of the case an issue has arisen with regard to the authenticity of such certificate.

Mr. Anupam Singla, Advocate representing respondents No.2 and 3 would apprise the Court that the petitioner had been got medically re-examined before a Board of Doctors headed by the Civil Surgeon, Rajindra Hospital, Patiala and the findings would reflect that the disability certificate upon which reliance has been placed had been procured.

Since counsel for the parties are present in Court, the date in the main writ petition is preponed from 02.08.2019 and the same is taken up on Board today itself.

Application disposed of .

Main case

List for further consideration on 20.08.2019.

The issue with regard to the mode and manner adopted for procuring the disability certificate issued by the Civil Surgeon Barnala, needs to be gone into.

To be shown as part heard.”

Thereafter, the said writ petition came up for hearing

before this Court on 06.02.2020 and the following order was passed: -

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“Petitioner at the relevant point of time was serving on the post of General Manager, P.R.T.C. He was to attain the age of superannuation i.e. 58 years on 28.2.2019.

Instant writ petition was filed on 25.2.2019 seeking a Mandamus for directing the respondent-Corporation to extend in his favour the benefit of enhanced age of retirement from 58 years to 60 years on the ground that he suffers from a disability element of 50% on the basis of two disability certificates i.e. dated 31.5.2017 (Annexure P-6 colly) and 27.10.2017/3.11.2017 (Annexure P-7 colly). Both the certificates relied upon by the petitioners were issued by the office of Civil Surgeon, Barnala.

During the course of arguments it has gone uncontroverted that pursuant to certain correspondence exchanged between the petitioner and the respondent-Corporation, the petitioner had appeared for medical re-examination before the Medical Board constituted by the Civil Surgeon, Patiala on 23.1.2019 so as to assess his disability. Such fact however for reasons best known to the petitioner was not even disclosed in the instant writ petition filed on 25.2.2019. Upon re-examination by the Medical Board constituted by the Civil Surgeon, Patiala a certificate dated 30.1.2019 is stated to have been issued on 28.2.2019 assessing the disability element of the petitioner to be 30%.

It is at this stage that the petitioner moved a misc. application seeking withdrawal of the main writ petition.

Prima facie, this Court is of the view that the petitioner made a deliberate attempt to mislead this Court and has concealed vital facts. Mr. Rahul Rampal, Advocate, who has now entered appearance on behalf of the petitioner submits that fresh instructions had been issued by the Govt. of India, Ministry of Social Justice and Empowerment and it is on account of operation of such

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instructions that the disability element could have varied. He seeks time to place on record such instructions so as to justify the variance in the disability element in the certificates issued from the office of Civil Surgeon, Barnala and Civil Surgeon, Patiala.

Be that as it may, the issue as regards the mode and manner of issuance of the disability certificate by the Civil Surgeon, Barnala as opposed to the subsequent disability certificates issued by the office of Civil Surgeon, Patiala needs to be probed. Accordingly, this Court deems it fit to implead the Director, Health Services, Punjab as party/respondent no.6.

Registry is directed to carry out necessary changes in the Memo of Parties.

Ms. Simran Grewal learned AAG, Punjab accepts notice on behalf of newly impleaded respondent no.6.

It is directed that respondent no.6 would look into the matter of issuance of the different certificates dated 31.5.2017/27.10.2017 by the Civil Surgeon, Barnala as also certificate dated 28.2.2019 by the Civil Surgeon, Patiala as also the effect of the instructions dated 4.1.2018 issued by the Govt. of India, Ministry of Social Justice and Empowerment. A personal affidavit of respondent no.6 in such regard be filed within a period of four weeks from today.

List on 27.3.2020.

A copy of this order be furnished to counsel for the parties under the signatures of Bench Secretary.”

In the above order, it was recorded by this Court that *prima facie*, the petitioner had made a deliberate attempt to mislead the Court and has concealed vital facts as the medical report dated 30.01.2019 issued by the Medical Board constituted by the Civil



Surgeon, Patiala, stated to have been issued on 28.02.2019 had assessed the disability element of the petitioner to be 30% and consequently, respondent No.6 in the said writ petition i.e. Director, Health Services, Punjab, was directed to look into the matter of issuance of different certificates dated 31.05.2017/27.10.2017 by Civil Surgeon, Barnala, as also certificate dated 28.02.2019 issued by the Civil Surgeon, Patiala and he was directed to file his personal affidavit. Thereafter, another application bearing CM No.8695-CWP of 2020 was filed by the petitioner for preponement of date of hearing in the main petition and in the said application, notice was issued to counsel for PRTC i.e. respondents No.2 and 3 on 10.09.2020. Thereafter, vide order dated 12.10.2020, case was ordered to be listed before the same Bench which heard the matter on 30.05.2019. On 16.10.2020, application for preponement of date of hearing was dismissed. Thereafter, the case was adjourned on 24.05.2023 and 19.12.2023 and finally on 21.12.2023, no one appeared on behalf of the petitioner and the said writ petition was dismissed for non-prosecution.

3. Now by filing the instant petition, the petitioner is merely challenging the issuance of charge-sheet dated 26.04.2023 (Annexure P-21) as also the order dated 04.08.2023 (Annexure P-15) whereby his claim for release of the remaining retiral dues has been rejected.

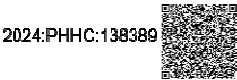
4. Learned counsel for the petitioner has submitted that under Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II (hereafter referred to as 'the Rules'), no disciplinary proceedings can be initiated against an employee after his retirement if the event is more than four



years old and since the charge in the charge-sheet relates to the period 2017/2019, therefore, the same is liable to be set aside. In support of the said contentions, he has placed reliance upon the judgments of this Court in ***O.P. Kharab v. HVPN Ltd. and others, 2007(2) SCT 49*** and ***Pritam Singh v. State of Punjab and others, 2012(9) SCT 540***. However, no argument has been addressed for quashing of the order dated 04.08.2023 for release of unpaid retiral dues.

5. *Per contra*, learned counsel for respondents No.2 and 3 has submitted that the present case would fall within the ambit of proviso 1 of Rule 2.2(b) of the Rules as in the present case, the petitioner was issued show-cause notice on 28.02.2019, when he was in service and on receipt of the said show-cause notice, the petitioner sought certain documents vide his application dated 08.03.2019 (Annexure P-17), which were supplied to him vide letter dated 22.03.2019 (Annexure P-18) and thereafter he filed reply to the show-cause notice on 22.05.2019 and since the matter was sub-judice before this Court in CWP No.5254 of 2019, therefore, the departmental proceedings were kept in abeyance till the final decision of the said case, vide order dated 22.09.2021 (Annexure P-20), and the said petition has been dismissed for non-prosecution due to non-appearance of the counsel for the petitioner, therefore, charge-sheet has been issued to the petitioner.

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



7. Before proceeding further in the matter, it would be relevant to reproduce Rule 2.2(b) of the Rules, which reads as under: -

“2.2(a). Recoveries from pensioners

x x x x

(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 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*

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- (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.

Explanation.—For the purpose of this rule—

- (a) *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, 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*

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- (ii) *in the case of a civil proceeding, on the date of presentation of the plaint in the court.*

Note:—As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

- (c) (1) *Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.*

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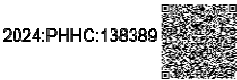
The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority:

Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.

(2) Payment of provisional pension made under sub-clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note.—*The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings.”*

8. A perusal of rule 2.2 of Punjab Civil Services Rules would show that it deals with the recoveries from pension. Under Clause (b) of Rule 2.2 of the Punjab Civil Services Rules, Volume-II, the Government further reserves 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 of recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. The position with regard to initiation of disciplinary proceedings has to be considered from dated 28.02.2019 when petitioner was still in service and was issued show-cause notice and after filing of the reply by the petitioner on 22.05.2019, the disciplinary proceedings were kept in abeyance in view of the pendency of earlier CWP No.5254 of 2019 and the same has been dismissed for non-prosecution, therefore, there is no bar for issuance of charge-sheet dated 26.04.2023. To that extent, no directions are called for in this petition to draw the curtains on the departmental proceedings. In view of what has been stated hereinabove, the present case does not fall within the ambit of proviso 2 of Rule 2.2(b) of the Punjab Civil Services Rules, Volume II, Part II and would rather fall under proviso 1 of Rule 2.2(b). The judgments cited by learned counsel for the petitioner are clearly distinguishable and are not applicable to the facts of the present case.

9. In this view of the matter, finding no merit in the present petition, the same is dismissed with no order as to costs.

21.10.2024
R.S.

(NAMIT KUMAR)
JUDGE

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