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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-24084-2016  
Date of decision: 15.02.2024

VINOD KUMAR BEHAL

...Petitioner

VERSUS

REGISTRAR COOPERATIVE SOCIETIES HARYANA AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sandeep Singal, Advocate  
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Subhash Ahuja, Advocate  
for respondents No.2 and 3.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ, order or direction especially a writ in the nature of *certiorari* for quashing the impugned charge-sheet dated 23.04.2013, which is pending against the petitioner inordinately till date even after the retirement of the petitioner and contrary to the instructions issued by the Government of Haryana dated 27.01.2003 (Annexure P-3), wherein it is clearly mentioned that a charge-sheet be ordinarily decided within a period of one year from the date of its issuance with a further prayer for directing the respondents to release the amount of leave encashment to the petitioner with interest @ 12% per annum, which has been withheld due to the pendency of the

aforesaid charge-sheet, which act of the respondents is contrary to the Full Bench judgment of this Court in *Punjab State Civil Supplies Corporation Limited and others versus Pyare Lal, 2012 (4) RSJ 616*.

2. Replication to the written statement filed on behalf of respondents No.2 and 3 has been filed in Court today the same is taken on record along with Annexure P-7. Copy of the same already stood supplied to learned counsel for the petitioner.

3. The brief facts of the present case are that the petitioner was working as Assistant Manager with the respondent-Bank and he retired on 31.01.2014 on attaining the age of superannuation. While the petitioner was in service, he was served with a charge-sheet dated 23.04.2013 vide Annexure P-1 and thereafter, an inquiry was conducted against him. After the submission of the inquiry report by the Inquiry Officer, second show cause notice was issued to the petitioner dated 31.08.2016 vide Annexure R-2/1 and thereafter, no further proceeding or order was passed by any authority till date. In this way, despite the submission of inquiry report by the Inquiry Officer and despite issuance of show cause notice vide Annexure R-2/1 in the year 2016, no further process was initiated by the competent/disciplinary authority nor any order of punishment or any kind of order was passed in this regard.

4. There was one more charge-sheet against the petitioner in which ultimately the charges were dropped by the competent/disciplinary authority vide Annexure P-7 on 29.11.2016 i.e. after the retirement of the petitioner. The aforesaid Annexure P-7 is reproduced as under:-

*“While working as Development Officer, the Faridabad Central Coop. Bank Ltd., Faridabad, a charge-*

*sheet containing the allegations of "Neglect of work, poor supervision and carelessness in performance of duties and doing act prejudicial to the interest of the bank of gross negligence involving or likely to involve the bank in seious losses" was served upon Shri Vinod Kumar Behl, Asstt. Manager/dev. Officer (Retd.) vide memo No.Estt./E.A-ii/2013-14/12678 dated 20.2.2015.*

*An Enquiry Officer was appointed vide orders dated 28.09.2015 to conduct departmental enquiry into the allegations leveled against him vide memo dated 20.2.2015.*

*The Enquiry Officer conducted the enquiry into above allegations and submitted the report on 19.10.2016 by recording a conclusion that no allegation stands proved against him. Hence, the charge sheet issued vide No.Estt./EAI/2013-14/12678 dated 20.02.2015 is hereby filed.*

*Chandigarh  
Dated:*

*SATBIR SHARMA  
MANAGING DIRECTOR*

5. The petitioner has challenged the charge-sheet dated 23.04.2013 and is also seeking a direction that the respondent-Bank be directed to release his leave encashment to the petitioner along with interest, which has been withheld only because of the pendency of the aforesaid charge-sheet.

6. Learned counsel for the petitioner submitted that so far as the second charge-sheet is concerned, admittedly the same has already been dropped by the competent/disciplinary authority vide Annexure P-7 on 29.11.2016 since no allegations were proved against the petitioner and now the grievance of the petitioner is only pertaining to first charge-sheet (Annexure P-1), which was issued to him in the year 2013 and till date, no order has been

passed by the competent/disciplinary authority even after the completion of the inquiry and issuance of second show cause notice. He further submitted that because of this reason, the leave encashment of the petitioner has been withheld till date. While referring to Annexure P-3, he further submitted that for the expeditious disposal of disciplinary proceedings against a Government employee, a policy decision was taken by the Government of Haryana and a letter was issued by the Chief Secretary, Government of Haryana to all the authorities by setting a time frame work of one year that an inquiry should be completed within a period of one year but in the present case, the charge-sheet is of the year 2013 and 11 years have elapsed and till date no final decision has been taken on the charge-sheet by the competent/disciplinary authority even though the inquiry stood completed much earlier and rather on the basis of inquiry, second show cause notice was issued to the petitioner on 31.08.2016 and even now more than 7 years have elapsed after the issuance of second show cause notice but the competent/disciplinary authority has not taken any action nor passed any order and therefore, the aforesaid charge-sheet itself needs to be quashed by this Court and consequently, directions may be issued to the respondent-Bank to release the leave encashment to the petitioner, which has been withheld on the basis of the aforesaid reason.

7. On the other hand, Mr. Subhash Ahuja, learned counsel for respondents No.2 and 3 submitted that so far as the second charge-sheet which has been so stated by learned counsel for the petitioner is concerned, there is no dispute with regard to the fact that charges in the second charge-sheet have already been dropped vide Annexure P-7. He also submitted that so far as charge-sheet dated 23.04.2013 (Annexure P-1) is concerned, inquiry was

conducted against the petitioner and charges were proved and therefore, the respondent-Bank issued second show cause notice to the petitioner on 31.08.2016 (Annexure R-2/1). He further submitted that the petitioner instead of filing any reply to the aforesaid show cause notice preferred to file the present writ petition and because of the pendency of the present writ petition, no order was passed by the competent/disciplinary authority and it was well within the rights of the respondent-Bank to have withheld the leave encashment of the petitioner because of the pendency of the disciplinary proceedings against the petitioner. He referred to a Division Bench judgment of this Court in **Punjab and Sind Bank, Sector-17, Chandigarh versus Regional Labour Commissioner (Central), Kendriya Sadan, Sector 9-A, Chandigarh and others, 2008 (1) SCT 369** to contend that the department is within its rights to have withheld the leave encashment. He also referred to judgment passed by a Coordinate Bench of this Court in **Balwinder Singh and another versus State of Punjab and others, 2020 (2) SCT 437** to contend that during the pendency of the disciplinary proceedings, leave encashment can be withheld.

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

9. The only dispute in the present case is pertaining to the action of the respondent-Bank to have withheld the leave encashment of the petitioner on the ground that charge-sheet dated 23.04.2013 (Annexure P-1) is still pending against the petitioner. The petitioner already stands retired on 31.01.2014 and there is no doubt that the aforesaid charge-sheet was issued to the petitioner prior to his retirement and the respondent-Bank could have within its rights continued with the inquiry etc. However, on the basis of aforesaid charge-sheet, an inquiry was conducted and the Inquiry Officer submitted the inquiry report

and on the basis of the said inquiry report, vide Annexure R-2/1 dated 31.08.2016, second show cause notice was issued to the petitioner and thereafter, the present writ petition has been filed by the petitioner. There is no interim order passed by this Court at any stage. Learned counsel for respondents No.2 and 3 submitted that because of the pendency of the present writ petition, no further action was taken by the competent/disciplinary authority.

10. This Court is of the considered view that the present writ petition deserves to succeed. Firstly because of the reason that in the absence of any interim order for staying of any further proceedings, no such plea can be taken by respondents No.2 and 3 by stating that during the pendency of the present writ petition, the competent/disciplinary authority did not deem it fit and proper to proceed with the departmental proceedings. It is the claim of the petitioner regarding withholding of leave encashment which is part of retiral benefits. The retiral benefits are sacrosanct and precious rights apart from being a Constitutional Right and cannot be dealt in a casual manner by the respondent-Bank. The second show cause notice, after the inquiry report was finalized, is of 31.08.2016 and more than 7 years have elapsed but no action has been taken by the competent/disciplinary authority and in this way, it appears that the respondent-Bank has been delaying the grant of leave encashment to the petitioner for an indefinite period or till the finalization of the present writ petition. There is no other justification coming forth from the respondent-Bank as to why for more than 7 years, the competent/disciplinary authority has not taken a decision on the inquiry report and the second show cause notice.

11. Secondly, a perusal of Annexure P-3, which are the instructions issued by the Chief Secretary, Government of Haryana as a policy decision

would show that normally the inquiries should be completed within a period of one year. Even though the aforesaid instructions may not be directly applicable to the respondent-Bank but the principle and the rationale is the same. There is no justification which has come forth from the respondent-Bank as to why till date no order has been passed on the second show cause notice based upon inquiry report for more than 7 years. The only justification given by the learned counsel for respondents No.2 and 3 that due to the pendency of the present writ petition, no order was taken from the competent/disciplinary authority is not sustainable.

12. Thirdly, a perusal of inquiry report would show that the allegation against the petitioner was that he was negligent in supervising into the audit/accounts of a Cooperative Society and there was no direct allegation of embezzlement against the petitioner but the allegation was only with regard to negligence in supervising and having a loose supervision. So far as the allegations contained in the second charge-sheet in which the charges have been dropped are concerned, it appears that similar kind of allegations were there against the petitioner pertaining to loose and negligent supervision only but there was no allegation of embezzlement qua the petitioner.

13. Fourthly, the charge-sheet dated 23.04.2013 (Annexure P-1) is also liable to be set aside solely on the ground of delay in not finalizing the same.

14. So far as the judgments as relied upon by the learned counsel for respondents No.2 and 3 are concerned, the same are not applicable to the present case and they are distinguishable. The judgment in **Punjab and Sind Bank's case (supra)** was pertaining to the fact where the delinquent officer was found guilty of causing loss to the Bank and an order of punishment was passed

against him pertaining to his compulsory retirement, whereas in the present case, there is no punishment order against the petitioner at all. So far as the judgment in Balwinder Singh's case (supra) is concerned, the same is also distinguishable because in that case, the services of the petitioners therein were terminated after they were found guilty in an FIR under Prevention of Corruption Act and the aforesaid judgments are therefore distinguishable on facts.

15. Therefore, considering the aforesaid totality of the present case, the present writ petition is allowed. The impugned charge-sheet dated 23.04.2013 (Annexure P-1) is hereby quashed. The respondent-Bank is directed to pay the due leave encashment to the petitioner, along with interest @ 6% per annum, from the date of its accrual till the date of its disbursement. The aforesaid payment shall be made to the petitioner within a period of three months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum.

15.02.2024  
Chetan Thakur

(JASGURPREET SINGH PURI)  
JUDGE

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