

Before Kuldip Singh, J.

DR. SOHAN LAL ARORA — *Petitioner*

versus

STATE OF PUNJAB — *Respondent*

CWP No. 10490 of 2007

August 4, 2016

Constitution of India, 1950 — Punjab Civil Services Rules, Vol-II, Chapter-II — Rule 2.2(b) — Whether an order of dismissal from service could be passed after retirement of an employee — Held — No relationship of employer and employee after retirement — When a person is not in service, he cannot be dismissed — Option is proceed under Rule 2.2(b) of the Punjab Civil Services Rules, Vol-II, Chapter-II by withholding or withdrawing pension if pensioner is found guilty of grave misconduct or negligence during his service — Further question, if employee retires before passing of punishment order in an inquiry initiated during service — Order under Rule 2.2 (b) ought to have been passed regarding cut in pension but employee could not have been dismissed from service with retrospective effect — Petition allowed, pensionary benefits to be released with interest — Respondents would however, be at liberty to proceed under Rule 2.2(b)

Held, that after the retirement, there is no relationship of employer and employee between the department and the retired employee. Therefore, apparently when a person is not in service, he could not be dismissed from service.

(Para 12)

Further held, that now, further question would arise that as to when the inquiry is initiated during the service of an employee and he retires before passing of the punishment order, what the competent authority should do? Therefore, the Principal Secretary should have passed the order under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter II, regarding cut in the pension only and the employee could not be dismissed from service with retrospective effect. However, in case, the employee has already retired, the authority is left with no option, but to resort to provisions of Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II.

(Para 13 & 15)

Puneet Kumar Jindal, Senior Advocate with Sakshi, Advocate,
for the petitioner.

R.S. Pathania, Deputy A.G. Punjab.

KULDIP SINGH, J.

(1) Petitioner-Dr. Sohan Lal Arora seeks issuance of writ of certiorari, quashing the dismissal order dated 7/8.10.2007 (Annexure-P-20), vide which his earlier dismissal order dated 13.9.2004, has been confirmed, allegedly in compliance with the order dated 11.7.2006, passed by this Court in CWP No. 19265 of 2004, titled as ***Dr. Sohan Lal Arora versus State of Punjab and others*** (Annexure-P-14). The petitioner also seeks a writ of mandamus, directing the respondents to release the pension and other retiral benefits alongwith interest at the rate of 18% per annum.

(2) The relevant facts for the purpose of disposal of the present writ petition are that the petitionr joined the Government service as a Medical officer on temporary basis with effect from 18.12.1981. He was appointed on the recommendations of the Punjab Public Service Commission on regular basis with effect from 11.7.1983. On 22.11.2000, the petitioner was served with a chargesheet (Annexure-P-2), levelling three charges. The charge No. 1 was regarding claiming excess arrears. The charge No. 2 relates to non deduction of income tax on the arrears and the charge No. 3 relates to claiming increments for doing house job/P.G. diploma. As a result of the inquiry, the charge No. 3 was held to be proved. The department, without getting the approval of the Punjab Public Service Commission, passed the dismissal order on 9.7.2004/13.9.2004 (Annexure- P-13). The petitioner preferred the Civil Writ Petition No. 19265 of 2004 before this Court. The Division Bench of this Court set aside the dismissal order dated 9.7.2004/13.9.2004, permitting the department to follow the due procedure and to pass fresh orders in accordance with law. The dismissal order was set aside on the ground of non supply of copy of report of the Punjab Public Service Commission. In the meanwhile, the petitioner moved to the department for release of his dues. After conveying the approval of the Punjab Public Service Commission, the petitioner was called for personal hearing. The petitioner submitted a detailed representation on 20.1.2007, highlighting that his salary has not been paid since February, 2003, nor any subsistence allowance has been paid thereafter. The petitioner retired from service on attaining the age of superannuation on 31.5.2007. Not a single penny was paid to the petitioner including the

GPF.

(3) In August, 2007, the petitioner moved a contempt petition i.e. COCP No. 824 of 2007 on account of failure of respondents to comply with the order dated 11.7.2006, passed by this Court in CWP No. 19265 of 2004. The notice was issued to the Principal Secretary in person. However, on the next date of hearing i.e. 8.10.2007, respondents passed the impugned order of dismissal dated 7/8.10.2007 (Annexure-P-20) and communicated the same to the learned counsel appearing for the petitioner. The petitioner claims that after his retirement, the dismissal order could not be passed and that the same is contrary to the rules. The petitioner further contends that FIR No. 91, dated 19.4.2003 was registered under Sections 406/467/468/471/120-B IPC at Police Station Sadar, Muktsar. However, the challan was not put up till the filing of the present writ petition and the matter is pending for cancellation of the said FIR.

(4) The State, in the reply, has taken the plea that the petitioner had embezzled Rs. 95.65 lacs. The petitioner had managed to draw the said amount with the support of fake documents when he was posted at Primary Health Centre, Chakshere Wala, District Muktsar, as Incharge. FIR No. 91, dated 18.4.2003 was registered under Sections 406/467/468/471/120-B IPC at Police Station Sadar, Muktsar, which is pending for consideration before the Court at Muktsar. The service record was not disputed. It is stated that while posted at PHC Sardoolgarh, District Mansa, from 5.10.1996 to 11.2.1999, he drew the salary in accordance with his basic pay Rs. 3,900/-. He himself prepared the bills of arrears of increment and suspension allowance. He had taken the benefit of annual increments during his stay in the office of Civil Surgeon, Patiala. He misused the wording of letter dated 2.11.1995 (Annexure-R-2) and prepared the bills of arrears of pay by wrongly stating that the Civil Surgeon had granted him four increments of house job and degree post graduate. It is stated that the contempt petition was dismissed on 23.11.2007. The State has justified the passing of the dismissal order.

(5) I have heard the learned senior counsel for the petitioner, the learned State counsel and have also carefully gone through the file.

(6) The perusal of the abovenoted facts would show that the inquiry was initiated against the petitioner on 20.2.2011. The charges proved against the petitioner are that of drawing of increments for house job and post graduate without doing the same. The first dismissal order was passed on 9.7.2004/13.9.2004. The petitioner challenged the

same before this Court by way of filing the CWP No. 19265 of 2004. The Division Bench of this Court, vide order dated 11.7.2006 (Annexure-P-14), set aside the dismissal order on the ground that the copy of the report of the Punjab Public Service Commission was not supplied to the petitioner. However, the respondents were given liberty to follow the due procedure and to pass fresh orders in accordance with law. Thereafter, it comes out that the orders were not passed nor any payment of pensionary benefits was made to the petitioner, despite his representation dated 15.7.2006 (Annexure-P-15). Thereafter, the petitioner moved a contempt petition (COCP No. 824 of 2007) before this Court in August, 2007. When the notice of this contempt notice was issued to the Principal Secretary in person, he suddenly woke up and passed the order dated 7.10.2007, conveyed to the petitioner, vide endorsement No. 27/143/98-4HB2/281, dated 8.10.2007 (Annexure-P-20), which is stated to be the date fixed in the said contempt petition. The operative part of the said order is reproduced as under :-

“7. Whereas the same charges has also been proved by the Inquiry Officer in his enquiry report dated 30.9.2002, I am of the considered view that the orders of dismissal dated 13.9.2004 passed against Dr. Sohan Lal Arora with the concurrence of Punjab Public Service Commission, Patiala, are fully justified and I confirm the same after due compliance of the orders dated 11.7.2006 of Hon'ble Punjab and Haryana High Court passed in CWP No. 19265 of 2004-Dr. Sohan Lal Arora Versus Punjab State.”

(7) In this way, the previous dismissal order dated 7/13.9.2004 was confirmed.

(8) Undisputedly, before passing of the said dismissal order, the petitioner had attained the age of superannuation on 31.5.2007 and had retired from service. In this way, the impugned order was passed after more than six months of the retirement of the petitioner.

(9) Now, the question arising for consideration is that as to whether the order of dismissal from service could be passed after the retirement of the employee?

(10) I find the reply in negative.

(11) Surprisingly, in the present case, in place of passing fresh orders in accordance with law, the Principal Secretary, without considering the fact that in the meanwhile, the petitioner has retired from service, held that the order of dismissal dated 9.7.2004/13.9.2004

is fully justified and confirmed the same. This was done despite the fact that the dismissal order dated 9.7.2004/13.9.2004 was set aside by a Division Bench of this Court and fresh order in accordance with law was directed to be passed. In this way, the fresh order is nothing, but reiteration of the previous dismissal order dated 9.7.2004/13.9.2004, which was already set aside by a Division Bench of this Court in CWP No. 19265 of 2004.

(12) After the retirement, there is no relationship of employer and employee between the department and the retired employee. Therefore, apparently when a person is not in service, he could not be dismissed from service. The option before the Government authority is to proceed under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II, which is reproduced as under :-

“2.2 (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 Government, if in a departmental judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during his service including service rendered on re-employment after retirement.”

(13) Now, further question would arise that as to when the inquiry is initiated during the service of an employee and he retires before passing of the punishment order, what the competent authority should do?

(14) A similar question was raised before the Hon'ble Supreme Court of India in *High Court of Punjab and Haryana versus Amrik Singh*¹. The extract from the observation of the Apex Court is reproduced as under :-

“3. Several options are open to the appointing authority and in case the disciplinary authority also happens to be appointing authority. Before the delinquent reaches superannuation, the enquiry should be got expedited and appropriate order passed on the basis of the findings reached by the disciplinary authority. In case the delinquent attempts to drag the proceedings or he does not co-operate in the

¹ 1995 (2) SCT 613

completion of the enquiry, after giving necessary warning in writing, suitable course appropriate to the facts is required to be adopted. In case it is not possible to complete the enquiry or to pass the final order, the suspension should be extended and re-employment ordered or the later extended and to pass appropriate orders during extended period. In case it is found that either of those courses, neither is feasible nor possible and allowed the delinquent to retire from service, it would be open to the disciplinary authority to record in its order that but for the retirement he would have passed on order of dismissal or removal from service. Since the delinquent had retired the disciplinary authority would record in the order that the delinquent "committed grave misconduct of the proved charge" and suitable order be made."

(15) Therefore, the Principal Secretary should have passed the order under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter- II, regarding cut in the pension only and the employee could not be dismissed from service with retrospective effect. It was further observed by the Apex Court that the dismissal order from service could not be passed with effect from a later date than the date of retirement of the delinquent employee. However, in case, the employee has already retired, the authority is left with no option, but to resort to provisions of Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II. As such, the impugned order dated 7/8.10.2007 (Annexure-P-20) is illegal and liable to be quashed.

(16) The learned senior counsel for the petitioner has also contended that during the suspension of the petitioner and during the inquiry, even subsistence allowance was not paid to the petitioner. It is further contended that even GPF amount, which was accumulated money of the employee, was also not paid. Even the provisional pension was not paid during the inquiry. Therefore, the punishment is otherwise illegal.

(17) In view of the foregoing discussion, I come to the conclusion that the impugned order dated 7/8.10.2007 (Annexure-P-20) is not sustainable in the eyes of law. Therefore, the same is accordingly quashed. The respondents are at liberty to proceed against the petitioner under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-11, Chapter-11, and if there is justification, can pass order in accordance with the said rule within six months from the date of judgment. In the

meanwhile, the respondents are directed to release all the pensionary benefits with interest at the rate of 9% per annum, starting three months from the date of retirement of the petitioner. However, if the respondents decide to proceed under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-11, the provisional pension shall be released to the petitioner. The compliance of this order be made within two months of the receipt of copy of this order. The arrears of salary shall also be paid to the petitioner, if not paid earlier, with interest at the rate of 9% per annum from the date it became due till its payment.

(18) The present writ petition is accordingly allowed.

M. Jain