



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

CWP-21500-2018 (O&M)
Date of Decision : 22-10-2024

.....Petitioner

VERSUS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manjit S. Khaira, Sr. Advocate (joined through V.C.)
with Mr. Jaswinder Singh, Advocate
for the petitioner.

Mr. Swapan Shorey, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance of the petitioner is that the petitioner has retired from service on 31.05.2015 and after the retirement, a chargesheet has been served upon the petitioner on 17.11.2015 which relates to an incident that took place as far back in March, 2009 hence, keeping in view the Rules governing the service, no chargesheet can be served on upon a retired employee relating to an incident which is 4 years old on the date of the serving of the chargesheet.

Learned counsel for the petitioner argues that the issuance of the chargesheet to the petitioner is beyond the jurisdiction of the respondents keeping in view of Rule 2.2 of the Punjab Civil Services Rules Vol.II hence, the same is liable to be set aside. The reliance is being placed upon the

judgment of this Court in CWP No.25593 of 2021 decided on 08.08.2024 titled "*Satwant Singh Gill Vs. State of Punjab and ors.*" as well as the judgment of this Court in CWP No.12564 of 2021 decided on 22.08.2024 titled "*Raghubir Singh Vs. State of Punjab and ors.*".

Learned counsel appearing on behalf of the respondents submits that though, the petitioner has been chargesheeted relating to the incident which took place in the year 2009 but, there was already a chargesheet which was served upon the petitioner prior to his retirement and though, he was exonerated in those proceedings but, the department decided to chargesheet the petitioner for the incident which has been mentioned in the summary of the allegation in the chargesheet dated 17.11.2015 hence, the jurisdiction existed with the department to conduct the enquiry and to start disciplinary proceedings against the petitioner which is very much within the four corners of Rule 2.2 of the Punjab Civil Services Rules Vol.II .

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

In the present petition, the facts which have been noted hereinbefore are not in dispute. It is not in dispute that the petitioner retired from service on 31.05.2015. It is also a conceded fact that the chargesheet was issued to the petitioner on 17.11.2015. It is also a conceded fact that keeping in view the summary of allegations mentioned in the chargesheet dated 17.11.2015 that action has been taken qua the incident of the year 2009. Once, these facts are not disputed, according to Rule 2.2 of the Punjab Civil Services Rules Vol.II, the issuance of a chargesheet to a retired employee relating to an incident which is more than 4 years old on the date when the chargesheet is served, is not permissible.

The law settled in *Satwant Singh's case (supra)* and *Raghubir Singh's case (supra)*, which also relates to issuance of a chargesheet after retirement qua an incident which is more than 4 years old on the date when the chargesheet was served, wherein the chargesheet has been set aside, is fully applicable upon the facts and circumstances of the present case. The relevant paragraph of the judgment in *Raghubir Singh's case (supra)* is as under:-

"5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It is conceded fact that the petitioner was served a charge-sheet after two years of his retirement. The jurisdiction to serve a charge-sheet upon a retired employee is to be seen from the Rules governing the service. The Rule 2.2 of the Punjab Civil Service Rules, Volume-II, Part-II, governs the said aspect. The same is reproduced hereunder the the ready reference.

"Rule "2.2 (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 preceding, 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 would be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer in service, whether before this 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 proceedings 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

(1) 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

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

(c) (1) Whether 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 preceding 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.

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 (1). (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement, 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 aforementioned 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 sanction upon conclusion of the proceedings."

7. A perusal of the above reproduction would show that a departmental proceeding can be initiated against a retired employee, in case, at the time of serving of the charge-sheet, the incident for which, the departmental proceedings are initiated is not more than four years old.

8. In the present case, the charges which has been alleged against the petitioner in the charge-sheet dated 04.04.2006 relates to

the year 1998- 99, which is more than four years old as on 04.04.2006. Learned counsel for the respondent has not been able to justify as to how the State had a jurisdiction to issue a charge-sheet on 04.04.2006 in respect of any allegation relating to the year 1998-99. Once, the factum that the allegations for which the chargesheet has been issued after retirement, are more than four years old as on 04.04.2006, the serving of the charge-sheet of the allegation alleged was beyond the jurisdiction of the respondent -State

9. Further, this controversy has already been settled by this Court with regard to the jurisdiction of the State for initiating disciplinary proceedings against a retired employee while passing order in CWP No. 25593 of 2021, titled as "Satwant Singh Gill Vs. State of Punjab and Others", decided on 08.08.2024, wherein it has been held that after, no charge-sheet can be served upon an retired employee with regard to an allegation which is more than four years old on the date when the charge- sheet is being issued. Hence, the claim of the petitioner is covered by the judgment in Satwant Singh Gill's case (supra). Learned State counsel has not been able to rebutt the principle of law noticed hereinabove to be applicable to the case of the petitioner.

10. Keeping in view the above mentioned facts, the charge-sheet and the consequent proceedings, including the inquiry report as well as the order of punishment dated 29.12.2014 and the revised punishment order dated 21.12.2018, are set aside. Any recovery which has been made by the State from the pension of the petitioner is directed to be refunded back to the petitioner.

11. As, the charge-sheet was issued without jurisdiction, any recovery which has been made from the petitioner was also without jurisdiction hence, on the amount to be refunded to the petitioner, the petitioner will also be entitled for interest @ 6% per annum from the date the amount is deducted till the date the same is refunded. Let the order be complied within eight weeks from the date of receipt of certified copy of this order."

Learned counsel for the respondents has not been able to rebut the applicability of the judgment in *Satwant Singh Gill's case (supra)* and *Raghubir Singh's case (supra)* upon the case of the petitioner as well.

Keeping in view of the above, the chargesheet dated 17.11.2015 which has been issued to the petitioner after his retirement is without any jurisdiction keeping in view the Rule 2.2 of the Punjab Civil Services Rules Vol.II and the same is accordingly set aside.

As the serving the chargesheet was beyond jurisdiction of the respondents, any order passed on the said chargesheet ,can also not be sustained hence, the order passed the respondents dated 16.03.2020 finalizing the said disciplinary proceedings is also set aside being without jurisdiction

Any benefit of the petitioner which has been withheld by the respondents on the ground of pendency of the disciplinary proceedings/chargesheet, be released to him within a period of 8 weeks from the receipt of copy of this order.

No other argument raised.

Present petition is allowed in above terms.

Pending application, if any, also stands disposed of.

22-10-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO