

Paramjit Singh Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

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.