

Before Harsimran Singh Sethi, J.

RAKSHA DEVI—*Petitioner*

versus

**PUNJAB STATE POWER CORPORATION LTD. AND
OTHERS**—*Respondent*

CWP 1511 of 2017

January 16, 2020

*Constitution of India, 1950—Art.226—Disciplinary enquiry—
Punjab State Electricity Board Employees Punishment and Appeal
Rules, 1971—Punishment of recovery imposed prior to issue of
charge sheet and holding of disciplinary enquiry— Held, not
permissible under the Rules—Post-decisional enquiry is never
envisaged under any rule, much less under 1971 Rules—Impugned
order of recovery quashed.*

Held that, from the pleadings, it is clear that the respondents themselves have admitted that at the time of passing of the order dated 22.12.2016 (Annexure P-7), no enquiry was held and the enquiry has been initiated after imposing the punishment of recovery. No provision under any service Rules has been produced on record showing that the order of punishment can precede the enquiry proceedings. It is only after an employee is found guilty of the allegations, which are alleged against him/her, appropriate decision is to be taken by the competent authority. In the present case, the order of recovery has been passed much prior to the issuance of the charge-sheet and holding of the enquiry, which is not permissible under the Rules. Post decisional enquiry is never envisaged under any Rules, much less the Rules under which the enquiry proceedings have been initiated against the petitioner now.

(Para 8)

Tribhuvan Dahiya
Mohit Garg, Advocate
for the petitioner.

HARSIMRAN SINGH SETHI, J. oral

CM No.17311 of 2019

(1) The present application has been filed for placing on record the written statement on behalf of respondents No.1 to 3.

(2) Application is allowed.

(3) Written statement on behalf of respondents No.1 to 3 is taken on record.

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(4) In the present writ petition, the grievance which is being raised by the petitioner is that vide order dated 22.12.2016 (Annexure P-7), recovery of Rs.1,93,366/- has been imposed and that too, without holding any enquiry into the allegations of the negligence/mis-conduct, which are being attributed to the petitioner for the recovery of the said amount.

(5) Upon notice of motion, the respondents have filed reply. In the reply, the respondents have stated that after passing of the impugned order dated 22.12.2016 (Annexure P-7), the chargesheet has been issued to the petitioner on 06.04.2007 under Rule 8 of the Punjab State Electricity Board Employees Punishment and Appeal Rules, 1971 (for short 'the Rules') and the petitioner has already associated herself in the said enquiry and the witnesses have also been examined and appropriate orders on the same will be passed.

(6) The relevant paras of the reply are as under:

“1. That instant petition is liable to be dismissed as infructuous because the answering respondents have already initiated enquiry proceedings against the petitioners under Rule 8 of Punjab State Electricity Board (now PSPCL) Employees Punishment and Appeal Rule, 1971. It is submitted that the primary grouse of the petitioner was that she had not been given adequate opportunity of representing herself and therefore keeping in view the principles of natural justice and to give an effective hearing, departmental enquiry proceedings have been initiated and the same are currently going on at the evidence stage.

2. That the chargesheet against the petitioner was issued on 06.04.2017 under Rule 8 of Punjab State Electricity Board (now PSPCL) Employees Punishment and Appeal Rule, 1971 whereby the petitioner has been supplied all the necessary documents along with chargesheet, list of accusation etc. The petitioner has also joined the enquiry. At this stage most of the departmental witnesses have been examined and the next date for the remaining departmental

witnesses is 06.08.2019.

3. That pursuant to the initiation of the departmental proceedings against the petitioner, Joint Secretary (Enquiry Patiala) has been appointed as Enquiry Officer in the case under Rule 8(2) of the 1971 Rules and Sh. Paramjit Singh, Senior Assistant has been appointed as Presenting Officer in the case on 24.07.2017.

4. That the enquiry proceedings commenced on 17.08.2017 and thereafter the proceedings have continued on 21.08.2017, 04.09.2017, 14.09.2017, 13.10.2017, 09.11.2017, 05.12.2017, 19.01.2018, 15.03.2018, 05.04.2018, 07.09.2018, 18.12.2018, 17.01.2019, 29.01.2019, 27.02.2019, 03.04.2019, 23.04.2019 and 17.06.2019. It is pertinent to mention that most of the departmental witnesses have been examined and the enquiry proceedings are at very advanced stage and are likely to conclude within the next few months. It therefore no longer lies in the mouth of the petitioner to submit that proper procedure has not been followed or adequate opportunity of hearing has not been granted. As the petitioner is free to lead her defense after the closure of the departmental evidence.”

(7) I have heard the counsel for the petitioner. There is no representation on behalf of the respondents.

(8) From the pleadings, it is clear that the respondents themselves have admitted that at the time of passing of the order dated 22.12.2016 (Annexure P-7), no enquiry was held and the enquiry has been initiated after imposing the punishment of recovery. No provision under any service Rules has been produced on record showing that the order of punishment can precede the enquiry proceedings. It is only after an employee is found guilty of the allegations, which are alleged against him/her, appropriate decision is to be taken by the competent authority. In the present case, the order of recovery has been passed much prior to the issuance of the chargesheet and holding of the enquiry, which is not permissible under the Rules. Post decisional enquiry is never envisaged under any Rules, much less the Rules under which the enquiry proceedings have been initiated against the petitioner now.

(9) Keeping in view the above, it is clear that the impugned

order dated 22.12.201Z (Annexure P-7) has been passed without following the due procedure of law as envisaged under the Rules and, therefore, the same cannot sustain and is, accordingly, set aside.

(10) Though the impugned order has been set aside but the respondents will be within their jurisdiction to pass appropriate orders keeping in view the proceedings, which have been initiated against the petitioner by issuance of the chargesheet dated 06.04.2017. No opinion is expressed by this Court on the allegations, which have been alleged against the petitioner in the chargesheet dated 06.04.2017. The respondents will be within their jurisdiction to pass appropriate orders in respect of the allegations alleged in the said chargesheet.

(11) Keeping in view the facts and circumstances of the case, the writ petition is allowed in above terms.

Tribhuvan Dahiya