

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(259)

1.

CWP-22054-2023

Kamiker Singh Deol

....Petitioner

Versus

The State of Punjab and another

.....Respondents

2.

CWP-21364-2023

Gurpal Singh

....Petitioner

Versus

The State of Punjab and others

.....Respondents

3.

CWP-22773-2023

Popinder Kalia

....Petitioner

Versus

The State of Punjab and another

.....Respondents

4.

CWP-23092-2023

Vinod Chaudhary

....Petitioner

Versus

The State of Punjab and others

.....Respondents

5.

CWP-23869-2023

Baljit Singh

....Petitioner

Versus

The State of Punjab and another

.....Respondents

Date of Decision: - 21.03.2024

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Jatinder Pal Singh, Advocate

for the petitioner(s) in CWP-22054-2023 and
CWP-22773-2023.

Mr. Ankit Midha, Advocate, for the petitioner(s)
in CWP-21364-2023; CWP-23092-2023 and
CWP-23869-2023.

Ms. Neha Sonawane, DAG, Punjab.

Mr. TPS Walia, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This order will dispose of the above-said five writ petitions as common questions of facts and issues of law arise in the said writ petitions.

2. Reply by way of affidavit filed on behalf of respondents No.1 and 2 in CWP-22054-2023 today in the Court, is taken on record. A copy thereof has been supplied to learned counsel for the petitioner.

3. Primary prayer in the said five writ petitions is for setting aside the inquiry proceedings and the charge-sheets issued by respondent No.1 on the ground of the same being barred under Rule 2.2(b) of the Punjab Civil Services Rules, Volume-II (hereinafter referred as “the Rules”), inasmuch as, the same have been issued after retirement of the petitioners, for an event which had taken place more than four years prior to the initiation of the disciplinary proceedings i.e. issuance of charge-sheet.

4. The undisputed facts in the present writ petitions are that the petitioners in all the writ petitions had retired prior to the issuance of the charge-sheets and the alleged incidents as stated in the charge-sheets had occurred more than four years prior to the date on which the charge-

sheets had been issued. The said facts stand further fortified from the chart given herein below, the dates mentioned in which have not been disputed.

Case No.	Date of appointment	Designation of Joining	Date of occurrence	Post During time of Incident	Date of retirement	Date of charge-sheet/enquiry	Difference b/w date of occurrence and charge-sheet
CWP-22054-2023	18.02.1980	Jr Engineer	04.03.2014	SDO	28.02.2017 (includes 2 years extension)	04.08.2023	9 years 5 months
CWP-21364-2023	15.02.1982	Jr Engineer	11.08.2016 to 31.12.2016	XEN	31.03.2018	14.08.2023 & 04.09.2023	6 years 7 months
CWP-22773-2023	28.02.1980	Jr Engineer	19.08.2013	XEN	31.08.2019 (includes 2 years extension)	11.01.2023	9 years 5 months
CWP-23092-2023	04.07.1983, 04.01.1991, June 2001, 08.10.2008	SDO, XEN, SE, Chief Engineer	22.02.2013	Chief Engineer (Drainage)	30.11.2018	01.09.2023	10 years 6 months
CWP-23869-2023	18.08.1983	Clerk	26.05.2017	Superintendent (Grade I)	30.09.2020 (includes 8 months extension)	01.09.2023 & 05.10.2023	6 years 3 months

5. Rule 2.2(b) of the Rules, which is admittedly applicable in the present cases, is reproduced herein below: -

“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 proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment 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 either 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 reemployment, 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—

(i) 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 civil proceeding, on the date of presentation of the plaint in the Court.”

6. A perusal of the above rule would show that the government has reserved the right of withholding or withdrawing a pension or any part of it either permanently or for a specified period and also the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to government in case in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service. The said right is as per

proviso (2), subject to the fact that in case the said departmental proceedings are not instituted while the officer was in service whether before his retirement or during his re-employment, then, the same shall not be in respect of any event which took place more than four years before such institution. A further perusal of the explanation (a) to the Rule would show that a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner.

7. In the present cases, admittedly, there were no judicial proceedings against any of the petitioners, nor the petitioners were suspended and the impugned action had been initiated subsequent to their retirements. From the above-said undisputed facts (which have been shown in the chart), it is also apparent that the events/occurrences had taken place more than four years prior to the issuance of the charge-sheet, which is the relevant date and thus, in view of the proviso (2) of Rule 2.2 (b) of the Rules, the departmental proceedings initiated against all the petitioners deserve to be quashed/set aside.

8. The Hon'ble Supreme Court in the case titled as “Punjab State Power Corporation Ltd. Patiala and others Vs. Atma Singh Grewal, reported as 2014(13) SCC 666” had upheld the order of the learned Single Bench as well as of the Division Bench, whereby the charge-sheet was quashed by applying Rule 2.2(b) of the Rules in a case where the allegations pertained to the period from 15.05.2002 to 03.12.2002 and the charges were framed beyond the period of four years from December, 2002 and after the retirement of the employee. The

relevant portion of the said judgment is reproduced herein below: -

*“1. Petitioner No. 1 is the Punjab State Electricity Board (PSEB); Petitioner No. 2 is the Chief Engineer, HRD-cum-Inquiry Officer and Petitioner No. 3 is the Senior Executive Engineer working in PSEB. Respondent was the employee of PSEB who retired from service, with effect from 30.4.2004. He had given the notice on 27.2.2004 for voluntary retirement which was accepted. As a result, the respondent stood voluntarily retired from 30.4.2004. **However, almost 4 years after his retirement i.e. on 7.1.2008, the respondent was served with the charge sheet levelling certain allegations against him, allegedly committed between 15.5.2002 to 3.12.2002. These charges which were for the period May 2002 to December 2002 were obviously of a period much earlier than 4 years before the serving of the charge sheet dated 7.1.2008 and much after his retirement when he had ceased to be the employee of PSEB.***

2. The Respondent filed the Writ Petition in the High Court seeking quashing of the said charge sheet on the ground that it was barred in view of Rule 2.2.(B) of the Punjab Civil Service Rules 2 reserves right with the Government to withhold or withdraw a pension or a part of it under certain circumstances viz. when in judicial proceedings or departmental proceedings, such an employee is found to have committed grave misconduct or negligence. It also provides for recovery of pecuniary loss, if caused. However, second proviso to the aforesaid provision stipulates the time limit within which the departmental inquiry can be instituted, in respect of an ex-employee if it was not stated while such a Government officer was in service. The precise language of second proviso is as follows:-

“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 if he has retired, the event should not be more than 4 years old.

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. *In the present case since the changes were of the year 2002 and charge sheet served in the year 2008, **it was manifest that the alleged event took place much more than 4 years before the serving of charge sheet and after his retirement.** In this ground the learned Single Judge quashed the said chargesheet dated 7.1.2008. The petitioners chose to file appeal before the Division Bench which has also been dismissed by the Division Bench vide impugned judgment dated 20.8.2009.*

4. *After hearing the Counsel for the parties we are of the opinion that in view of aforesaid admitted facts, second proviso of Rule 2 states at the face of the petitioner and no fault can be found in the judgment of the High Court.”*

9. The Co-ordinate Bench of this Court in case titled as “**Raj Pal Vs. State of Haryana and others**, reported as 2023(1) Law Herald 62, had observed that the date of initiation of such departmental proceedings is deemed to be the date when a charge-sheet is issued to the concerned government employee/pensioner/government employee and there was a complete embargo on the initiation of departmental proceedings in respect of events which had taken place more than four years prior to the said initiation of departmental proceedings i.e. issuance of charge-sheet. It was observed that the object behind the Rules seems to be that a retired employee, after the statutory period of four years, should be left to live in peace in the twilight zone of his life as also for the reason that it is not easy for a retiree to have access to the relevant record or his colleagues, who may have also retired and settled elsewhere, making it difficult for him to effectively defend himself. Relevant Para Nos.8, 11 and 12 of the said judgment are reproduced herein below:

“8. *A harmonious reading of Rules 12.2(b) and 12(5)(a) leads to only one irresistible conclusion that after an employee has*

retired from service there is a complete embargo on the initiation of departmental proceedings against him in respect of event(s) which may have taken place more than four years prior to the initiation of the departmental proceedings and that the date of initiation of such departmental proceedings is deemed to be the date when a charge-sheet is issued to the concerned government employee/pensioner/government employee placed under suspension. The apparent object behind these Rules seems to be that a retired employee, after the statutory period of four years, should be left to live in peace in the twilight zone of his life. The alleged misconduct on his part should be allowed to settle with the efflux of time. The rationale also appears to be based on the phrase 'let bygones be bygones' for retirees and because memory fades with age as also for the reason that it is not easy for a retiree to have access to the relevant record or his colleagues, who may have also retired and settled elsewhere, making it difficult for him to effectively defend himself.

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11. *To the same effect is the judgment of a Division Bench of this Court in Baldhir Singh's case (supra) wherein it was held as follows: -*

“6. A bare perusal of the aforementioned Rule makes it clear that Rule 2.2(b) (ii) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by afflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and

the retiree. The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end. Moreover, the learned State counsel has not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner."

12. Similarly, another **Division Bench of this Court in Sub Inspector Puran Chand's case (supra)**, while considering a similar issue, held as follows:-

*"7. Pointed attention of this Court has been drawn to clause (2) of the aforesaid rule 2.2(b). A careful perusal of the same would show that in case a departmental proceeding is to be initiated against an employee after his retirement, **it cannot be in respect of an event which took place more than four years from the date when the proceeding is initiated.** It is clear that the charge sheet was issued to the petitioner in the instant case on 24.11.1998, whereas the incident in question in respect to which he has been proceeded against relates to the year 1988 i.e. one decade prior to the issuance of the charge sheet. It is obvious that issuance of the aforesaid charge sheet is wholly unacceptable in law, as the same is clearly barred by the provision of clause (2) of rule 2.2(b) extracted above."*

10. Learned State counsel has opposed all the writ petitions on the ground that on account of the lapse/negligence of the petitioners, loss has been caused to the State and since the said loss has not been recovered till date, it is a continuing offence and the relevant event/period to be considered, should be taken as continuing till date.

11. This Court has considered the argument of learned State counsel and is of the opinion that the same is misconceived and deserves to be rejected.

12. It would be relevant to note that once in the charge-sheet, a

specific period/date has been mentioned when the alleged illegality has been committed by the petitioners, then, the said event/occurrence cannot be stretched beyond the period which has been specifically mentioned in the charge-sheet. In case the argument of learned State counsel to the effect that the loss has not been recovered till date and thus, the event/period should be extended are accepted, then, proviso (2) of Rule 2.2(b) of the Rules would be rendered otiose, inasmuch as, in a large number of cases the alleged loss caused on account of the alleged misconduct by the employee would neither have been determined, much-less recovered. Moreover, no law has been cited by the learned State counsel in respect of the said argument. In the judgment of the Hon'ble Supreme Court in the case of Punjab State (supra), the period which was considered for applying the bar in view of the Rule 2.2(b) of the Rules was the period between 15.05.2002 and 31.12.2002 which was the period regarding which allegations had been made in the charge-sheet. The impugned action of the respondent authorities is clearly barred by proviso (2) of the Rule 2.2(b) of the Rules and accordingly, all the writ petitions are allowed and the impugned orders including the impugned charge-sheets and all subsequent proceedings arising therefrom, against the petitioners are quashed.

March 21, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No