IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

Reserved on 04.08.2023
Pronounced on: 04.01.2024

(1) CWP-24362-2014 (O&M)

Sarbjit Singh Dhami **Petitioner**

VS.

Punjab State Power Corporation Ltd.and others **Respondents**

(2) CWP-25806-2014 (O&M)

Narinder Singh **Petitioner**

VS.

Punjab State Power Corporation Ltd.and others **Respondents**

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Ms. Jyoti Sareen, Advocate
for the petitioner(s).

Ms. Sukhmani Patwalia, Advocate and
Mr. Abhishek Masih, Advocate
for the respondents-PSPCL.

***

DEEPAK MANCHANDA, J.

1. This judgment shall decide the aforementioned writ petitions where the issue involved in both the petitions is common but to decide the controversy the facts of CWP-24362-2014 have been extracted for adjudication of both the writ petitions.

2. Both the petitions have been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for

quashing the impugned order dated 29.09.2014 (Annexure P-6) vide which 10% cut in pension of petitioner-Sarbjit Singh Dhami has been imposed for five years in CWP-24362-2014 and impugned order dated 29.09.2014 (Annexure P-7) vide which 20% cut in pension of petitioner-Narinder Singh has been imposed for five years in CWP-25806-2014 in pursuance of the disciplinary proceedings initiated against the petitioner after his retirement, in a wholly arbitrary and illegal manner and in violation of statutory rules and settled legal principle and for directing the respondents to refund the amount of pension already recovered along with interest @ 12 % per annum till realization with further prayer for staying the operation of the impugned order (Annexure P-6).

3. The facts emanating from the pleadings of the present case are that on 28.01.1977, the petitioner- Sarbjit Singh Dhami had joined the Punjab State Electricity Board as Lineman and was promoted as Junior Engineer on 02.11.1981, he was further promoted as Sub Divisional Officer in the month of January, 2008. The petitioner retired as Sub Divisional Officer, re-designated as Assistant Engineer on 31.03.2009 on attaining the age of superannuation. Petitioner-Narinder Singh had joined the Punjab State Electricity as Lineman on 19.09.1975 and was promoted as Junior Engineer in the year 1997. The petitioner retired as Junior Engineer on 31.03.2010 on attaining the age of superannuation.

4. After four years of his retirement, the petitioner was served with charge-sheet dated 14.02.2013 (Annexure P-1) under Regulation 8 of Punjab State Electricity Board Employees (Punishment and Appeal) Regulations 1971 wherein it was alleged that while shifting tube-well connection of account

No.MK 446, fard of land, Aks and no objection certificate was not taken from the co-sharers of the land and the S.J.O. was signed by the petitioner without any estimate and that the tube-well connection was ordered to be shifted by the petitioner under LT system instead of HVDS scheme. The petitioner replied to the charge-sheet vide letter dated 23.07.2013 (Annexure P-2) and explained that as the shifting of the tube-well was in the same killa and as the connection was previously shifted by the consumer, by not shifting under the HVDS, no financial loss was caused to the Department and no undue benefit was given to the consumer and no new material was used for shifting and shifting fee of Rs. 2,000/- was duly deposited. Thereafter, without appreciating the grounds raised in the reply, Deputy Chief Engineer, P&M, Halqa Patiala was appointed as Enquiry Officer to hold enquiry into the charges. However, petitioner was never informed regarding rejection of his reply and appointment of enquiry officer. The petitioner went abroad to meet his daughter and remained there from 04.10.2013 to 20.12.2013 but during that period, no official letter was received on the address of the petitioner regarding appointment of Enquiry Officer or joining of the enquiry. Vide letter dated 12.02.2014 (Annexure P-3) issued by Joint Secretary, Technical-3, Powercom, Patiala received on 25.02.2014, the petitioner was communicated with the conclusion of enquiry report, without supplying the copy of the detailed enquiry report. It has been stated in the enquiry report (Annexure P-3) that the charges have been proved against the petitioner on the basis of record produced before the Enquiry Officer, without disclosing the nature of the record produced during the course of enquiry. Thereafter, the petitioner submitted detailed reply dated 21.03.2014 (Annexure P-4) to the enquiry report. The petitioner relied upon commercial circular No. 14/2005 (Annexure P-5) to show that in case of shifting of tube-well connection within same khewat/killa, no estimate was required to be prepared and only Rs. 2,000/-as shifting fee was required to be deposited. He also relied upon commercial circular No. 67-2006 (Annexure P-5) to show that the shifting of AP tube-well connection may be allowed on LT, if it is technically feasible to release the connection at new site on LT. After that, without associating the petitioner in enquiry, vide order dated 29.09.2014 (Annexure P-6), issued by respondent No. 2, the petitioner was held guilty of the charges and it was ordered to impose 10% cut in pension of the petitioner for a period of five years. Even the impugned order dated 29.09.2014 (Annexure P-6) is totally non-speaking, as no reasoning has been given in the order, rejecting the explanation given by the petitioner in his reply.

5. Learned counsel for the petitioner contends that the charge-sheet dated 14.02.2013 (Annexure P-1), issued to the petitioner after 04 years of his retirement is per-se arbitrary and illegal and without jurisdiction. Even further disciplinary proceedings undertaken against the petitioner by the respondents after retirement of the petitioner, is violative of statutory Rules 2.2[b] proviso [i] PCS rules Vol.2, part I, as well as the settled legal principle as laid down by Hon'ble Division Bench of this Court in case titled ***“Dr. Inderjit Singh Vasu Versus State of Punjab & other”*** **cited at 2007, Vol-III ILR, 134 (P & H)**. As such, the impugned order dated 29.9.2014 (Annexure P-6) passed by respondent No. 2 ordering 10% cut in pension of the petitioner for 05 years, is arbitrary, illegal and vitiated in the eyes of Law.

6. To support her contentions learned counsel for the petitioner relies upon the judgments passed by the Hon'ble Supreme Court of India and this

Court in ***"State of Punjab Vs. Amar Singh Harika" 1966 AIR (SC) 1313, "Roop Singh Negi Vs. Punjab National Bank & Ors." in Civil Appeal No.7431 of 2008, "Satwati Deswal Vs. State of Haryana and others", 2010 (1) SCC 126, "Dr. Inderjit Singh Wasu Vs. State of Punjab and others" in CWP-18451-2004, "Ramesh Kumar Sood Vs. Punjab State Electricity Board and others" in CWP-10307-2008 and "Pritam Singh Vs. State of Punjab and others" in CWP-19487-1998.***

7. Learned counsel for the respondents vide reply dated 11.12.2015 submitted that the enquiry officer was appointed vide order dated 29.10.2013. A common enquiry was initiated under Regulation 13 (1) of Punjab State Electricity Board Employees (Punishment and Appeal) Regulations 1971 against Assistant Engineer Sarbjit Singh Dhami, petitioner in CWP-24362-2014 and Junior Engineer, Narinder Singh, petitioner in CWP-25806-2014. Consequently, the petitioners were called for hearing vide letters dated 07.11.2013, 11.11.2013 and 18.11.2013 but petitioner in the present case did not come present and as per the mandate of the procedure, a public notice dated 29.11.2013 (Annexure R-2) was issued in two widely circulated newspapers.

8. Learned counsel for the respondents further submits that at no stage enquiry procedure was ever questioned by the petitioner it was never pleaded nor challenged before any competent authority that the enquiry procedure adopted by answering respondents is not in confirmity with the Rules and procedure. She also submits that the order vide which enquiry Officer was appointed was never challenged and the enquiry report itself vide which the charges have been proved has also not been challenged before this Court or any competent authority. Learned counsel for the respondents argues

that if the petitioner got aggrieved by the order imposing punishment of 10% cut in pension for 05 years then proper recourse as per the provisions of Punjab State Electricity Board of Engineers (Electrical) Regulations, 1965 would be to file an appeal as is stipulated under Regulation 22. She further argues that the main thrust of argument raised by the petitioner is on the fact that as per Rule 2.2(b) of Punjab Civil Services Rules, the chargesheet was issued beyond the stipulated period of 04 years, therefore, enquiry procedure was vitiated as is evident. The petitioners have retired on 31.03.2009 and 31.03.2010, respectively, the date of checking was 18.02.2009 and consequently, chargsheet was issued on 14.02.2013. Therefore, the same is within 04 years. The relevant crucial date for determination when the department proceedings were initiated is in fact the date on which the chargesheet was issued and not when it was communicated.

9. Learned counsel for the respondents also argued that under Article 226/227 of the Constitution of India, the scope of interference is limited as fair and proper enquiry has been conducted by the department in disciplinary proceedings and this Court cannot sit as Appellate Authority over the decision taken in the disciplinary proceedings by re-appreciating the evidence. To support her contentions, she relies upon the judgments passed by the Hon'ble Supreme Court of India and this Court in ***"Union of India and others Vs. P. Gunasekaran" 2015 (2) SCC 610, "B.C. Chaturvedi Vs. Union of India and others" 1995(6) SCC 749 and "Chander Singh Rathi Vs. State Bank of India and another" in CWP-14934-2007.***

10. Having heard the learned counsel for the parties and after perusing the material available on record with their able assistance.

11. The questions in present petition which has been raised by the petitioner is whether the issuance of chargesheet 04 years after the retirement of initiating disciplinary proceedings and thereafter, on the basis of the same by imposing 10% cut in pension of the petitioner for 05 years is justified. A perusal of the pleadings and material available on record shows and even has been admitted by the respondent-Corporation that since petitioner was retired on 31.03.2009 and he was served upon a chargesheet dated 14.02.2013 (Annexure P-1) under Regulation 8 of Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 on the allegations of shifting tube-well connection of account No.MK-446, where no objection certificate was not obtained from the co-sharers of the land and same was shifted by the petitioner under LT system instead of HVDS Scheme. The petitioner pleaded that the said connection in dispute was previously shifted by the consumer himself and no financial loss was caused to the department as no undue benefit was given to the consumer where no new material was used for shifting and even fee of Rs.2,000/- was also duly deposited but without appreciating the ground raised by the petitioner, the petitioner was held liable for misconduct which resulted into imposition of 10% cut in pension for 05 years.

12. By way of admission by the respondent-department as well as in view of the factual aspect as above, at the time of retirement, there was no departmental/judicial proceedings pending against the petitioner. It is only after more than 04 years of retirement, the petitioner was issued chargesheet dated 14.02.2013. It is well settled that no chargesheet could be issued against the employee after his retirement because the relationship of an employer and

employee comes to an end with the superannuation of the employee subject to payment of his retiral benefits. After retirement only those proceedings are allowed to continue which have been initiated during the course of employment and if any employee is found guilty then either a cut in his pension could be imposed or recovery could be effected from his gratuity. It is not a disputed fact that the petitioner retired from service on 31.03.2009. As such, the order imposing the punishment is totally cryptic and non-speaking and does not give the detail as to how, the petitioner has been found liable that too after a period of 04 years of his retirement. Not only this, the question of law which also arises in the present proceedings is whether after retirement an employee can be proceeded against. It is a settled principle of law that after the retirmeent, the employee can only be proceeded against in case, the rules governing the service permit of the said action. No such provision of law has been brought to the notice of this Court by learned counsel appearing on behalf of the respondents so as to justify its authority to serve a show cause notice so as to initiate disciplinary proceedings against the retired employee. In the absence of any authority shown by the respondents, it can be safely held that the respondent did not have any authority to initiate disciplinary proceedings against a retired employee.

13. The Hon'ble Supreme Court while deciding ***Civil Appeal No.2101 of 1999*** titled as “***Bhagirathi Jena v. Board of Director O.S.F.C.”*** has held that in case, there is no provision under the rules governing the service for continuation of disciplinary proceedings after retirement of an employee, no punishment or no deduction from the retiral benefit can be done as the proceedings after the retirement automatically lapses. Relevant paragraph is as

under:-

> *"In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."*

14. The Hon'ble Supreme Court of India in ***Chandra Singh v. State of Rajasthan and another 2003 (3) SCT 694*** also held that any proceedings, which have been undertaken after the retirement becomes without any authority or jurisdiction and any order passed in pursuance to the said proceedings initiated or continued after retirement, without there being any provisions giving jurisdiction to an employer to the said effect, are nullity in law. Relevant paragraph of the said judgment is as under-

> *"We also cannot accept the contention of Mr. Rao that in the case of Mata Deen Garg, the departmental proceedings could be kept pending despite the passing of the impugned order. The High Court had not passed any order in the departmental proceedings. It sought to invoke the jurisdiction which was conferred on the High Court and the State by reason of a statutory rule. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer the employee cannot be made to retire. There*

> *must exist specific provision in the pension rules in terms whereof, whole or a part of the pension can be withheld or withdrawn where for a proceeding has to be initiated. Furthermore, no rule has also been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. In absence of such a proceeding, the High Court or the State cannot contend that the departmental proceedings against the appellant Mata Deen Garg could continue."*

15. This Court has also also decided the same question of law as to whether an employee who is already retired from service can be chargesheeted or the charge-sheet issued to an employee while in service can continue after his retirement while deciding CWP No.2795 of 2016 decided on 12.09.2023, titled as ***"Kashmir Singh Vs. The Punjab State Power Corporation Ltd., Patiala and others"*** held as under :-

> *"14. Secondly, the charge sheet issued eight months after retirement without jurisdiction. It is an admitted fact that on the date when the petitioner attained the age of superannuation and retired on 28.02.2014, there were no proceedings pending against him. In the present writ, the charge-sheet which was served to the petitioner on 30.10.2014, which has been made the ground to pass the impugned order dated 21.08.2015 was issued to the petitioner on 30.10.2014. which is approximately eight months after his retirement.*
>
> *15. It is a settled principle of law that position with regard to the pendency of the disciplinary proceedings or proceedings before any Competent Court of Law, is to be seen on the date of retirement. In case there are no proceedings pending against the employee on the date of retirement, respondents do not have the jurisdiction to withhold the pensionary benefits of the employee. No rule has been cited by the learned counsel for the respondents*

> *that the charge-sheet, which has been issued without any notice and holding regular inquiry has been served after the retirement, will give the respondents the right to withhold the pensionary benefits, which right has already been accrued to an employee for the release of the same upon his retirement. In the absence of any rule, the position is to be seen on the date of retirement and any charge-sheet or disciplinary proceedings, initiated against the employee after retirement, will not give the jurisdiction to the respondents to withhold the pensionary benefits by virtue of the impugned order dated 21.08.2015."*

16. It has been held in a catena of judgments that no proceedings can be continued/initiated once an employee is permitted to retire. The present petition has been filed for quashing of the impugned order dated 29.09.2014 vide which 10% cut in pension of petitioner had been imposed for 05 years in pursuance to the disciplinary proceedings initiated against him. Learned counsel for the respondent-Corporation has raised an issue that once the enquiry proceedings were initiated at no stage enquiry procedure was ever question by the petitioner. It was never pleaded nor challenged before any competent authority. Moreover, the judgments on which learned counsel for the respondents has relied upon are not applicable to the facts of the present case. The sole question which has been raised for determination in the present petition is whether post retirement after a gap of 04 years, the disciplinary proceedings initiated against the petitioner is valid under that law which resulted into the passing of the impugned order Annexure P-6 but learned counsel for the respondents was not able to controvert the settled proposition of law with regard to action taken post retirement of the petitioner. The petitioner has relied upon the Rule 2.2 (b) of the Punjab Civil Services Rules Vol.-II Part

1 and the principles enshrined under the Rule are applicable to the petitioner. It is an admitted fact that there is no departmental proceedings having been initiated during the period the petitioner was in service.

17. As per Rule 2.2 (b) of the Punjab Civil Services Rules, in reference to the same, the co-ordinate Bench of this Court in case CWP-13134-2015 titled as "***Sukhjinder Singh Vs. Punjab State Civil Supplies Corporation Ltd. & Anr."*** decided on 04.03.2016. The relevant portion is reproduced as under:-

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

18. A bare perusal of the above sited law would show that question of law raised in the present petition has already been decided more than once by the Hon'ble Supreme Court as well as by this Court holding that without there being any specific Rule or jurisdiction to an employer to initiate

disciplinary proceedings after retirement or to continue the disciplinary proceeding after retirement, the employer cannot initiate disciplinary proceedings against an employee, who has already retired from service.

19. Keeping in view of the above, the impugned order dated 29.09.2014 (Annexure P-6) in CWP-24362-2014, whereby cut of 10% in pension of the petitioner has been imposed for 05 years and impugned order dated 29.09.2014 (Annexure P-7) in CWP-25806-2014, whereby cut of 20% in pension of the petitioner has been imposed for five years, are hereby quashed. The recovery, if any, made from the petitioner(s) be refunded to him within a period of 08 weeks from the date of receipt of copy of this order.

20. The petitions are allowed in above terms.

21. All pending miscellaneous application(s), if any, also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

January 04, 2024
Nisha-II/vanita

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*