(2010) 01 P&H CK 0081

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Kanwaljit Singh, General Manager (Retd.)	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision: Jan. 6, 2010

Citation: (2010) 2 ILR (P&H) 383 : (2010) 158 PLR 190 : (2010) 5 SLR 238

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

The writ petition, as originally framed in the year 1996, challenged the charge-sheet issued against the petitioner on 06.11.1991 and the constitution of an enquiry by the 5th respondent, named in person, on the ground that there was a personal bias against the petitioner and that, therefore, the enquiry was vitiated by mala fides and bias. The challenge also included that the finding recorded in the enquiry report was not supported by any reasoning. The writ petition came to be filed when the petitioner, who had retired on 29.02.1996, was sought to be visited with the penalty of withholding 50% of pensionary benefits such as leave encashment and gratuity. After the filing of the writ petition, the decision of the 5th respondent had been challenged by a revision petition before the 6th respondent-Financial Commissioner, Cooperation, Punjab, Chandigarh, who by a cryptic order dismissed the revision petition. The writ petitioner had, therefore, amended the writ petition also to challenge the order of the Financial Commissioner.

2. The charge-sheet against the petitioner was that during his service as a General Manager and Incharge of Project Section dealing with the planning, execution of the housing complexes/projects taken by Housefed at Bathinda, Mohali and Ludhiana, he had failed to effectively supervise the planning and execution of the work and by his negligence caused a financial loss of Rs. 2.40 lacs. The charge-sheet had been

issued not merely against the petitioner but also against the Managing Director. They had a common defence to make and the Managing Director had also explained that the petitioner was not, in any way, responsible for the alleged losses. The petitioner had also responded to the charge-sheet but ultimately when an enquiry was constituted by appointment of the 5th respondent as Enquiry Officer, the petitioner had sought for change of the Enquiry Officer. The plea was rejected and ultimately the enquiry led to a finding of guilt on certain charges while exonerating the petitioner from certain other charges. The report had been given on 28.07.1995 and a show cause notice had been issued on 28.11.1995 to the petitioner to respond to the punishment proposed to be imposed against him. The complaint of the petitioner was also that the Enquiry Officer''s report had not been served to him to give his response to show cause against the findings of the Enquiry Officer. The petitioner had sought for time for responding to the notice but in the meanwhile, on 29.02.1996, he retired from service on reaching the age of superannuation. On the same day, an order was also issued by the 6th respondent that his superannuation was "subject to the decision on the show cause notice already issued to him."

3. Against the decision finding him guilty and imposing the punishment of cut in 50% of the pensionary benefits, the counsel for the petitioner urged that the petitioner''s service with the 3rd respondent was governed by the Punjab State Cooperative Housing Federation Service Rules of 1976 and the said Rules did not provide for continuation of the enquiry beyond the date of superannuation. The impugned order passed on 06.06.1996 being subsequent to the date of the superannuation on 29.02.1996 was incompetent and without any legal basis. It was also the contention of the petitioner that the imposition of punishment of withholding any portion of the pensionary benefits was not provided for and, therefore, even the punishment meted out to him was illegal and unjustified. The other point contended by the learned Counsel for the petitioner was that the action of the 3rd respondent also betrayed a brazen instance of discrimination when the Managing Director, who was also proceeded against in the enquiry and who had been the principal decision making authority, had been exonerated and a different yardstick could not have been applied against the petitioner only. The last point urged was that the enquiry itself was vitiated since it was carried out by a person, who was under the direct control of the 5th respondent, who had a grudge against the petitioner for not obliging him in the matter of selection of candidates for the post of Secretary for Primary House Building Societies under the control of Housefed. As a person, who was directly reporting to the 5th respondent and over whom the 5th respondent had a complete control, the Enquiry Officer could not have had an objective assessment in the matter of adjudication. This aspect of bias was specifically refuted by the respondent No. 1, 2 and 6 in the counter filed by them.

4. There is no dispute on the point that the Service Rules of 1976 itself does not provide for continuation of enquiry beyond the period of superannuation. Learned

Counsel appearing for the respondents No. 3 and 4, Sh. Amit Sharma would, however, contend that the Rule 13 that provided that the Service Rules did not affect the application of any other law, statutory rule or regulation for the time being in force, as saving a situation that the Punjab Service Rules, which provide for continuation of the enquiry after the period of superannuation for a period of three years should be taken as enabling the society to continue with the enquiry. Learned Counsel would also contend that there is a thin line of difference between what constitutes an enquiry and how it is different from an ultimate disciplinary action. According to him, the enquiry had been concluded even prior to his retirement on 29.02.1996, when the Enquiry Officer had given his report on 28.07.1995 and only the ultimate decision after serving the show cause notice was taken subsequently and it did not mean continuation of an enquiry beyond the time of superannuation. It was also his contention that since the retiral benefits had not been fully paid to him, the relationship between the employer and the petitioner had not ceased and, therefore, the decision ultimately given was not vitiated.

5. In support of the contention of the petitioner that in the absence of statutory rules, the employer cannot take a decision to inflict a punishment on the result of an enquiry, the learned Counsel refers to a decision of the Hon''ble Supreme Court in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, . The case dealt with the appellant, who had been relieved on 01.07.1995 by the employer-Corporation "without prejudice to the claims of the Corporation." Two objections had been raised in the matter of the punishment and the conduct of enquiry. The employee had contended that there was no specific provisipn made for deducting any amount from the Provident Fund consequent on any misconduct and that there was no provision made for continuance of a departmental enquiry after superannuation. Sustaining both the objections raised by an employee, the Hon''ble Supreme Court held that the Corporation had no authority to make any reduction in the retiral benefits in the absence of specific provision and also that in the absence of provision for conducting a disciplinary enquiry after retirement, the same could not have been done. It ruled emphatically that once the appellant had retired from service on 30.06.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant.

6. The last expression in the above judgment in fact answers the point raised by the learned Counsel appearing for the respondent. His argument was that there is a dichotomy between a departmental enquiry and disciplinary action and that the continuance of an enquiry alone could be barred beyond the date of superannuation if Rules did not permit so and the imposition of disciplinary action could not be barred. This argument is fallacious for two reasons. One, a disciplinary action is not independent of the enquiry. It is the assessment by the disciplinary authority of the findings of the Enquiry Officer that leads to a disciplinary action. To that extent, a disassociation of a disciplinary enquiry and disciplinary action cannot

be made. Second, in so far as a disciplinary authority has a power to review the entire exercise undertaken by an Enquiry Officer by looking into every bit of evidence collected by him, a disciplinary authority is, in some sense, the ultimate authority, who decides on the evidence collected in the enquiry. A decision regarding punishment under disciplinary'' action is a denouement to an enquiry process and indeed a culmination of the same. The decision of the 3rd respondent imposing a punishment was on the day when the enquiry concluded and not the day when the Enquiry Officer submitted his report on 28.07.1995.

7. The only other question could be whether it made any difference that the disciplinary authority ultimately allowed the superannuation to take place subject to the result of the show cause notice issued to the employee. It was a similar situation of an employee having been superannuated without prejudice to the claims of the Corporation that was dealt with by the Hon''ble Supreme Court in Bhagirathi Jena''s case in entering its finding that in the absence of specific Rules, a disciplinary enquiry could not have been continued beyond the date of the superannuation. This position of law is confirmed also by the decision of the Hon''ble Supreme Court in State Bank of India Vs. A.N. Gupta and Others, that dealt with the case of an employee in a Bank where it held that the continuance of disciplinary proceedings beyond the date of superannuation was not permissible unless there was a specific provision to this effect in the relevant rules.

8. The argument of the learned Counsel appearing for the respondent that the Service Rules of 1976 must be read as being supplemented by the Punjab Civil Service Rules by virtue of a proviso referred to in Para 13 is also without substance, for the proviso must be understood only as any other law, which was applicable to the Federation. The exclusivity of the Rules of 1976 is not to be understood as de hors the applicability of any other law that is otherwise applicable. The Punjab Civil Service Rules cannot be rendered applicable propria vigore without a specific provision applying the same in respect of any matter which the Service Rules did not provide for. There is no automatic application of Punjab Civil Service Rules that would be possible so long as the petitioner himself was not a public servant to whom the Service Rules could have applied.

9. The contention made by the learned Counsel appearing for the respondent that the relationship of employer-employee would continue so long as the retiral benefits were not paid was on the basis of a decision of the Hon''ble Supreme Court in U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon, . The Hon''ble Supreme Court was referring to a case of show cause notice issued on the last date of service of an employee, who was in service of a Department of the State. The decision was rendered in the context of U.P. Civil Service Regulations and the validity of reduction of pension on the proved charge of unsatisfactory service. The position that could arise in case of an employee, who was governed by State Service Rules cannot be treated as governing the issue of an employee in a Cooperative

Society to whom the distinct rules were applicable. The decision cannot also be understood as laying down any proposition that an employee should be deemed to be in service so long as retiral benefits are not denied. A logical expansion would be that a person could be held to be continuing in service till his death by denying to him his terminal benefits. Such a proposition would be absurd and cannot be canvassed through the decision of the Hon''ble Supreme Court,

10. If inflicting a punishment after the superannuation is found as contrary to law, it becomes unnecessary for me to examine whether the enquiry before the Enquiry Officer had been fair or whether the petitioner had proved that the Enquiry Officer was affected by personal bias against the petitioner as contended by him. A decision either way would lead nowhere, for if it were to be accepted that the enquiry was fair, the petitioner would still succeed in the view expressed by me that the punishment that was issued pursuant to an enquiry meant continuance of the enquiry till the time of the decision and if it was done after he was superannuated from service which was invalid, then it would be no consequence if finding were to be either way as regards the validity of the enquiry or the correctness of the enquiry report. I, therefore, do not propose to enter any finding with reference to the other two points urged by the learned Counsel appearing for the petitioner. The petitioner succeeds on the point urged that there could not have been punishment of withholding the pensionary benefits on the basis of an enquiry that led to a decision subsequent to the date of superannuation.

11. The recovery that the punishment contemplates is a recovery "from pay of such other amount as may be due." It is doubtful whether the expression "from pay" could be substituted as "pensionary benefits" also. As regards the punishment meted out viz., of withdrawal of 50% of pensionary benefits, it must be held that the rule contemplates recovery from pay of such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Federation, which is not pensionary benefits. I have held that the result of the enquiry itself will make no difference, for the impugned proceeding of concluding an enquiry through a disciplinary action after superannuation was impermissible and therefore, the imposition of punishment ought to fail for the same reason as the earlier reasoning that the enquiry could not have been persisted even through a disciplinary action subsequent to the date of superannuation.

12. The writ petition is allowed but under the circumstances, there shall be, however, no direction as to costs. The petitioner shall now be entitled to the accrued benefits, which were denied to him with interest @9% per annum. The amount shall be calculated and given to the workman within a period of 8 weeks from today.