

(2016) 10 P&H CK 0140

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 22435 of 2014 (O&M)

Baldev Singh Saini

APPELLANT

Vs

Haryana State Federation of
Consumers

RESPONDENT

Date of Decision: Oct. 4, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 LawHerald 3613 : (2017) 2 PLR 366

Hon'ble Judges: Mr. Kuldip Singh, J.

Bench: Single Bench

Advocate: Mr. Padam Kant Dwivedi, Advocate, for the Respondent Nos. 1 and 2; Mr. Dhiraj Chawla, Advocate, for the Petitioner; Mr. Dinesh Kumar, Advocate, for the Respondent No. 3

Final Decision: Allowed

Judgement

Kuldip Singh J.(Oral) - Petitioner Baldev Singh Saini, was working as General Manager in the CONFED and retired as such from Sonipat on 31.05.2014. After his retirement, a charge sheet dated 05.08.2014 (Annexure P-9) has been issued to him regarding various acts and omissions done during his posting from 16.02.2009 to 31.08.2009 in Sonipat.

2. The short ground pleaded to quash the charge sheet is that under Rule 60 of Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. Staff Regulations, 1975 (in short "the CONFED Rules") and its sub Rule (2), after retirement, the departmental proceedings cannot be initiated for any event, which took place more than four years before the institution of such proceedings.

3. The other allegations of malafide against respondent No.3 have also been levelled, which are not required to be considered while deciding about fate of issue charge sheet in terms of the Rules of CONFED.

4. In the reply, respondent Nos.1 and 2 took the plea that a number of irregularities were committed by the petitioner while he was working as District Manager, Sonipat. He caused loss to the tune of Rs. 15,55,209/- to the respondent-Federation. Petitioner has also been charge-sheeted in some other cases, vide letters dated 25.09.2012, 27.09.2012, 18.10.2012, 07.06.2013, 28.04.2014 and 05.05.2014. All the charge sheets were issued for causing huge financial loss to the respondent-Federation. Therefore, the retiral dues were withheld till the finalisation of the chargesheets.

5. It is submitted that when the petitioner was working as District Manager in Sonipat, procurement of 26980.5 MT wheat of 2009-10 was made at Gohana and Barodha Mandi. Out of this stock, 418.5 MT stock was damaged at Storage point, Gohana due to gross negligence in the selection of proper storage at Gohana. The wheat was stored at low lying area under the overall control and supervision of the petitioner without following the laid down norms of FCI for hiring the plinth. As a result of which 4185 Qtl. wheat damaged in the year 2011-12 at wheat storage point Gohana. Since, the event took place less than four years, therefore, the petitioner has been rightly charge-sheeted under Rule 60 of the CONFED Rules.

6. I have heard learned counsel for the parties and have also carefully gone through the case file.

7. The date of retirement of the petitioner i.e. 31.05.2014 has not been disputed. So far the charge-sheet (Annexure P-9) is concerned, it is dated 05.08.2014, in which the petitioner alleged to have done some acts and omissions during his posting as District Manager, CONFED, Sonipat for the period from 16.02.2009 to 31.08.2009. The allegations are that the petitioner purchased wheat stock and stored at low lying area without following the rules and norms of the FCI and without getting necessary permission with the result that in the year 2011, 418.5 MT wheat was damaged.

8. The plea of learned counsel for the respondent is that the damage was done in the year 2011. Therefore, charge-sheet is within four years. However, a perusal of the charge-sheet shows that the alleged act was done by the petitioner during the period from 16.02.2009 to 31.08.2009 and the damage took place more than two years later. It will first raise the question whether the petitioner could be held liable for the damage occurring two years later? However, this issue need not to be considered. Apparently, the act was the act done between 16.02.2009 to 31.08.2009 due to which alleged loss was caused.

9. Rule 60 of the CONFED Rule is reproduced as under:

"60. The Confed further reserve to themselves the right of withholding or withdrawing retiral benefit or any part of it, whether permanently or for a specified period and the right of ordering the recovery from retiral benefits of the whole or part of any pecuniary loss caused to Confed, if the retiree is found in departmental

or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to Confed by misconduct or negligence during his service rendered on reemployment after retirement either by issue notice or through Land Revenue Department as arrear of land revenue.

Provided that:-

(1) Such departmental proceedings, if instituted while the employee was in service whether before his retirement or during re-employment shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service:

(2) Such departmental proceedings, if not instituted while the employee was on duty either before retirement or during re-employment:

(i) Shall not be instituted save with the sanction of the Competent Authority.

(ii) Shall 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 at such place or places as the Competent Authority may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made;

(3) Such judicial proceedings, if not instituted while the employee was on duty either before his retirement or during his re-employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2); and

(4) The Competent Authority shall be consulted before final orders are passed.

Explanation: for the purpose of this rule:-

(1) Departmental proceedings shall be deemed to have been instituted when the charges framed against the retiree are issued to him or, if the employee has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been instituted;

(i) in the case of criminal proceeding, on the date on which the complaint is made or as challan is submitted to a criminal court: and

(ii) in the case of Civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to Civil Court."

10. The said Rule makes it clear that the departmental proceeding shall be deemed to have been instituted when the charge sheet is issued to the retirees.

11. Rule 60(2) of the CONFED Rule makes it clear that after the retirement of an employee, the departmental proceedings will not be instituted save with the sanction of the Competent Authority and shall be in respect of an event which took place not more than four years of the institution of said proceedings. The alleged act of procuring wheat at low line plinth was done between 16.02.1009 to 31.08.2009. The damage ensued later on. Therefore, for the said event, the petitioner could be charge-sheeted at the most till 30.08.2013. However, the petitioner was charge-sheeted on 05.08.2014. Thus, the present charge-sheet is contrary to Rule 60 of the CONFED Rule reproduced above and is hereby quashed. This is without prejudice to the other charge-sheet, which is not the subject matter of the present petition. However, the department shall have the right to recover the loss, if alleged to have been proved, through the other lawful means, except the departmental proceedings.

12. As a result of the quashing of the charge-sheet, letter (Annexure P-5), debiting the amount from the account of the petitioner for loss to the tune of Rs. 15,55,209/- also stands quashed and same shall be refunded to the petitioner's account.

13. Accordingly, the present petition is allowed.