

(2015) 09 P&H CK 0283

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 17652 and 17653 of 2015

Kuldeep Singh

APPELLANT

Vs

Punjab State Warehousing Corporation and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Citation : (2015) 180 PLR 590

Hon'ble Judges : Amol Rattan Singh, J.

Bench : Single Bench

Advocate : R. Kartikey for Sanjiv Bansal, for the Appellant; Jastej Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Amol Rattan Singh, J.—Learned counsel for the respondent-Corporation could not deny that respondent No. 4 (Sh. B.R. Bansal) is a retired Judicial Officer and presently working on the panel of lawyers of the respondent-Corporation. In the judgment of the Supreme Court in Ramesh Chandra Vs. University of Delhi and Others , it was observed as under:--

"65. Further one "note" given by the Registrar and approved by the Vice-Chancellor in regard to the departmental enquiry being relevant, it is desirable to refer and discuss the same. The original "note" relating to engagement of a retired Judge of the High Court for conducting inquiry was given by the Registrar of the University on 03.04.2007. From the said note dated 03.04.2007 as approved by the Vice-Chancellor, we find that Justice X, a retired Judge of the Delhi High Court was appointed as the enquiry officer to conduct the departmental enquiry against the appellant as prior to his elevation to the High Court as a Judge, he was the counsel for Delhi University. The relevant portion of the note reads as follows:--

"Justice X (name changed), retired Judge of the Delhi High Court had, prior to the elevation to the High Court as a Judge, handled Delhi University cases. He is

well-versed with Delhi University Acts, statutes and Ordinances." It was in this background the University decided to engage him as enquiry officer.

66. We are of the opinion that if an Hon"ble retired Judge of a Court before his appointment as a Judge was a lawyer of any of the party (Delhi University herein), the disciplinary authority should not engage such retired Judge as an enquiry officer, as the other party may allege bias against the enquiry officer and the reputation of the Hon"ble Judge may be at stake. The University is directed not to engage any Hon"ble retired Judge of any Court, who was earlier a counsel of the University as an enquiry officer to hold an inquiry against any of its employees.

67. The enquiry officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The presenting officer also would be a person who had sufficient experience in presenting case before the enquiry officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not."

2. Thereafter, after discussing the law on the issue, it was further held as follows:--

"70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon"ble Judge is appointed as an enquiry officer in an enquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair.

71. For the reasons aforesaid, we hold that all the departmental enquiries conducted against the appellant were in violation of rules of natural justice. This apart, as the third inquiry report is based on extraneous facts and first part of the charge held to be proved in memorandum dated 26.03.2010 not being the part of the charges shown in the (third) charge-sheet, the order of punishment, including Resolution by memorandum dated 26.03.2010 cannot be upheld."

3. In the present cases, respondent No. 4, as already noticed, is a retired Judicial Officer and on the panel of the respondent-Corporation.

4. Though the ratio of the judgment in Ramesh Chandras" case (supra), eventually is that in case a retired Judicial Officer/Judge or a legal expert is to be appointed as an enquiry officer, then the delinquent official should be given the option of appearing before such officer through his/her counsel, the observations of the Supreme Court are also to the effect that a legal/law officer, especially a retired Judicial Officer/Judge, should not generally be appointed as an enquiry officer, if he is on the panel of the lawyers of the institute concerned, because of the possibility of bias being alleged, and also for the reason that it may bring the Judicial Officer/Judges" own reputation into question. In view of the above, since in the present cases, the fact noted in the opening para hereinabove is not

denied, the enquiry proceedings and the impugned orders are quashed, with liberty to the respondent-corporation to start a fresh enquiry (in the case of both petitions), from the stages where the petitioner submitted his reply to the charge sheets issued.

Disposed of as above.