2024:PHHC:102559

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22325-2021
Date of decision: 07.08.2024

BAJINDER SINGH

...Petitioner

VERSUS

THE HARYANA STATE AGRICULTURAL MARKETING BOARD AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. A. K. Walia, Advocate for the petitioner.

Mr. Jagbir Malik, Advocate for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing:-

(i) Impugned charge-sheet dated 09.12.2015 (Annexure P-1), impugned enquiry report dated 19.02.2016 (Annexure P-3) and impugned punishment order dated 24.11.2016 (Annexure P-4), vide which penalty of 2% cut in pension for a period of one year has been imposed.

(ii) Impugned charge-sheet dated 22.03.2016 (Annexure P-5), impugned enquiry report dated 09.05.2016 (Annexure P-7) and impugned punishment order dated 22.05.2017 (Annexure P-8), vide which penalty of 2% cut in pension for a period of one year has been imposed.

(iii) Impugned charge-sheet dated 18.04.2016 (Annexure P-9), impugned enquiry report dated 17.10.2016 (Annexure P-11) and impugned punishment order dated 02.06.2017 (Annexure P-12), vide which penalty of 2% cut in pension for a period of one year has been imposed.

(iv) Impugned charge-sheet dated 25.05.2017 (Annexure P-13), impugned enquiry report dated 24.08.2018 (Annexure P-15) and impugned punishment order dated 10/12.09.2019 (Annexure P-17), vide which penalty of 2% cut in pension for a period of one year has been imposed.

(v) Impugned charge-sheet dated 01.01.2018 (Annexure P-18), impugned enquiry report dated 02.05.2018 (Annexure P-20) and impugned punishment order dated 30.10.2018 (Annexure P-21), vide which penalty of 2% cut in pension for a period of one year has been imposed, with a further prayer to direct the respondents to refund the amount recovered from the petitioner by way of cuts in pension along with interest @ 12% per annum from the due date till the date of actual payment.

2. Learned counsel for the petitioner while giving the facts of the present case submitted that the petitioner was working as a Superintendent in the respondent-Board and while he was in service, he filed a writ petition before this Court bearing *CWP-643-2014*, titled as *Bajinder Singh versus The Haryana State Agricultural Marketing Board and others*. He further submitted that in the aforesaid writ petition *mala fides* were alleged because the petitioner was wrongly being ignored for being considered for promotion to the post of Administrative Officer and the aforesaid writ petition was allowed by a Coordinate Bench of this Court vide Annexure P-23 on 31.08.2018 and the

respondents were directed to consider promoting the petitioner as Administrative Officer with all consequential benefits from the date when the other person, namely, Shakuntla Rani was promoted as Administrative Officer and it was further directed that the petitioner as well as aforesaid Shakuntla Rani will be deemed to have retired on the post of Administrative Officer. He further submitted that since the aforesaid writ petition was based upon *mala fides* of the respondents and the same was filed in the year 2014, when the matter was subjudice, the petitioner in the meantime attained the age of superannuation on 31.05.2015. He further submitted that although the petitioner retired on the aforesaid date from the post of Superintendent because the matter was still subjudice but ultimately when the aforesaid writ petition was allowed vide Annexure P-23, then the aforesaid judgment was implemented and he was deemed to be retired from the post of Administrative Officer. He further submitted that at the time of retirement of the petitioner in the year 2015, he was holding current duty charge of the Administrative Officer.

3. Learned counsel for the petitioner also submitted that so far as the aforesaid factual position is concerned, there is no dispute with regard to the same but the dispute in the present case is that when the petitioner filed the aforesaid writ petition before this Court in the year 2014 based upon *mala fides,* then due to the filing of the aforesaid writ petition, in order to victimize the petitioner, the respondent-Board issued a series of charge-sheets against him, which were issued to him after his retirement and the same were issued without any authority of law and the grievance of the petitioner in the present case is pertaining to the challenge to the aforesaid series of charge-sheets. He further

submitted that in total 5 charge-sheets were issued against the petitioner after his retirement and the same have been challenged in the present writ petition. Apart from the above, the aforesaid 5 charge-sheets culminated into the order of punishment of 2% cut in pension for a period of one year, which is also under challenge in the present writ petition.

4. Learned counsel for the petitioner further submitted that the first charge-sheet was issued to the petitioner vide Annexure P-1 dated 09.12.2015 and thereafter, the punishment order was passed vide Annexure P-4 on 24.11.2016, whereby penalty of 2% cut in pension for a period of one year has been imposed. Second charge-sheet was issued to the petitioner vide Annexure P-5 dated 22.03.2016 and regarding which the punishment order was passed vide Annexure P-8 on 22.05.2017, whereby penalty of 2% cut in pension for a period of one year has been imposed. Third charge-sheet was issued to the petitioner vide Annexure P-9 dated 18.04.2016 and regarding which the punishment order was passed vide Annexure P-12 on 02.06.2017, whereby penalty of 2% cut in pension for a period of one year has been imposed. Thereafter, fourth charge-sheet was issued to the petitioner vide Annexure P-13 dated 25.05.2017 and regarding which the punishment order was passed vide Annexure P-17 on 10/12.09.2019, whereby penalty of 2% cut in pension for a period of one year has been imposed. Finally, fifth charge-sheet was issued to the petitioner vide Annexure P-18 dated 01.01.2018 and regarding which the punishment order was passed vide Annexure P-21 on 30.10.2018, whereby penalty of 2% cut in pension for a period of one year has been imposed.

5. Learned counsel for the petitioner submitted that all the aforesaid charge-sheets were issued to the petitioner after his retirement. He further submitted that 1st, 2nd and 3rd charge-sheets were issued to the petitioner under the provisions of Rule 2.2(b) of the Punjab Civil Services Rules as applicable to the State of Haryana and 4th and 5th charge-sheets were issued to the petitioner under Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 read with Rule 7 of the HCS (Punishment & Appeal) Rules, 2016 because at that point of time, Haryana Civil Services Rules came into force. He further submitted that so far as the provisions of Rule 2.2(b) of the Punjab Civil Services Rules as applicable to the State of Haryana are concerned, the same are in *pari materia* with that of Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016.

6. Learned counsel for the petitioner further submitted that as per both the aforesaid Rules, there is no doubt regarding the power vested with the respondent-Board to have issued charge-sheet even after retirement of an employee but the same is subject to various conditions and those conditions are mandatory conditions which are required to be fulfilled. While referring to the aforesaid Rules, he submitted that the first and the foremost condition is that if an employee has retired and in case the employer or the Government or the Government Organization wants to issue any charge-sheet after the retirement, then it can be done only with the sanction of the Government. He further submitted that in the present case, there was no sanction of the Government and the same position has even been conceded by the respondent-Board in the reply by only giving a justification that since the cause of action arose prior to the

retirement of the petitioner, there was no need of sanction. He further submitted that the respondent-Board while filing the reply has misinterpreted the provisions of Rule 2.2(b) of the Punjab Civil Services Rules as applicable to the State of Haryana and Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016. He further submitted that so far as the second mandatory condition is concerned, as per Rule 12 (1) of the Haryana Civil Services (Pension) Rules, 2016, in such like cases recovery can be made from the pension only when pecuniary loss is caused, whereas in the present case neither there is returning of any finding by the Enquiry Officer nor there is any order of any competent authority or any punishment order in which it is so reflected that because of the negligence of the petitioner, any pecuniary loss has been caused and therefore, the punishment order by which 2% pension has been directed to be recovered was in violation of the aforesaid Rules and without the authority of law. He further submitted that even otherwise also the issuance of charge-sheets and passing of the punishment orders were because of the *mala fides* on the part of the respondent-Board as the petitioner had filed the aforesaid writ petition (Annexure P-23) which was allowed and therefore, all the 5 charge-sheets and the punishment orders are liable to be set aside being without the authority of law.

7. On the other hand, learned counsel for the respondents submitted that so far as the factual position as so stated by the learned counsel for the petitioner that no sanction was obtained from the Government is concerned, the same is correct. He further submitted that it is also correct that as per the aforesaid charge-sheets or the punishment orders, there is no returning of any

finding that any pecuniary loss has been caused by the petitioner due to his negligence. He further submitted while referring to the reply filed on behalf of the respondent-Board that since the cause of action arose prior to the retirement of the petitioner, therefore the sanction from the Government was not required. He also submitted that there is a delay in filing of the present writ petition because the present writ petition has been filed in the year 2021 and all the five punishment orders were passed on 24.11.2016, 22.05.2017, 02.06.2017, 10/12.09.2019 and 30.10.2018, respectively.

8. I have heard the learned counsels for the parties.

9. Before proceeding further, the provisions of Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II as applicable to the State of Haryana and Rule 12 of the Haryana Civil Services (Pension) Rules, 2016, are reproduced as under:-

Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II

2.2 Recoveries from pension.-

(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

(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.

Rule 12 of the Haryana Civil Services (Pension) Rules, 2016

"12. Right of appointing authority to withhold or withdraw pension.-

(1) The Appointing Authority reserve 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 to make good of the whole or part of any pecuniary loss, if any, caused to Government, if the pensioner is found in departmental or judicial proceedings, to have—

(a) been guilty of grave misconduct or negligence committed by him but there is no pecuniary loss to Government; or

(b) caused pecuniary loss to Government by misconduct or negligence; during his service including service rendered on re-employment after retirement:

Provided that the Haryana Public Service Commission or Haryana Staff Selection Commission or any other approved Recruitment Agency, as the case may be, shall be consulted before final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of minimum pension prescribed from time to time.

***Note.-** Pensionary benefits shall be withheld if departmental proceedings under rule 8 of Haryana Civil Services (Punishment and Appeal) Rules, 2016 involve any financial loss to Government are pending at the time of retirement.*

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

(b) The departmental proceedings, if not instituted while the Government employee 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 at 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 Government employee during his service".*

10. A perusal of the aforesaid provisions would show that when an employee retires from service, then after his/her retirement no charge-sheet can be issued except by fulfilling the mandatory conditions contained therein. It is a settled law that when an employee retires then after retirement the master and servant relationship ceases to exist. However, there is an exception to the aforesaid Rules and the exception is prescribed under the Statutory Rules. The aforesaid Rules provide for not only an exception but also provide essential ingredients which are *sine qua non* and which are conditions precedent for the purpose of invoking such an exception. In other words, for the purpose of invoking such an exception, one of the foremost condition is that it has to be done by way of sanction from the Government but in the present case it is an admitted position that no sanction was obtained by the respondent-Board from the Government. Another condition which is pre-requisite for the purpose of effecting recovery from the pension of a retired employee is that it has to be established that there was some pecuniary loss caused but again it is a conceded position that there is no returning of any finding or no loss has been caused

because of the petitioner's negligence. Therefore, on the face of it both the conditions which are *sine qua non* for the purpose of initiating enquiry or issuance of any charge-sheet after the retirement and thereafter, to pass any order of punishment have been violated.

11. So far as delay aspect is concerned, it was argued by the learned counsel for the respondents that the present writ petition was filed in the year 2021, whereas punishment orders were passed from the years 2016 to 2019, the same is not sustainable. The charge-sheets and punishment orders are in total violation of Statutory Rules and the punishment orders were passed in series spread over three years till 2019. The present writ petition has been filed in the year 2021 and therefore, it cannot be said that there was any unreasonable delay in filing the petition. Furthermore, punishment orders pertain to cut from pension, whereas pension is not only a Statutory Right but also a Constitutional Right under Article 300-A of the Constitution of India being a Right to Property and therefore, plea of delay is unsustainable. In view of the aforesaid totality of facts and circumstances of the present case, this Court is of the considered view that the present writ petition deserves to succeed.

12. Consequently, the present writ petition is allowed. The impugned charge-sheets dated 09.12.2015 (Annexure P-1), dated 22.03.2016 (Annexure P-5), dated 18.04.2016 (Annexure P-9), dated 25.05.2017 (Annexure P-13) and dated 01.01.2018 (Annexure P-18) along with punishment orders dated 24.11.2016 (Annexure P-4), dated 22.05.2017 (Annexure P-8), dated 02.06.2017 (Annexure P-12), dated 10/12.09.2019 (Annexure P-17) and dated 30.10.2018 (Annexure P-21) are hereby set aside. It is directed that any

recovery made from the petitioner in pursuance of the aforesaid punishment orders shall be refunded to the petitioner along with interest @ 6% per annum (simple), within a period of four months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid four months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple). In case due to the pendency of the aforesaid charge-sheets any pensionary benefits/retiral benefits of the petitioner have been withheld, then the same shall also be refunded to the petitioner along with interest @ 6% per annum (simple), within the period of aforesaid four months.

13. Considering the facts and circumstances where *ex facie* series of charge-sheets issued against the petitioner after his retirement were in violation of the provisions of law and the same were without the authority of law, the petitioner also deserves exemplary costs, which shall be in the nature of compensation, which are assessed as Rs.50,000/- (Rupees Fifty Thousand Only), which shall also be paid to the petitioner within a period of aforesaid four months.

(JASGURPREET SINGH PURI)
JUDGE

07.08.2024
Chetan Thakur

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