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

210

**CWP-18244-2019
Date of decision: 17.02.2025**

ISHWAR CHAND ......Petitioner

VERSUS

STATE OF HARYANA ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

*****

Present: - Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Keshav Pratap, Advocate and
Mr. Sumbhav Parmar, Advoate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

*****

VINOD S. BHARDWAJ, J. (Oral)

Challenging the order dated 26.04.2019 passed by the respondents whereby the petitioner has been dismissed from Government Service w.e.f. 20.04.2018, the instant petition has been filed.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner was served with a Show Cause Notice vide Memo No. 3788/Local/5-2011/8661 dated 18.08.2011 on the following charges.

> "*1. That Sh. Ishwar Chand prepared the detailed particulars of share of shamlat land belonging to village Dhamala, Manakpur Nanak Chand, Manakpur Thakur*

Dass, Surajpur, Rajjipur, Milk, Rampur Sayudi & Lohgarh, falling in Tehsil Kalka, acquired by various departments, on his own level and that too without getting prior permission from the Collector, Panchkuka.

2. That Sh. Ishwar Chand directly sent the SO worked out shares to the concerned Land Acquisition Officers without getting permission from Collector, Panchkula, resulting which, the Land Acquisition Authorities distribution compensation amounting to Rs.7,89,53,600/- to the concerned persons.

3. That Sh. Ishwar Chand prepared the detailed particulars of share of shamlat land belonging to village Dhamala, Manakpur Nanak Chand, Manakpur Thakur Dass, Surajpur, Rajjipur, Milk, Rampur Seudi & Lohgarh in violation of the provisions of Para No. 348 of Haryana Land Record Manual & Section 71 of Punjab Land Revenue Act."

3. He submits that the Regular Departmental Enquiry was ordered to be conducted into the above said three charges. He contends that an Inquiry officer was eventually appointed by the Government who submitted his report dated 07.01.2014 in which the three charges were returned to have been proved against the petitioner. The authorities thereafter supplied the aforesaid Inquiry report and also passed the impugned order dated 26.04.2019 whereby the petitioner has been dismissed from service w.e.f. 20.04.2018 on the charge of misappropriation of Rs. 7.90 crores. The relevant extract of the above order reads thus:-

"After going through the contents of file, charge sheet under Rule 7 of the Haryana Civil Services

(Punishment & Appeal) Rules, 1987, reply thereof, report of regular enquiry officer, representation made against the findings of the Inquiry Officer's report submissions made at the time of personal hearing and connected provisions of the Haryana Civil Services (Punishment & Appeal) Rules, 2016, it is clear that all the three charges, as mentioned above, have been proved by the regular Inquiry officer. There is no denying the fact that the delinquent has calculated the shares of 'shamlat deh' lands in complete violation of para 3.48 of the Haryana Land Records Manual and Rule 71 of the Punjab Land revenue Rules, 1909 without seeking the permission/approval of the competent authority i.e. District Collector, Panchkula and submitted the shares to the Land Acquisition Collector, Panchkula at his own level. It was incumbent upon the delinquent to refer the matter to the Land acquisition Collector, Panchkula for seeking concurrence of the District Collector. In the alternative, he could have proposed to the Land acquisition Collector either to send the case to the District judge under Section 30 of the Land Acquisition Act, 1894 or refer the matter to the District Collector Panchkula to adjudicate the title of 'shamlat dah' land under Section 13A of the Punjab village Common Lands (regulations) Act 1961 especially to safeguard the interest of the Gram Panchayat/local bodies concerned, which he has failed to do so altogether. Consequently, land acquisition compensation to the tune of Rs. 7.90 crore has been distributed to private persons without adjudication of title under Section 13A of the Punjab Village Common Lands (Regulations) Act, 1961. Thus, it can be concluded that all the charges have been proved against the delinquent especially those relating to

> *causing of financial loss to the concerned local body by way of illegal distribution of compensation amounting to Rs. 7.90 crores. Sh. Ishwar Chand, Tehsildar was retired from Government service w.e.f 30-4-2018 on attaining the age of superannuation i.e. 58 years subject to the final outcome of departmental proceedings pending against him under rule 7 of the Haryana Civil Services (Punishment and Appeal), rules, 1987 (now 2016).*
>
> *In the light of allegations, findings of the Inquiry Officer as regard misappropriation of Rs. 7.90 crore, Sh. Ishwar Chand, Tehsildar is dismissed from government service w.e.f 20-4-2018 i.e. from the date of approval of Punishing Authority as provided in Rule 4(b)(vii) of the Haryana Civil Services (Punishment and Appeal), Rules, 2016."*

4. Learned Senior Counsel for the petitioner contends that the order of dismissal is based on an allegedly proven charge of misappropriation of Rs. 7.90 crores whereas it is evident from a perusal of the statement of allegations that there was no charge of misappropriation against the petitioner. It is further argued that in a best case, the allegation is that a financial loss to the tune of Rs. 7.90 crores was caused on account of sending the worked out shares of the proprietors by the petitioner in the land which now the State claims to be Shamlat Deh as per the Punjab Village Common Lands (Regulations) Act, 1961, however, in the statement of allegations/charge-sheet served upon the petitioner, there was again no such allegation of the petitioner having caused any financial loss to the State Exchequer. He further argues that the order of dismissal, as has been imposed upon the petitioner retrospectively from 20.04.2018, vide order

dated 26.04.2019 even though the petitioner had already superannuated on 30.04.2018. He contends that an order of dismissal from service could not have been imposed retrospectively. It is further argued that originally the charge was about submitting the list of proprietors for the Revenue Estate of 08 villages, however, no evidence was led by the respondents in relation to three villages as to whether any work was ever undertaken by the petitioner or not and that with respect to one of the villages, there was no record available and that the petitioner had never sent any report. The report submitted by him was only for four villages. The respondents have, however, proceeded on an assumption as if the charge with respect to all the 08 villages have been established against the petitioner notwithstanding absence of any evidence of petitioner having prepared record for 4 out of 8 villages. Hence, even the allegation of loss pertaining to 8 villages is wrong and there is nothing on record to show as to what was the total statement area compensation that had been apportioned for each of the villages and how much of it related to the four villages for which record was sent by him. In the absence of any such evidence, petitioner cannot be accused of having worked shares of all the 8 revenue estates leading to disbursement of the award.

5. Counsel for the respondent-State on the other hand contends that the petitioner, while being posted as Tehsildar at Kalka, calculated the shares of the alleged proprietors in relation to the Shamlat land and forwarded the same to the Land Acquisition Collector. Relying on the same, the LAC distributed award to the tune of Rs. 7.90 crores approximately to

the private persons who were not entitled to the same and thus causing a huge loss to the State exchequer. He fairly concedes that in so far as the averment contained in the written statement that there was a misappropriation of the above amount by the petitioner, the same was actually not the charge that had been leveled against the petitioner. He, however, submits that the petitioner was not empowered to apportion the shares over the said land in view of Para No. 348 of the Haryana Land Record Manual & Section 71 of Punjab Land Revenue Act except with the prior approval of the competent authority. No such prior approval had been taken by him before forwarding such list to the Land Acquisition Collector and had it not been for the above said act of the petitioner, the wrongful compensation would not have been distributed. He further submits that no petition under Section 13-A of the Punjab village Common Lands (Regulations) Act, 1961 had ever been preferred by the claimants/alleged proprietors for adjudication of title over the land, hence, despite absence of any proceedings for determination of title, the petitioner determined the shares of proprietors in an illegal manner and submitted the same to the Land Acquisition Collector. He further submits that after the conclusion of the Regular enquiry, the report was supplied to the petitioner to file his objection/reply and final decision was taken on 26.04.2019. Even though the petitioner was due for his superannuation on 30.04.2018 but there is no bar to conclude an already pending disciplinary proceedings against such a Government employee. The services of petitioner was hence dismissed vide order dated 26.04.2019 w.e.f. 20.04.2018 i.e. from the date of approval of the order of dismissal by the punishing authority, as provided under Rule 4

(b) (vii) of the Haryana Civil Services (Punishment and Appeal) Rules, 2016. He also submits that since the requisite approval of Haryana Public Service Commission for imposing the punishment of dismissal was received vide letter dated 04.05.2018 from HPSC, after retirement of the petitioner from Government Service on 30.04.2018, hence, there was some delay in finally communicating the order of imposition of punishment.

6. Responding to the above, learned Senior Counsel for the petitioner contends that the respondents had not supplied copy of the opinion/report furnished by the Haryana Public Service Commission, from whom an advise had been taken, even though the same was relied upon by the disciplinary authority in imposing the punishment of dismissal. He contends that in view of the judgment of the Hon'ble Supreme Court of India in the matter of ***"Union of India and others versus R.P. Singh"*** passed in ***Civil Appeal No. 6717 of 2008*** reported as ***2014 (3) S.C.T 3,*** opinion/advise received from the Public Service Commission was also required to be supplied in advance to the delinquent official so as to respond to the same. It is contended that the non-supply of the said advice caused prejudice to the petitioner and he was not granted a fair opportunity to rebut the material that was relied upon by the punishing authority against him.

7. Reference is also placed on the judgment of the Hon'ble Supreme Court in the matter of ***"State of Punjab versus "Bakhtawar Singh and others"*** reported as ***1972 AIR (Supreme Court) 2083*** which held that when a charge has not been leveled or inquired into against a delinquent employee, the same cannot form basis for imposition of a penalty against

such an employee. Hence, it is submitted that a mere claim that a loss has occurred on a misappropriation by the petitioner cannot be the basis for imposition of penalty once the same was not a part of a charge framed against him which was to the effect that amount has been disbursed wrongly. The relevant extract of the order reads thus:-

> *"10. It may be noted that Shri Bakhtawar Singh was not charged with having not discharged his duties impartially. None of the charges levelled against him accused him of not discharging his duties impartially. Hence the Minister was not justified in taking into consideration a charge in respect of which the member was not given any opportunity to explain his position. Further the finding of the Minister that Shri Bakhtawar Singh was taking part in politics is a vague finding. Politics is a word of wide import. By merely saying that he was taking part in politics nothing concrete is conveyed or established. In view of this conclusion of ours, it is not necessary to go into the other grounds urged on behalf of Shri Bakhtawar Singh."*

8. It is further submitted that the aforesaid judgment in the matter of ***Bakhtawar Singh (supra)*** was relied upon by this Court in the matter of ***"K.B. Rai versus State of Punjab"*** bearing ***CWP-5471 of 1995*** reported as ***1996 (1) SCT 639.*** Reference is made to Para No. 18 thereof which reads thus:-

> *"18. The second facet of the last contention of Shri Atma Ram is that the petitioner was not charged with the allegation of committing financial irregularities by splitting work order and, therfore, he could not be*

held guilty for the same and he could not be punished on the basis of such a charge. After having carefully perused the charge sheet, the findings recorded by the enquiry officer, the show cause notice and the punishment order, I am convinced that the learned counsel for the petitioner is right in contending that the petitioner had not been charged with the allegation of having committed financial irregularities by splitting work orders. For the reasons best known to it, the Government did not charge the petitioner with the allegation of financial irregularities by splitting work orders. Charge No. 1 relates to loss/embezzlement to the State exchequer. Charge No. 2 relates to lack of integrity. Charge No. 3 relates to improper upkeep of financial accounts. Charge No. 4 relates to lack of financial control of work. Charge No. 5 relates to dereliction in performance of duties and Charge No. 6 is of incompetency in performance of Govt. duties. In the first allegation levelled against the petitioner, it has been stated that the petitioner purchased non-consumable/major items without requirement and thereby caused loss to the Exchequer. There is not an iota of inidication either in the charge or in the statement of allegations that the petitioner was to answer the allegation that he had splitted up the work orders and has, thus, committed financial irregularities. In the absence of such charge or allegation, the enquiry officer did not have jurisdiction to record evidence on this charge much less to record a finding of guilt against the petitioner. Similarly, the Government did not have the authority to issue show cause notice to the petitioner on the premise that he has been found guilty of financial irregularities by spitting the work orders nor could the

Government punish him for such a charge which did not form part of the charge sheet.

9. The said judgment was followed yet again by this Court in the matter of ***"Joginder Singh versus the Gobind Pura Co-operative Agricultural Service Society Ltd. and others"*** reported as ***2013 (18) SCT 684.*** The relevant extract thereof reads thus:-

> "*6. On due consideration of the matter, I am of the opinion that the Revisional authority, while passing the impugned order, could not travel beyond the scope of the charges which were levelled against the petitioner. If the petitioner had faced proceedings in a related case that would be an independent cause to be dealt with separately by the competent Authority and for which an appropriate disciplinary proceeding and punishment should have been the logical course. This course has indeed been adopted by the authorities and regarding which a separate petition was preferred by the petitioner. But to say that the petitioner is charged with retaining an amount of 660 and some odd, which also he deposited though after some time and to take into consideration some other material which does not form part to charge-sheet against him and then to form this to be the basis of restoring the punishment of dismissal, would be a course which would be unjustified and impermissible."*

10. In support of his argument that post superannuation of a person, a penalty cannot be imposed, he places reliance on the judgment in the matter of ***"Tarsem Singh versus the Punjab Scheduled Castes Land Development and Finance Corp."*** reported as ***2013 (2) SCT 342.*** The relevant extract thereof reads thus:

"5. The facts, which are not in dispute are that the petitioner retired from service on 30.9.2008. No doubt, at that time, a criminal case was pending against him, in which he was convicted vide judgment dated 25.11.2010, passed by Sub Divisional Judicial Magistrate, Malout. As a consequence thereof, without issuing any show cause notice to the petitioner, he was dismissed from service vide order dated 21.1.2011 with retrospective effect from 30.9.2008, the date of his retirement. It is settled that an employee cannot be dismissed from service from retrospective effect. Regulation 44 of the Regulations though enables the competent authority to dismiss an employee on account of conviction in a criminal case for any offence involving moral turpitude, explanation to the aforesaid Regulation clearly provides that dismissal can be from a date when an employee is convicted. In the present case, admittedly the petitioner was convicted by the Sub Divisional Judicial Magistrate on 25.11.2010, which was after the petitioner had already retired from service and there being no relationship of master and servant between the parties on that day, he could not be dismissed from service with retrospective effect. Accordingly, the impugned order dated 21.1.2011 (Annexure P-10) dismissing the petitioner from service is quashed."

11. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the matter of ***"UCO Bank and others versus Prabhakar Sadashiv Karvade"*** reported as ***2018 (2) SCC (L&S) 630.*** The operative part thereof reads thus:-

"10. A reading of the plain language of Regulation 4 of the Discipline and Appeal Regulations and

Regulation 20(3)(iii) of the 1979 Regulations makes it clear that any of the penalties, whether major or minor can be imposed only on a serving officer employee of the Bank. This necessarily implies that none of the penalties specified in Regulation 4 of the Discipline and Appeal Regulations can be imposed on an officer employee after his retirement from service, though in terms of Regulation 20(3)(iii) of the 1979 Regulations, the disciplinary proceedings initiated against an officer employee before his retirement can be continued and final order is passed and further that such officer employee is not entitled to retiral benefits till the conclusion of disciplinary proceedings and passing of final order. The only exception to this is that the officer is entitled to receive his own contribution to CPF. However, there is nothing in the language of these regulations from which it can be inferred that the disciplinary authority has the power to impose a substantive punishment on retired officer employee. This becomes more explicit from a conjoint. reading of Regulation 48 of the Pension Regulations which empowers the competent authority to withhold or withdraw a pension or a part thereof and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service. Second proviso to Regulation 48 contains a fiction and lays down that if the departmental proceedings are instituted while the employee was in service, the same shall be deemed to be proceedings under the regulations and continued and concluded as if the employee had continued in service. The third proviso *imposes a bar on the initiation of departmental or judicial proceedings against an employee after his retirement in respect of an event which took place more than 4 years before such institution. The sum and substance of these regulations is that even though a departmental inquiry instituted against an officer employee before his retirement can continue even after his retirement, none of the substantive penalties specified in Regulation 4 of 1979 Regulations, which include dismissal from service, can be imposed on an officer employee after his retirement on attaining the age of superannuation. Therefore, we have no hesitation to hold that order dated 12.10.2004 passed by the disciplinary authority dismissing the respondent from service, who had superannuated on 31.12.1993 was ex facie illegal and without jurisdiction and the High Court did not commit any error by setting aside the same.*

11. We may also observe that master and servant relationship between the respondent and the employer i.e., appellant No.1 Bank had come to an end for all practical purposes on 31.12.1993 i.e., the date of superannuation. The departmental inquiry initiated against the respondent before his retirement could be continued for a limited purpose for determining whether or not he is entitled for full pensionary benefits and gratuity."

12. Even though certain other judgments have also been referred to by the Counsel for the petitioner, however, since the same are reiteration of the aforesaid principle, hence, the same need not be extracted yet again. The set position of law has been reiterated even in the judgment of ***"Rama Nand***

versus State of Haryana and others" passed in ***CWP-19650 of 2018*** decided on 28.02.2023.

13. Counsel for the State reiterates the facts noticed above and submits that arguments of petitioner are devoid of merit and the judgments cited are not applicable. It is submitted that disciplinary proceedings having been initiated prior to the date of retirement, a final order could be passed by the competent authority. The judgments relied upon by the petitioner are not applicable as in those cases. The proceedings itself commenced after the retirement.

14. He further submitted that had it not been for the wrong working of shares, the compensation could not be distributed, hence, loss is caused to the State exchequer.

15. He however submits that there was no change of misappropriation but the same seems to be an erroneous reason given.

16. He pleads ignorance about whether the disbursed amount was recovered by the State from the landowners later and whether the petitioner submitted the shares for 3 villages or 7.

17. He is not in a position to refer to the material on record that any evidence was led to prove misappropriation or any foul play by the petitioner.

18. On the other hand, no judgment has been cited by the learned State Counsel to rebut the arguments advanced by the Counsel for the petitioner.

19. The following undisputed facts emerge from the above:-

i) Even though the dismissal order records that there was an embezzlement to the tune of Rs. 7.90 crores by the petitioner but there was no change to the said effect.

ii) The specific change against the petitioner is that he worked out shares of proprietors in 7 villages but he specifically denied any involvement in 4 villages.

20. *Prima facie* both these aspects were required to be taken into consideration but the same has not been done.

21. Hence, I am of the opinion that order of dismissal is seemingly driven by an allegation of embezzlement and loss to the State exchequer, which has not been established. The matter is accordingly remanded to the punishing authority after setting aside the impugned order for passing a fresh decision in accordance with law and after granting an opportunity of hearing. This Court has thus not dealt with the applicability of judgments cited by the Counsel for the petitioner on merits lest it causes prejudice to either party.

The present writ petition is accordingly allowed in above terms.

(VINOD S. BHARDWAJ)

FEBRUARY 17, 2025 **JUDGE**

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No