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

(235) **CWP-15079-2017**
Date of Decision : July 08, 2025

General Manager, Food Corporation of India, Regional Office, Punjab, Sector 31-A, Chandigarh .. Petitioner

Versus

K.C. Sharma and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.K. Gupta, Advocate, for the petitioner.

Mr. Jasbir Singh, Advocate, for
Mr. J.S. Maanipur, Advocate, for respondent No.1.

None for respondents No. 2 and 3.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 28.02.2017 (Annexure P-4) passed by the Appellate Authority envisaged under the Payment of Gratuity Act, 1972 (hereinafter referred as ‘1972 Act’) by which, the direction has been given to the petitioner-Food Corporation of India to take into account the last pay drawn by the respondent No.1-workman at the time of his retirement on 31.01.2010 ignoring the order dated 03.09.2010 (Annexure P-1) passed by the competent authority imposing the punishment of reduction upon respondent No.1 copy of which order has been attached as P-1 and the consequent reduction of his basic pay to Rs.24,870/-.

2. Learned counsel for the petitioner argues that at the time when the respondent No.1-workman attained the age of superannuation, the disciplinary proceedings initiated against him were already pending which proceedings were continued keeping in view Regulation 60-A of the FCI (Staff) Regulations, 1971 according to which, the disciplinary proceedings pending against an employee will continue by a deeming fiction that the employee concerned for the purpose of such proceeding is in service with the only condition stipulated therein that such disciplinary proceedings initiated against an employee who may retire during the proceedings are to be decided within a period of 12 months of date of delivery of charge-sheet to the accused and in the present case, the pending disciplinary proceedings against the respondent-employee were decided within a period of 12 months of his retirement, which factum has been ignored by the appellate authority while giving the direction to revise the gratuity admissible to the respondent No.1-workman.

3. Learned counsel for the petitioner-FCI submits that the order of punishment was never challenged by the respondent No.1-workman and the same attained finality and therefore, the last pay drawn admissible to the respondent No.1-workman being Rs.24,870/- which was taken up for consideration for the calculation of gratuity, was perfectly valid and legal hence, the impugned order dated 28.02.2017 (Annexure P-4) passed by the authorities concerned may kindly be set aside.

4. Learned counsel for the respondent No.1-workman argues that once the respondent No.1-workman had retired from service on 31.01.2010, any order of punishment passed thereafter, cannot take away the last pay

drawn which was actually drawn by the respondent No.1-workman at the time of his retirement on 31.01.2010.

5. Learned counsel for the respondent No.1-workman submits that as the master and servant relationship between respondent No.1 and petitioner had come to an end, any order of punishment passed after the retirement does not give any authority to revise and lessen the last pay drawn and therefore, the impugned order passed by the appellate authority exercising jurisdiction under the Payment of Gratuity Act, 1972 is perfectly valid and legal and is liable to be upheld especially when there is no loss caused to the petitioner at the hands of the respondent No.1-workman.

6. Learned counsel for the respondent No.1-workman further submits that once the post on which respondent No.1 worked did not entail pension was not a pensionary job, no order of punishment could have been passed after the retirement.

7. Learned counsel for the respondent No.1-workman further submits that the claim of the respondent No.1-workman is covered by the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.5848-49 of 2014 titled as Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board, Lucknow and others, decided on 30.06.2014*** so as to hold that no disciplinary proceedings can be continued against an employee after retirement.

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

9. It is a conceded position that a disciplinary proceeding was pending against the respondent No.1-workman on the date when he retired

on 31.01.2010. The said proceedings culminated on 03.09.2010 by passing the order of punishment by the authority exercising jurisdiction under 1972 Act, copy of which has been appended as Annexure P-1 by which, the punishment of reduction in time scale of pay in three stages on the date of superannuation was imposed. In pursuance to the said punishment, the last pay drawn of the respondent No.1-workman was fixed on 19.02.2011, copy of which has been appended as Annexure P-2. It is a conceded position that the respondent No.1-workman has not challenged the said order and the same has already attained finality.

10. The argument which has been raised by the learned counsel for the respondent No.1-workman is that the last pay drawn, which was actually drawn by the respondent No.1-workman, has to be taken into account as no order of punishment after retirement is effected can take away the said right.

11. It may be noticed that whether the continuation of the disciplinary proceedings against an employee after his retirement will proceed or not depends upon the Rules which govern over the employees. In the present case, 1971 Rules, which govern over the issue in hand have been brought on record by the petitioner. The relevant rule reproduced is as under:

> *"60-A- Procedure for disciplinary proceedings after retirement:*
>
> *(i) Any disciplinary proceedings, if instituted by issue of charge-sheet while the employee was in service, whether before his retirement or during his re-employment, shall, after the retirement of the employee, be continued and concluded by the authority by which it was commenced, in the same manner, as if the employee had continued in service.*

(ii) Such proceeding after retirement should be completed expeditiously and within twelve months from the date of delivery of charge sheet to the charged official, subject to Court Orders, if any.

(iii) During the pendency of the disciplinary proceedings, the disciplinary authority may withhold payment of gratuity for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Corporation, if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of offence or misconduct as mentioned in the relevant Sections of the Payment of the Gratuity Act, 1972 (39 of 1972) or to have caused pecuniary loss to the Corporation by misconduct or negligence during his service, including service rendered on deputation or on re-employment after retirement, provided that the provisions of relevant Sections of the Payment of Gratuity Act, 1972 shall be kept in view in the event of delayed payment, in case, the employee is fully exonerated."

12. A bare perusal of the abovementioned Rule would show that any charge-sheet pending against a retired employee, will continue in operation by a deeming fiction that the employee remains in service upto the decision of the said charge-sheet with a condition stipulated therein that the said charge-sheet has to be decided within a period of 18 months of the date of retirement of the employee.

13. In the present case, the respondent No.1-workman retired from service on 31.01.2010 and within a period of 9 months, while passing an order dated 03.09.2010 (Annexure P-1), the punishment was imposed upon the pending charge-sheet against respondent No.1.

14. Once by the power of the rules mentioned hereinbefore, the jurisdiction to continue with the proceedings initiated against charge-sheet

against respondent No.1 exists with the petitioner-FCI, the contention of respondent No.1-workman that on cessation of master and servant relationship between the petitioner and respondent, the proceedings initiated against the charge-sheet and the effect of charge-sheet will come to an end, cannot be accepted. The appellate authority while exercising jurisdiction under 1972 Act qua the claim of the respondent No.1 -workman regarding gratuity have failed to appreciate the same and have rather ignored the same.

15. Qua the judgment of the Hon'ble Supreme court of India in ***Dev Prakash Tewari's (supra)***, the said judgment is only relevant where there is no power with the employer to continue with the disciplinary proceedings after the retirement keeping in view the rules governing the service.

16. In the present case, the facts are different and as per the rules, the charge-sheet can continue in operation for a period of 18 months after proceedings initiated against retirement by treating the employee in a deeming fiction to be in service. Hence, the judgment in ***Dev Prakash Tewari's (supra)*** will not be applicable in the present case.

17. Keeping in view the totality of the circumstances, the orders passed by the appellate authority exercising jurisdiction under 1972 Act so as to direct the petitioner that the amount of gratuity is to be paid as per actual last pay drawn ignoring the punishment imposed by authority concerned vide order dated 03.09.2010 (Annexure P-1), is not correct. Any order of punishment passed by the authorities concerned which is within their jurisdiction to pass as per rules, has to be accepted and taken into

consideration whereas, the same has been ignored by the appellate authority. The order passed by the appellate authority is contrary to the facts as well as the rules governing the service of the respondent-employee and cannot be allowed to operate.

18. The order dated 28.02.2017 (Annexure P-4) is set aside. The amount deposited in terms of the impugned order which has been set aside, be refunded back to the petitioner-FCI.

19. The present writ petition is allowed in above terms.

July 08, 2025 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No