
(2016) 03 P&H CK 0174

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13134 of 2015(O&M).

Sukhjinder Singh

APPELLANT

Vs

Punjab State Civil Supplies Corporation Ltd. and another.

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Civil Services Rules, 1920 — Rule 2.2

Citation : (2016) 2 LawHerald 1322

Hon'ble Judges : Lisa Gill, J.

Bench : Single Bench

Advocate : K.S. Rekhi, Advocate, for the Appellant; Tarun Singla, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Lisa Gill, J. - Petitioner has preferred this writ petition for quashing the charge-sheet dated 24.03.2015, Annexure P2, issued to him, being in contravention of the provisions of Rule 2.2(a) of the Punjab Civil Services Rules.

2. Brief facts of the case are that, petitioner joined the respondent, Punjab State Civil Supplies Corporation Limited (hereinafter referred to as the, "PUNSUP") in the year 1976 as a Sub Inspector. He was permitted to retire from the post of Field Officer on attaining the age of superannuation on 31.10.2012. Order dated 31.10.2012 is annexed with the writ petition as Annexure P1. It is submitted that when the petitioner was posted as Inspector Grade-I at Patti and Khemkaran Mandis of District Tarn Taran during the Kharif procurement season of 2010, purchase of paddy was carried out by the petitioner for the period from 01.10.2010 to 11.11.2010. Some of the paddy was not lifted for about a month as timely arrangement for its transmission to the rice-millers was not made by the district authorities of PUNSUP. The petitioner was directed by the District Manager, PUNSUP to shift 4000 metric tonnes of paddy to M/s. Capital Overseas, Tarn Taran and 1800 metric tonnes of paddy to M/s. Soami Agro, Bhikhiwind

from Khemkaran and Patti Mandis. The Kharif was to be issued on book weight i.e., 35 Kg. per bag as per the instructions. Shifting of this paddy was carried out to the allottee rice millers from 16.11.2010 to 14.12.2010 on book weight without conducting actual weighment. On receipt of this paddy stocks, shortage of 725.85 quintals was reported by the concerned rice millers. In respect to this shortage, charge-sheet dated 24.03.2015, Annexure P2, has been issued to the petitioner under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 charging him for irresponsible and negligent conduct and holding him responsible for shortage in the paddy stock.

3. Aggrieved therefrom, the petitioner has preferred the present writ petition on the ground that issuance of the charge-sheet is in stark violation of Rule 2.2 of Punjab Civil Services Rules having been issued in respect to an event which took place more than four years therefrom. The petitioner admittedly retired from service on 31.10.2012 therefore, the impugned charge-sheet and any proceedings arising therefrom should be quashed.

4. The respondent while opposing the writ petition averred in the written statement that petitioner has concealed the true facts inasmuch as the bungling committed by the petitioner came to the knowledge of the answering respondent for the first time in the first week of April, 2011.

5. Thereafter, the petitioner was told in official meetings as well as telephonically to deposit receipts pertaining to 1348 bags of paddy i.e., 725.85 quintals or its cost i.e., Rs. 9,32,093/-, with the District Office. He failed to deposit the said receipts or the amount in question. He was asked vide memo dated 31.05.2011/01.06.2011 (Annexure R1) to deposit the said receipts with the District Office failing which his case would be sent to the Head Office for further administrative action. The petitioner was again asked vide memo dated 15/19.12.2011 to do the needful and ultimately, vide memo dated 10.02.2012 (Annexure R3), the case regarding recovery of the deficient amount was recommended to be sent to the Head Office for further administrative action. In the meanwhile, on attaining the age of superannuation, petitioner was permitted to retire on 31.10.2012 while clarifying in order dated 31.10.2012, Annexure P1, that his retirement is subject to any pending/future departmental/recovery case, which may be initiated against him. Draft of the charge-sheet was sent to the Head Office on 27.11.2014. Charge-sheet dated 24.03.2015 was issued to the petitioner but he did not submit any reply. An Inquiry Officer was appointed but the petitioner despite being duly served did not join the inquiry proceedings which were consequently conducted ex parte. The Inquiry Officer concluded that all the allegations in the charge-sheet stood proved against the petitioner vide his report dated 27.06.2015. The service record of the petitioner reveals that he was censured vide order dated 13.11.1985 on an earlier occasion. Dismissal of the writ petition is, thus, prayed for.

6. Learned counsel for the petitioner vehemently argues that Rule 2.2 CSR being categoric and specific, clearly renders the action on the part of the respondents

in issuance of the impugned charge-sheet to be absolutely illegal. The petitioner's retiral benefits had not been released in an illegal and arbitrary manner. The event in this case, admittedly, took place between 01.10.2010 to 11.11.2010 and the impugned charge-sheet was issued on 24.03.2015. Mention in the retirement order that petitioner's retirement is subject to pending case as well as the cases which may be instituted in future, cannot permit blatant violation of the provisions of Rule 2.2 CSR. He, thus, prays that the impugned charge-sheet and any further proceedings emanating therefrom be set aside and the retiral benefits of the petitioner be released.

7. Learned counsel for respondents has vehemently argued that the plea of the petitioner regarding the charge-sheet being issued after four years is incorrect as the impugned charge-sheet was issued well within the period of four years for the reason that events/discrepancies in question came to the knowledge of the respondent for the first time in April, 2011. Therefore, the period of four years would be deemed to have started from April, 2011 and charge-sheet was issued in March, 2015. It is vehemently argued that the petitioner is responsible for causing a huge loss to the tune of Rs. 9,32,093/- to the respondent-Corporation. It is, in fact, loss to the public exchequer and, thus, the respondent-Corporation should be permitted to proceed against the petitioner. Once it is mentioned in the retirement order itself that his retirement is subject to any pending/future departmental/recovery case, it cannot be said that there is any violation of Rule 2.2 CSR. The retiral dues of the petitioner have been rightly withheld.

8. He, thus, prays for dismissal of this writ petition.

9. I have heard learned counsel for the parties and have gone through the file. It is not disputed that the event in question relates to the period from 01.10.2010 to 11.11.2010. The petitioner retired on 31.10.2012. The order dated 30.10.2012 regarding superannuation of the petitioner mentions that the petitioner's retirement would be subject to pending/future departmental/recovery cases which may be initiated against him. His retiral benefits were directed to be released subject to receipt of the charge report as well as no due certificate from districts Amritsar and Tarn Taran. Contention of learned counsel for respondents that action had been initiated against the petitioner prior to his retirement, is not borne out from the record. Perusal of Annexure R1 and R2 reveals that these are communications to the petitioner asking him to deposit the receipts in respect to the deficiency of the paddy stock or for deposit of Rs. 9,32,093/-.

10. The matter was sent to the Head Office on 10.02.2012 vide Annexure R2 for initiating the case of recovery from the petitioner. It is not disputed that no charge-sheet was issued to the petitioner prior to his retirement. It has been held by a Division Bench of this Court in Dr. Inderjit Singh Wasu v. State of Punjab and others, 2007(3) SCT 788 that departmental proceedings are deemed to have been instituted only when a charge-sheet is issued or the officer is placed under suspension or in criminal proceedings when challan is presented.

Mere issuance of a show cause notice is of no consequence. Therefore, it cannot be said that proceedings in the present case had been initiated at any stage earlier than the issuance of charge-sheet dated 24.03.2015 i.e., clearly after a lapse of four years of the event in question.

11. Similarly contention of the respondents that the matter having come to light in April, 2011, the impugned charge-sheet should be held to have been issued within the time frame prescribed under Rule 2.2 CSR, is untenable hence, rejected. A Division Bench of this Court in R.C.Gupta v. PSEB, 2002(1) SCT 1136 has held as under:-

"..... Faced with this difficulty the learned counsel for the respondent submitted that earlier it was not to the knowledge of the respondent with regard to the illegalities committed by the petitioner as the matter was pending with the Vigilance Department and on coming to know from the Vigilance Department the respondent authorities had initiated the action against the petitioner. But we are not convinced with the submission raised by the learned counsel for the respondent in view of Rule 2.2(b) of the Punjab Civil Services Rules which states that the departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall not be in respect of any event which took place more than four years before such institution.

A reading of the rule would show that the defence taken up by the respondent is not open to it. Admittedly, the petitioner has been charge-sheet for the events of 1984 vide charge sheet dated 26.03.1999. Therefore, such charge sheet cannot be sustained in the eyes of law."

12. The stipulation in the retirement order dated 31.10.2012, Annexure P1, that the petitioner's retirement is subject to decision of any pending/future department/recovery case cannot, in any manner, vest the department with any right to proceed in flagrant violation of the express provisions of Rule 2.2 (b) CSR. Such a stipulation would enable the employer to by-pass the specific provisions of law with impunity. Accepting such an interpretation would mean that the employer would be at liberty to initiate action against an employee after a lapse of any number of years of the event in question simply because of such a stipulation in respect to any proceeding which may be initiated by the department in future. Such an interpretation is clearly not permissible. Pendency of any other proceedings against the petitioner has not been brought to my notice.

13. Action of the respondent-Corporation in issuing the impugned charge-sheet dated 24.03.2015, Annexure P2, is clearly in violation of Rule 2.2 CSR.

14. Keeping in view the facts and circumstances of the case, this writ petition is allowed. Charge-sheet dated 24.03.2015, Annexure P2 and any further proceedings arising therefrom are, hereby, quashed. Consequently, retiral benefits, if any withheld on this account, be released to the petitioner in case

there is no other impediment thereto.