
Before M.M. Kumar & Rajesh Bindal, JJ.

DR. INDERJIT SINGH WASU,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. NO. 18451 OF 2004

22nd May, 2007

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Volume II (Part I)—Petitioner working as Lecturer allowed to serve as Principal—Pay drawn as Lecturer protected—Order lowering basic pay of petitioner is arbitrary—Allegations with regard to purchase of second hand Photostat machine and misappropriating of books levelled after a period of 10 months of petitioner's retirement—No charge sheet could be issued against an employee after his retirement—Petition allowed order effecting recovery quahsed.

Held, that no charge sheet could be issued against an employee after his retirement because the relationship of employer and employee come to an end with the superannuation of the employee subject to payment of his retiral benefits. After retirement only those proceedings are allowed to continue which have been initiated during the course of employment and if an employee is found guilty then either a cut in his pension could be imposed or recovery could be effected from his gratuity.

(Para 6)

Further held, that Chapter 2 of the Punjab Civil Services Rules, Volume II (Part I) deals with general provisions relating to grant of pension. Rule 2.2 specifically deals with recovery which could be effected from pension. According to Rule 2.2 (b), right of the employer to withhold or withdraw a pension or any part thereof, whether permanently or for a specified period, has been reserved but with certain conditions. The right of ordering recovery from pension of whole or part of any pecuniary loss caused to the employer in a departmental or judicial proceeding if the pensioner is found guilty of gross misconduct or negligence during the period of his service then such recovery could be effected provided the departmental proceedings

were instituted while the officer was in service. If such departmental proceedings are not instituted while the officer was in service then the same cannot be instituted without the prior sanction of the superior authorities like the Government and in any case cannot be in respect of an event which has taken place more than four years before such institution. The explanation appended to Rule 2.2 (b) clarifies that the departmental proceeding would be deemed to be instituted only when the charge sheet is issued or if the officer was placed under suspension from an earlier date or in criminal proceedings the challan has been presented.

(Para 8)

Further held, that no inquiry has been instituted in respect of the events of 1999/2000 and a period of four years has already gone by, even the charge sheet has not been issued. The so called show cause notice issued to the petitioner would not constitute the basis to conclude that charge sheet has been issued and the departmental proceedings had commenced.

(Para 8)

Rajinder Goyal, Advocate, for the petitioner.

Amol Rattan Singh, Addl. A.G., Punjab, for respondent No. 1.

Ashwani Prashar, Advocate, for respondent Nos. 2 and 3.

JUDGMENT

M.M. KUMAR, J

(1) The prayer made by the petitioner in the instant petition filed under Article 226 of the Constitution is for quashing order dated 13th November, 2003 (P-3) effecting recovery of Rs. 2,93,285 from his Death-cum-Retirement Gratuity, after his retirement.

(2) The petitioner was appointed on the post of Lecturer by the Managing Committee, Guru Nanak Dev Bharat College, Narur Panchat-respondent No. 3 on 24th July, 1971 against an aided post. The aforementioned institution is affiliated to Guru Nanak Dev University, Amritsar-respondent No. 4. The appointment of the petitioner was duly approved by respondent No. 1. On the basis of his excellent record, the petitioner was appointed as Principal on 1st

November, 1999 in the Guru Nanak Dev Bharat College, Narur Panchhat-respondent No. 2. His pay on the post of Principal was protected by order dated 21st June, 2000 and he was allowed to serve as Principal at his basic pay of Rs. 16,200 with effect from the date of his joining, which was 1st November, 1999 (P-7). He retired on attaining the age of superannuation on 28th January, 2003. Consequently, he became entitled to all his retiral benefits including gratuity, which were not paid. In that regard, the petitioner sent a legal notice dated 10th April, 2003 (P-1). A show cause notice was issued to the petitioner on 30th October, 2003 alleging various irregularities (P-2). The aforementioned show cause notice has never been received by the petitioner as he was in England from 26th June, 2003 to 4th December, 2003. However, respondent Nos. 2 and 3 passed the impugned order dated 13th November, 2003 (P-3) and thereby recovered a sum of Rs. 2,93,285 out of the gratuity amount payable to him. Thereafter, the petitioner sent legal notice dated 6th July, 2004 (P-4) requesting them to withdraw the order dated 13th November, 2003 (P-3). The order dated 13th November, 2003 (P-3), which is the subject matter of challenge in this petition reads as under :—

“You worked as Lecturer in Punjabi from 24th July, 1971 to 31st October, 1999 in our College. The post of Principal was advertised and you applied in response to the same. You were selected and appointed as a Principal on probation for one year on 1st November, 1999 in the pay scale of Rs. 12,000—18,300. As you were fresh appointee, you were required to claim pay Basic Pay of Rs. 12,000 but you fixed your basic pay at Rs. 14,940. Therefore, you have drawn excess amount of Rs. 2,23,285 from 1st November, 1999 to 28th January, 2003. Besides this, you purchased an old Photostat Machine as a new one at a cost of Rs. 76,200 whereas the actual cost of the old machine was Rs. 26,200. This machine never functioned and all Photostat work was got done from the open market. Therefore, you misappropriated Rs. 50,000 of the College. In addition to above, 65 Books of the College Library costing Rs. 20,000 were with you. You neither returned the books nor reimbursed the price of books. Thus an

amount of Rs. 20,000 was payable by you on account of the cost of books.

A show cause notice No. P.F./I.S. Wasu, dated 30th October, 2003 was given to you under registered A.D. Post as well as under certificate posting. While the Regd. A.D. notice has been received back undelivered, but the notice sent under certificate posting has not been received back and the same is deemed to have delivered to you. You were called upon to show cause within 10 days as to why the aforesaid amount be not recovered from you by adjusting the same from your gratuity. However, no reply has been received.

Now the matter has been considered by the Managing Committee of the College in its meeting held on 12th November, 2003 and because of reasons given above, it has been decided to make a recovery of Rs. 2,93,285. Therefore, the amount of Rs. 2,93,285 has been adjusted out of the gratuity payable to you. Consequently a cheque of balance amount of Rs. 35,563 No. CD0742525, dated 14th November, 2003 is enclosed herewith."

(3) Mr. Rajinder Goyal, learned counsel for the petitioner, has argued that the impugned order suffers from patent illegality, inasmuch as, the petitioner was never considered as a fresh appointee nor he was given the basic pay of Rs. 12,000 as suggested by the impugned order. He has drawn our attention to resolution dated 21st June, 2000 (P-7), passed by the Managing Committee, Guru Nanak Nav Bharat College, Narur Panchhat-respondent No. 3, which shows that they pay of the petitioner as lecturer was protected because at the time of his selection as Principal he was already serving as Lecturer at the basic pay of Rs. 16,200, which fact was duly verified by the D.P.I. (Punjab), Chandigarh. Therefore, he was allowed to serve as Principal at his basic pay of Rs. 16,200 with effect from the date of his joining which was 1st November, 1999. Mr. Goyal has further argued that no recovery in any case could be effect after the retirement of the petitioner as is sought to be made from him by the impugned order. He has

referred to the allegation of purchase of an old photostat machine, which is alleged to have been purchased at the rate of new machine. It has been alleged that the machine had never functioned and the photostat work was got done from the open market. On the aforementioned basis, it has been considered as proved that Rs. 50,000 has been misappropriated by the petitioner. Learned counsel has also pointed out that the cost of 65 books is also sought to be recovered from the petitioner which has been determined at Rs. 20,000.

(4) Mr. Ashwani Prashar, learned counsel for respondent Nos. 2 and 3, has submitted that the petitioner cannot be permitted to go scot free as he has misappropriated public funds by not returning library books and by supplying old photostat machine charging rate of a new photostat machine. He has maintained that the petitioner has to be considered as a fresh appointee on the post of Principal by granting him minimum of the pay scale of Rs. 12,000. He has also pointed out that the petitioner has earlier filed a complaint under Section 12 of the Consumer Protection Act, 1984, before the District Consumer Disputes Redressal Forum, Kapurthala and the complaint was subsequently withdrawn by recording the statement of the petitioner that the claims made by him stood satisfied.

(5) Having heard learned counsel for the parties and perusing the record, we are of the considered view that the Guru Nanak Nav Bharat College, Narur Panchhat and its Managing Committee-respondent Nos. 2 and 3 have acted arbitrarily in passing the order dated 13th November, 2003. The version of respondent Nos. 2 and 3 that the petitioner was a fresh appointee as projected in the impugned order dated 13th November, 2003 (P-3) is absolutely illegal in view of the fact that a resolution dated 21st June, 200 (P-7) was passed by the Managing Committee, Guru Nanak Nav Bharat College, Narur Panchhat- respondent No. 3 stating that the pay drawn by the petitioner as Lecturer stood protected and he was allowed to serve as Principal at his basic pay of Rs. 16,200 w.e.f. the date of his joining. The resolution passed by the Managing Committee reads as under :—

“A meeting of the College Governing Council was held on 19th June, 2000 and the following resolution was passed.

Dr. Inderjit Singh Wasu, Principal had been given appointment of Principal in the Grade of 12,000–420–18,300 w.e.f. date of Joining i.e. 1st November, 1999 (Minimum to be fixed at Rs. 12,840) which had been approved by D.P.I. (Punjab), Chandigarh,—*vide* letter No. 11/89-99/Grant-1(5) dated 6th June, 2000. Since Dr. Inderjit Singh Wasu, at the time of Selection as Principal has already been serving as a Lecturer in Grade at Basic Pay of Rs. 16,200 and this basic pay had already been verified by the D.P.I. (Punjab), Chandigarh. So he is allowed to serve as Principal at his Basic Pay of Rs. 16,200 w.e.f. his joining date i.e. 1st November, 1999.”

(6) It is, thus, evident that respondent Nos. 2 and 3 have acted arbitrarily by passing the impugned order and lowering his basic pay at Rs. 12,000. It cannot be held that the petitioner has drawn excess amount of Rs. 2,23,285 from 1st November, 1999 to 28th January, 2003. Similarly, the allegations with regard to purchase of photostat machine cannot be gone into after the petitioner has retired. It is admitted position that the petitioner has retired on 28th January, 2003 and the impugned order has been passed on 13th November, 2003 after the lapse of about ten months. Respondent Nos. 2 and 3 also levelled allegation against the petitioner that Rs. 20,000 on account of loss of book was recoverable from the petitioner. It is well settled that no charge sheet could be issued against an employee after his retirement because the relationship of employer and employee come to an end with the superannuation of the employee subject to payment of his retiral benefits. After retirement only those proceedings are allowed to continue which have been initiated during the course of employment and if an employee is found guilty then either a cut in his pension could be imposed or recovery could be effected from his gratuity.

(7) We are further of the view that the allegation against the petitioner with regard to purchase of second hand photostat machine cannot be gone into after his retirement. From the perusal of the written statement it appears that the machine was purchased somewhere in 1999 and the allegation now levelled against the petitioner is that it was second hand machine purchased by the

petitioner when he was Principal and he paid the amount showing the machine to be brand new. It is evident that the petitioner retired on 28th January, 2003 and there was ample time with the respondents to proceed against him during his service instead of levelling this allegation after his retirement. Such a method of fastening liability on a retired employee has to be termed as unfair and arbitrary. If the petitioner has committed the offence of misappropriation then by issuing a show cause notice such an order cannot be passed by concluding that the allegation stood proved and the petitioner was guilty of misconduct of such a magnitude. Likewise, the allegation of misappropriating of books and seeking recovery of an amount of Rs. 20,000 from the retiral benefits of the petitioner would fall in the same category. In that regard reference may be made to the letter dated 16th July, 2004 (R-2/2) addressed by the petitioner to the Principal to show that the petitioner had returned 23 books to the Librarian and the Librarian made the revised list. The total cost calculated by the Librarian was Rs. 992.10 paise and a cheque to that effect was sent by the petitioner, which was not accepted by the Principal. The cheque was sent by the petitioner to the Principal thereafter. Therefore, the disputes of this nature could not be raised after the retirement of the petitioner.

(8) There are omnibus principles deducible from the Punjab Civil Services Rules, Volume II (Part-I) Chapter 2 deals with general provisions relating to grant of pension. Rule 2.2 specifically deals with recovery which could be effected from pension. According to Rule 2.2(b), right of the employer to withhold or withdraw a pension or any part thereof, whether permanently or for a specified period, has been reserved but with certain conditions. The right of ordering recovery from pension of whole or part of any pecuniary loss caused to the employer in a departmental or judicial proceeding if the pensioner is found guilty of gross misconduct or negligence during the period of his service then such recovery could be effected provided the departmental proceedings were instituted while the officer was in service. If such departmental proceedings are not instituted while the officer was not in service then the same cannot be instituted

without the prior sanction of the superior authorities like the Government and in any case cannot be in respect of an event which has taken place more than four years before such institution. The explanation appended to Rule 2.2(b) clarifies that the departmental proceedings would be deemed to be instituted only when the charge-sheet is issued or if the officer was placed under suspension from an earlier date or in criminal proceedings the challan has been presented. These omnibus principles have been tested on the touchstone of the reasonableness and has stood the test all time. Therefore, we do not see any reason not to extend the same to the employees of the privately aided schools and colleges. If the aforementioned principles are applied to the facts of the present case, it would then become obvious that no inquiry has been instituted in respect of the event of 1999/2000 and a period of four years have already gone by, even the charge-sheet has not been issued. The so called show cause notice issued to the petitioner would not constitute the basis to conclude that charge-sheet has been issued and the departmental proceedings had commenced. This wholesome principle has been applied by Hon'ble Supreme Court in the case of **Union of India versus K. V. Jankiraman**. (1)

(9) For the reasons stated above, this petition succeeds. The impugned order dated 13th November, 2003 (P-3) effecting recovery of Rs. 2,93,285 from the Death-cum-Retirement Gratuity of the petitioner, is hereby quashed. Accordingly, directions are issued to the respondents to pay the aforementioned amount to the petitioner within a period of two months. The petitioner shall also be entitled to interest @ 12% per annum, has been held by a Full Bench of this Court in the case of **R. S. Randhawa versus State of Punjab**, (2). The needful shall be done within a period of two months from the date a certified copy of this order is received by the respondents.

R.N.R

(1) (1991)4 S.C.C. 109

(2) 1997(3) R.S.J. 318