



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CWP No. 6842 of 2024

Date of Decision : 02.04.2025

Vijay Pal Sharma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Sobti, Advocate for the petitioner.

Mr. Malkiat Singh, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the charge-sheet dated 20.07.2023 (Annexure P-4) as well as the order passed on 05.03.2024 (Annexure P-9) by which a decision has been taken by the respondents to continue with the said charge-sheet.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner attained the age of superannuation on 31.10.2016. Thereafter, the petitioner was granted extension and ultimately, the petitioner retired from service on 24.07.2018. Prior to his retirement, a charge-sheet was served upon the petitioner on 21.06.2018 and the petitioner filed the reply to the said charge-sheet and keeping in view the reply given by the petitioner, the said charge-sheet was withdrawn on 05.02.2019.

3. Learned counsel for the petitioner submits that after a lapse of approximately more than 04 years of retirement, another charge-sheet has



been issued to the petitioner on 20.07.2023 on the same allegation, which charge-sheet has been impugned in the present petition.

4. Learned counsel for the petitioner further submits that after the issuance of the charge-sheet dated 20.07.2023, the petitioner had approached this Court by filing CWP No. 2072 of 2024, wherein, a direction was given to the respondents to look into the representation dated 08.01.2024 filed by the petitioner and decide the same in accordance with law. Keeping in view the directions given by this Court, the respondents have declined the claim of the petitioner for dropping the charge-sheet dated 20.07.2023 vide order dated 05.03.2024 (Annexure P-9) and have decided to continue with the charge-sheet which order has also been impugned in the present petition.

5. Learned counsel for the petitioner argues that the charge-sheet which has been issued to the petitioner on 20.07.2023 (Annexure P-4) is beyond jurisdiction of the respondent-State as, the petitioner had already retired from service by the said date and keeping in view Rule 2.2(b) (ii) of the Punjab Civil Services Rules Volume-II, the departmental proceedings can only be initiated against a retired employee in respect to an allegation which is not more than four years old on the date when the charge-sheet is served, whereas in the present case, not only the charge-sheet which was served upon the petitioner on the same allegation, was withdrawn in the year 2019, but even the fresh charge-sheet dated 20.07.2023 (Annexure P-4) has been served upon the petitioner after a period of more than four years even from the date of withdrawal of the earlier charge-sheet, hence, the charge-sheet dated 20.07.2023 (Annexure P-4) is liable to be set-aside.



6. Upon notice of motion, the respondents have appeared and have conceded certain facts including the fact that the petitioner was issued a charge-sheet in June, 2018 on the same allegation, which was withdrawn in February, 2019 after the retirement of the petitioner keeping in view the reply given but it has been submitted that as the Department of Vigilance has given certain report on the certain allegations alleged against the petitioner, which required departmental proceedings to be initiated against the petitioner, the said jurisdiction has been availed by the State while issuing the charge-sheet dated 20.07.2023 hence, the writ petition may kindly be dismissed.

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

8. The issue in the present petition is whether, a retired employee can be proceeded against by way of departmental proceedings keeping in view the rules governing the service or not.

9. As per Rule 2.2(b) (ii) of the Punjab Civil Services Rules Volume-II, a retired employee can be proceeded against by issuance of a charge-sheet but only under certain circumstances. One of the condition imposed for holding the departmental proceedings is that the allegation on which the charge-sheet has been issued, should not be more than 04 years old on the date, when the charge-sheet is being served. The Relevant Rule 2.2. (b) of the Punjab Civil Service Rules Vol. 2. is as under :-

“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 proceeding, 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 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 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 proceeding 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 a civil proceeding, on the date of presentation of the plaint in the court.”

10. Now, the question which arises is whether, the respondent-department had jurisdiction in the facts and circumstances of the present case to issue the charge-sheet dated 20.07.2023 or not.

11. It may be noticed that on the same allegation, a charge-sheet was earlier served upon the petitioner in June, 2018 which was withdrawn after the retirement of the petitioner in February, 2019. Even if, four years period as envisaged under the rules governing the service is counted from the withdrawal of the said charge-sheet then also, the four years period has expired as the fresh charge-sheet was issued on 20.07.2023 i.e. much after a period of four years.

12. Learned counsel for the respondents has not been able to dispute the fact that the allegations which are required to be substantiated against the



petitioner relate to the year 2016-2017, which is approximately seven years old at the time when the charge-sheet dated 20.07.2023 (Annexure P-4) was issued to the petitioner.

13. Once, the allegations for which the charge-sheet has been issued are more than four years old on the date when the charge-sheet is served upon a retired employee, Rule 2.2(b) (ii) of the Punjab Civil Services Rules Volume-II clearly prohibits initiation of such kind of departmental proceedings so as to safeguard the interest of the retired employee.

14. Further, the said issue has already been decided by Co-ordinate Bench of this Court while passing order in CWP No. 341 of 2024 titled as ***Balwinder Singh Vs. State of Punjab and others***, decided on 07.03.2024. Learned counsel for the respondents has also not been able to rebut the said settled principle of law that no charge-sheet can be served upon a retired employee in respect of allegations which are more than four years old on the date when the charge-sheet is served.

15. Keeping in view the totality of the circumstances and the settled principle of law noticed here-in-before, the charge-sheet dated 20.07.2023 (Annexure P-4) issued to the petitioner in the present case is beyond the jurisdiction of the respondents and cannot be sustained.

16. Apart from this, it is not a case that the respondents did not knew about the allegations being alleged against the petitioner. The allegations were also made part of the charge-sheet issued to the petitioner in June, 2018, which was withdrawn by the respondents themselves in February, 2019 after seeking the reply of the petitioner. Once, an earlier charge-sheet had been withdrawn, issuing a new charge-sheet to hold the



fresh enquiry into the same allegations merely on the ground that the Vigilance Department has given a report is contrary to the rules governing the service as well as the settled principle of law.

17. Keeping in view the totality of the circumstances, the charge-sheet dated 20.07.2023 (Annexure P-4) and the subsequent order passed to continue the charge-sheet dated 05.03.2024 (Annexure P-9) respectively are set-aside.

18. Present petition is allowed in above terms.

April 02, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No