

(2014) 01 P&H CK 0190

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 15671 of 2010 (O and M)

Paramjit Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 8, 2014**Acts Referred:**

- Punjab Civil Services Rules - Rule 2.2(b)

Citation: (2014) 175 PLR 629**Hon'ble Judges:** Rajesh Bindal, J**Bench:** Single Bench**Advocate:** Gurcharan Dass, for the Appellant; Suvir Sehgal, Additional Advocate General, Punjab and Mr. Arvind Galav, Advocate, for the Respondent**Final Decision:** Allowed

Judgement

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 06.5.2010, vide which Enquiry Officer was appointed by the Director, Health & Family Welfare Department, Punjab for conducting preliminary enquiry into the allegations in a complaint filed against the petitioner by respondent No. 5. Learned counsel for the petitioner submitted that the petitioner, who was serving as Superintendent Grade-II in the office of Civil Surgeon, Ludhiana superannuated on 31.12.2004. Initiation of enquiry or even preliminary enquiry more than four years after his retirement is totally illegal in the light of the Rule 2.2(b) of the Punjab Civil Services Rules, Vol. II, Part-1. The aforesaid Rule firstly provides that no enquiry can be initiated against a retired employee without prior sanction of the Government and in respect of any event which took place more than four years before the institution of such enquiry. The submission is that even in the present case the enquiry has been instituted by the Director, Health & Family Welfare Department, Punjab, there is nothing to show that prior sanction of the Government has been taken. He further submitted that the incident, which has been referred to in the complaint by respondent No. 5 pertains to the period

from 28.08.1996 to 14.11.1996. He further submitted that leave for the period from 28.08.1996 to 24.09.1996 was sanctioned with full pay vide order dated 21.07.1997. Initiation of preliminary enquiry on 06.05.2010 is clearly for the incident, which is more than four years old. Learned counsel for the petitioner further submitted that the reason for filing of complaint by respondent No. 5 against the petitioner was on account of embezzlement by respondent No. 5. The petitioner made a complaint against respondent No. 5, on the basis of which report of enquiry dated 16.02.2010 was submitted by SIT holding that there was large scale embezzlement by some officers/officials in the Health Department including respondent No. 5. Immediately after submission of report on 16.02.2010, as revenge, respondent No. 5 filed a complaint on 07.04.2010, on the basis of which, the impugned order dated 06.05.2010 was passed directing holding of enquiry against the petitioner. As no action was taken against the officer/official, the petitioner filed CWP No. 20047 of 2011 before this Court in public interest, in which vide order dated 12.01.2012, this Court directed for taking appropriate action against the persons held guilty and directed to register FIR against them. In fact the complaint was motivated.

2. On the other hand, learned counsel for the State submitted that Director, Health & Family Welfare, Punjab vide order dated 06.05.2010 (Annexure P-4) merely instituted preliminary enquiry against the petitioner. A perusal thereof shows that if anything is found against the petitioner, regular enquiry will be instituted. At that stage sanction of the Government will be required. He further submitted that as there was allegation of fraud against the petitioner, the same vitiate everything which includes condition of sanction of the Government against the retired employee and the period of limitation.

3. Learned counsel for respondent No. 5 submitted that vide order dated 06.04.1998, the period from 28.08.1996 to 14.11.1996 was treated as absence from duty without pay and allowances and one annual increment with cumulative effect was stopped as punishment. The aforesaid order was never implemented and besides that the petitioner had drawn salary for that period. On account of this fraud being committed by the petitioner, he deserves to be punished.

4. Heard learned counsel for the parties and perused the paperbook.

5. The dates which are not disputed are that an office order has been passed on 06.05.2010, appointing Ashok Kumar Bhatia as Enquiry Officer for conducting preliminary enquiry into the allegations in a complaint made against the petitioner. The petitioner retired from service as Superintendent Grade-II on 31.12.2004. The allegations in the complaint filed by respondent No. 5 against the petitioner on 07.04.2010 are that the petitioner remained willfully absent from duty from 28.08.1996 to 14.11.1996. As a consequences of this, absence from duty, punishment of stoppage of one annual increment with cumulative effect was imposed. In fact the aforesaid order was not implemented, as a consequence he had drawn salary for the aforesaid period and also increment, which was stopped.

6. Rule 2.2(b) of the Punjab Civil Services Rules, Vol-II, Part-I, which reads as under, provides that after the retirement of an employee no enquiry can be instituted except with prior sanction of the Government and further the same cannot be in respect of any event, which took place more than four years before such institution:--

(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 Govt., if in a departmental judicial proceedings, the pensioner is found guilty of grave mis-conduct or negligence during his service, including service rendered on 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 an event which took place not more than four years before the institution of such proceedings; 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.

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7. In the present case, the stand of learned counsel for the State is that enquiry has still not been instituted. The order dated 06.05.2010, only talks about the preliminary enquiry. The incident, which is sought to be enquired into pertains to the period from 28.08.1996 to 14.11.1996. The petitioner retired on 31.12.2004. Meaning thereby, the incident is 14 years old. Considering the aforesaid fact, the Rule as referred to above did not permit initiation of enquiry against the petitioner, who had retired from service, hence, even initiation of preliminary enquiry is without jurisdiction.

8. The contention raised by learned counsel for the State that it being a case of fraud, the same vitiate everything is merely to be noticed and rejected. The aforesaid Rule clearly prescribes the circumstances under which enquiry can be instituted against a retired employee. No exceptions have been provided. Initiation

of inquiry against the retired employee in the present case is without jurisdiction being for an incident beyond four years and having been instituted for an incident which is more than four years old. For the reasons mentioned above, the present petition is allowed. The impugned order (Annexure P-4) dated 06.05.2010 initiating inquiry against the petitioner is quashed.