223(1)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19107-2018 (O&M)
Date of Decision: 13.08.2024

Kehar Singh

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ashutosh Kaushik, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Mr. Padamkant Dwivedi, Advocate, for respondents No.2 & 3.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of recovery demand notice/charge-sheet dated 09.07.2018 (Annexure P-1).

2. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner was working as a Helper and he retired on 30.11.2017. He submitted that after his retirement a charge-sheet was served upon him dated 09.07.2018 (Annexure P-1) and a perusal of the aforesaid charge-sheet would show that the allegations are pertaining to the year 2012-

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2013 which was more than four years prior to the date of issuance of the charge-sheet. He further submitted that even otherwise also the aforesaid charge-sheet has been issued under Rule 21 of the Certified Standing Orders of the Corporation as the Punjab Civil Services Rules as applicable to the State of Haryana were not applicable to the respondent-Corporation and therefore, even otherwise also after the retirement of the petitioner the master and servant relationship ceased to operate and the respondent-Corporation could not have issued any charge-sheet to the petitioner after his retirement because there was no privity of contract between them. He further submitted that even otherwise also, assumingly for the sake of arguments even if the Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 are applicable in the present case, then also the aforesaid charge-sheet could not have been issued to the petitioner. He further submitted that while referring to the aforesaid Rule 12.2(b) that there is a condition precedent to take sanction of Government for the purpose of issuance of a charge-sheet after the retirement and there is nothing on record to show as to whether any sanction was obtained by the respondent-Cooperation in this regard or not and even otherwise also as per the aforesaid Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016, if a charge-sheet is to be issued against a retired employee, then the same cannot be issued pertaining to a subject matter which arose more than four years preceding the date of the issuance of the charge-sheet, whereas in the present case on the face of it, it was more than four years. He submitted that in this way both the conditions which are essential for the purpose of invoking provisions of 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 have been violated by the respondent-Cooperation and therefore, the aforesaid charge-

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sheet is liable to be quashed. He also submitted that in pursuance of the orders passed by this Court on 02.08.2018, the recovery proceedings have been stayed.

3. On the other hand, learned counsel appearing on behalf of the respondent-Corporation submitted that so far as the applicability of Rule 12.2(b) of the Haryana Civil Services Rules is concerned, the Haryana Agro Industries Corporation had resolved in the year 1967 that service conditions of Haryana State employees will be applicable to the respondent-Corporation and therefore, it cannot be said that the aforesaid Haryana Civil Services Rules, 2016 are not applicable to the petitioner.

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

5. The grievance of the petitioner is that he retired on 30.11.2017 and after his retirement vide Annexure P-1, he was served with a charge-sheet on 09.07.2018 and since the master and servant relationship ceased to operate, it was not within the authority of the respondent-Corporation to have even issued a charge-sheet to the petitioner.

6. A perusal of charge-sheet (Annexure P-1) would show that the allegations in the aforesaid charge-sheet were with regard to the negligence on the part of the petitioner pertaining to the year 2012-2013 and therefore clearly shows that the aforesaid allegations were pertaining to more than four years preceding the date of the issuance of the charge-sheet i.e. 09.07.2018.

7. Another question which arises in the present case is as to whether the provisions of Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 will be applicable to the present case or not. A perusal of the charge-sheet

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would show that the provisions of 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 have not been invoked by the respondents because the charge-sheet has been issued under Rule 21 of the Certified Standing Orders of the Corporation. Assumingly, even if the aforesaid provision of Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 is made applicable to the petitioner by virtue of the resolution which has been so stated by the learned counsel for the respondent-Corporation passed in the year 1967, according to which the service conditions of the Haryana Government employees will be applicable to the respondent-Corporation, even then it would be worthwhile to analyse as to whether any of the pre-requisite conditions of the aforesaid Rule has been violated or not. The aforesaid Rule 12.2 of the Haryana Civil Services (Pension) Rules, 2016 is reproduced as under:-

> *"12. Right of appointing authority to withhold or withdraw pension:-*
>
> *(1) ....*
>
> *(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*

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(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".

8. A perusal of the aforesaid rule would show that there are various conditions so stated in the aforesaid Rule which are *sine qua non* and are condition precedent for the purpose of initiation of the disciplinary proceedings against a retired employee. As a matter of general rule after the retirement of an employee the master and servant relationship ceases to operate. However, the disciplinary proceedings can still be initiated as per aforesaid rule after the retirement of an employee but only in case the aforesaid pre-requisite conditions are fulfilled. One of the mandatory conditions is that the cause of action should not have accrued more than four years preceding the initiation of a charge-sheet. In the present case, on the face of it, the charge-sheet has been issued on 09.07.2018, whereas as per the contents of the charge-sheet itself, the same pertains to the subject matter of the year 2012-2013 and therefore, it was clearly beyond the period of four years. Therefore, the aforesaid conditions do not remain satisfied.

9. So far as the second condition is concerned, which is another mandatory condition precedent is that in case an exception is to be carved out for initiation of any disciplinary proceeding, then the sanction of the Government has to be taken first. However, there is nothing on the record nor it has been so stated by any of the learned counsel for the parties as to how and when any sanction was obtained. In other words, no sanction was obtained from

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the Government and therefore, the aforesaid condition was also violated. In this way, both the conditions which were *sine qua non* have been violated by the respondent-Corporation.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned charge-sheet 09.07.2018 (Annexure P-1) is set aside and quashed. In case any amount has been recovered from the petitioner in pursuance of the aforesaid charge-sheet, then the same shall be refunded to the petitioner alongwith interest @ 6% per annum within a period of three months from today.

13.08.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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

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