

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

Date of Decision : 08-08-2024

.....Petitioner

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

Present: Mr. Harinder Sharma, Advocate for the petitioner.

Mr. Satnampreet Singh Chauhan, Sr. DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance being raised by the petitioner is that nine years after the retirement of the petitioner, chargesheet has been issued against the petitioner and that too for an incident relating to the year 2005-06, which was more than 4 years old at the time of issuance of the chargesheet and on the basis of the said chargesheet, the petitioner has been proceeded against an impugned order of cut in pension, which order has been passed on 18.11.2021, copy of which has been appended as Annexure P-10.

Learned counsel for the petitioner argues that the petitioner retired on attaining the age of superannuation on 31.01.2007. On 06.01.2016, a chargesheet was served upon the petitioner with regard to the allegations relating to an incident which took place in the year 2005-06. The petitioner raised an objection that no chargesheet can be served on him after his retirement and that too qua an allegation relating to an incident which is

more than 4 years old at the time of issuance of chargesheet, keeping in view the rules governing the service, but the respondents passed an order of punishment dated 18.11.2021, copy of which has been appended as Annexure P-10 by which, 10% cut has been imposed permanently. Learned counsel submits that the said punishment has been imposed without their being any jurisdiction to initiate the disciplinary proceedings against the petitioner under the rules governing the service hence, the order of punishment dated 18.11.2021 (Annexure P-10), is without jurisdiction and is liable to be set aside.

Learned counsel for the respondent concedes the factum that as per the rules governing the service, after the retirement of an employee, the chargesheet can only be served with regard to allegations relating to an incident which is not more than 4 years old at the time of the issuance of the chargesheet but submits as, the petitioner never raised any grievance on the said issue, the order of punishment has been passed hence, the writ petition may kindly be dismissed.

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

Under Rule 2.2 of the Punjab Civil Services Rules Volume-II, an action can be taken against a retired employee.

As per Rule 2.2 (b) of Punjab Civil Services Rules Volume-II of the action can only be taken with regard to allegations relating to an incident which is not more than 4 years old at the time of the issuance of the disciplinary proceedings.

Rule 2.2 (b) is reproduced as under:-

“XXX XXX XXX

(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 department or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during his service including service rendered on 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 and as if the officer had continued in service.

(2) Such departmental proceedings, if not instituted while the officer was in service whether before retirement or during his re-employment:-

(ii) shall not be in respect of an event which took place not more than four years before the institution of such proceedings, 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.”

In the present case, the petitioner retired on attaining the age of superannuation on 31.01.2007 whereas the chargesheet was served after a period of 9 years on 06.01.2016. That being so, no chargesheet could have been served upon the petitioner.

Hence, keeping in view the above mentioned Rule, no disciplinary proceedings could have been initiated after 9 years of the retirement.

Learned counsel for the State has not been able to rebut the contention that under Rule 2.2 (b) of the said rules, the chargesheet could not have been served upon the petitioner after 9 years of the retirement. That being so, the punishment imposed on the petitioner is on the basis of disciplinary proceedings initiated without any jurisdiction. Once, the chargesheet could not have been served upon the petitioner after a period of 9 years of retirement, any punishment imposed on the basis of the said chargesheet cannot be held to be valid as the same is contrary to the Rule 2.2 (b) of the Punjab Civil Services Volume-II. Accordingly, the impugned order dated 18.11.2021, copy of which has been appended as Annexure P-10, is hereby set aside.

Any deduction which has been done from the pensions of the petitioners on the basis of the impugned order, which has been set aside, be refunded back to the petitioner within a period of eight weeks from the receipt of copy of this order.

No other arguments raised for the interference by this Court in the present petition.

Hence, the present petition is allowed.

08-08-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE