

(31) For the reasons stated above, this petition succeeds. The appointment of Dr. V.S. Pahil-respondent No. 3, is set aside and the order of his appointment dated 15th November, 2007 (P-1) is quashed. The amendment or resolution dated 29th October, 2007 (P-13) is also set aside. Respondent No. 2 Agency is directed to issue fresh circular/ advertisement to fill up the post of Director in accordance with law and the needful shall be done within a period of two months from the date of receipt of a certified copy of this order. However, till the appointment of the Director is finalized, the Director, Agricultural Department, Haryana, shall ex-officio perform the duty as the Director of respondent No. 2 Agency. The petitioners are held entitled to their costs, which are quantified at Rs. 50,000 and the same shall be paid by respondent Nos. 1 and 2 in equal proportion.

R.N.R.

Before M.M. Kumar & Sabina, JJ.

BALDHIR SINGH,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

C.W.P. No. 17458 of 2007

18th July, 2008

Constitution of India, 1950—Art. 226—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rl. 8—Punjab Civil Services Rules, Vol. II-Rl.2.2—Initiation of departmental proceedings after more than five years of petitioner's retirement—Rl. 2.2(b)(2)(ii) stipulates that no departmental proceedings against an officer could be initiated against a retired employee in respect of an event which took place more than four years preceding date of such initiation—Petition allowed, initiation of departmental proceedings against petitioner quashed.

Held, that Rl.2.2(b) of the Punjab Civil Services Rules, Vol. II which has been invoked by the Government to charge sheet the

petitioner itself prohibits institution of an enquiry against a retired officer for an event which had taken place more than four years before such institution. Rl.2.2(b)(2) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by efflux of time are permitted to be reopened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree. The '*Sword of Damocles*' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end.

(Paras 5 & 6)

Further held, that no inquiry could be initiated against a retired employee in respect of an event which has taken place more than four years preceding the date of such initiation. The event in respect of which inquiry has been initiated is more than five years old. Therefore, the same is liable to be set aside.

(Para 8)

M.P. Goswami, Advocate, *for the petitioner*.

P.C. Goel, Sr. DAG, Punjab, *for the respondents*.

M.M. KUMAR, J.

(1) Challenge in this petition filed under Article 226 of the Constitution is to the charge sheet dated 13th March, 2007 (P-3) and order dated 30th July, 2007 (P-5), appointing an enquiry officer to hold

enquiry under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 read with Rule 2.2(b) of the Civil Services Rules, Volume-II, against the petitioner.

(2) Shri Baldhir Singh, petitioner in the instant petition retired from service as Excise and Taxation Officer, Ludhiana-I, with effect from 31st December, 2001 (P-1). Admittedly, on that date no departmental/vigilance enquiry etc.. was pending against him. After more than five years of his retirement, the Financial Commissioner (Taxation) and Secretary to Government of Punjab, Department of Excise and Taxation-respondent No. 1, has issued a charge sheet to him on 13th March, 2007 (P-3) with the allegation that the petitioner had issued a Registration Certificate dated 11th November, 2001 in favour of M/s Shiv Shakti Wool Traders, Ludhiana, without verifying as to whether the said dealer was actually doing any business at the given premises. It has further been alleged that due to the negligence of the petitioner, the State has suffered a loss of Rs. 64,89,931 on account of non-depositing of tax, excluding the element of penalty to be imposed under the provisions of the P.G.S.T. Act, 1948. Denying the allegations and referring to Rule 2.2(b)(2)(ii) of the Punjab Civil Services Rules, Volume-II (for brevity, 'the Rules'), the petitioner filed his reply on 13th June, 2007 taking the plea that no inquiry could have been initiated against him for an alleged act which pertains to more than four years of his retirement (P-4). The respondents instead of dropping the charge sheet, appointed an Enquiry Officer, *vide* order dated 30th July, 2007 (P-5). The aforementioned charge sheet and order dated 30th July, 2007 are subject matter of challenge in the instant petition.

(3) Mr. M.P. Goswami, learned counsel for the petitioner has argued that the impugned charge sheet is not sustainable in the eyes of law because the same is violative of the statutory provisions of Rule 2.2(b)(2)(ii) of the Rules, which stipulates that no departmental proceedings against an officer could be initiated in respect of any event which took place more than 4 years before such institution. Learned counsel has argued that the petitioner stood retired from service on 31st December, 2001 and charge sheet has been issued on 13th March, 2007 i.e. after more than five years of his retirement. In order to substantiate his argument, learned counsel has placed reliance on various Division

Bench judgments of this Court rendered in the cases of **Puran Chand versus State of Punjab (1)**, **L.B. Gupta, Chief Engineer versus PSEB (2)**, **R.C. Gupta versus PSEB (3)**, **Gurdev Singh versus State of Punjab (4)**, and **M.P. Goswami versus State of Punjab** (C.W.P. No. 17382 of 2005, decided on 7th August, 2007, (Annexure P-6).

(4) Mr. P.C. Goel, learned State counsel on the other hand has submitted that the action of the respondents is justified because due to the negligence of the petitioner, State Government has suffered huge loss to public exchequer. He has further argued that in response to the charge sheet the petitioner has already filed his reply and Enquiry Officer has been appointed. Learned State counsel has insisted that the inquiry is at an advance stage and it would not be proper to quash the inquiry at this juncture merely on the technical ground envisaged by Rule 2.2(b)(2)(ii) of the Rules. Therefore, no cause of action has arisen for the petitioner to file the instant petition, which is liable to be dismissed.

(5) Having heard learned scounsel for the parties and perusing the paper book with their able assistance, we are of the considered view that there is merit in the instant petition and the same deserves to be allowed. Rule 2.2(b) of the rules, which has been invoked by the Government to charge sheet the petitioner, itself-prohibits institution of an enquiry against a retired officer for an event which had taken place more than four years before such institution. This prohibition is contained in sub-clause (ii) of sub-rule (2) of Rule 2.2(b) which reads thus :-

“2.2(b)(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 any event which took place more than four years before such institution.”
(emphasis added)

(6) A bare perusal of the aforementioned Rule makes it clear that Rule 2.2(b)(2)(ii) places a complete embargo on holding of an

-
- (1) 2002(2) RSJ 85
(2) 2001 (4) RSJ 127
(3) 2002 (1) RSJ 509
(4) 2004 (2) RSJ 127

enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by afflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree. The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end. Moreover, the learned State counsel has not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner.

(7) We also find merit in the contention raised by the learned counsel for the petitioner that the question raised in the instant petition is no longer *res integra* and has been adjudicated in various Division Bench judgments of this Court in the cases of Puran Chand (supra), L.B. Gupta (supra) R.C. Gupta (supra) Gurdev Singh (supra) and M.P. Goswami (supra).

(8) The aforementioned discussion shows that on principle as well as on precedent it has been held that no inquiry could be initiated against a retired employee in respect of an event which has taken place more than four years preceding the date of such initiation. In the present case the event in respect of which inquiry has been initiated is more than five years old. Therefore, the same is liable to be set aside.

(9) For the reasons aforementioned this petition succeeds. The charge sheet dated 13th March, 2007 (P-3) and order dated 30th July, 2007 (P-5) appointing an Enquiry Officer and all other subsequent proceedings are quashed.

R.N.R.