

(2022-3)207 PLR 050
MAHABIR SINGH (RETD.) v. UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED

PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Harsimran Singh Sethi.
 MAHABIR SINGH (RETD.) – Petitioner,
Versus

UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED and others – Respondents.
 CWP No. 4868 of 2017

(i) Uttar Haryana Bijli Vitran Nigam Limited - Service Matter - Show Cause Notice has been issued only in the year 2015 i.e. after 5 years of the retirement of the petitioner - Junior Engineer - Shortage of missing parts of T/Fs Oil and excess of calls of mobiles attributed to the period while he was working as J.E., Area Incharge of a particular Division - Nothing has been brought to the notice of this Court as to how, the shortages have been calculated and attributed to the petitioner - The order imposing the punishment is totally cryptic and non-speaking - It is a matter of fact that after the retirement, the area would have remained under various officers for a period of 5 years. [Para 2, 6]

(ii) Uttar Haryana Bijli Vitran Nigam Limited - Without there being any specific rule giving jurisdiction to an employer to initiate disciplinary proceedings after retirement or to continue the disciplinary proceedings after retirement, employer cannot initiate disciplinary proceedings against an employee who has already retired from service and cannot continue the proceedings against him/her after his/her retirement though, the same have been issued during his service career.

[Para 7]

Cases referred to:-

1. 2003(3) SCT 694, *Chandra Singh v. State of Rajasthan*.
2. (2014-4)176 PLR 460, *Jogi Ram v. Haryana State Federation of Consumer's Co-operative Wholesale Stores*.

Mr. Naveen Daryal, for the petitioner. Mr. Pardeep Rajput, for the respondents.

Harsimran Singh Sethi J. (Oral) - (10th March, 2022) -In the present petition, the challenge is to the order dated 23.12.2015 (Annexure P-13) by which, a recovery of `95,177/- has been imposed to be recovered from the pensionary benefits of the petitioner.

2. As per the facts mentioned in the petition, the petitioner while working as a Junior Engineer with the respondent-Corporation, attained the age of superannuation and retired on 31.10.2010. After a period of 5 years of the retirement, the petitioner was issued a show cause notice on 15.10.2015 asking him to tender explanation for the shortage of missing parts of T/Fs Oil and excess of calls of mobiles attributed to the period while he was working as J.E., Area Incharge of a particular Division. In pursuance to the said show cause notice, the impugned order was passed on 23.12.2015 (Annexure P-13) making the petitioner liable for the said shortage and a recovery to the tune of Rs. 95,177/- had been ordered, which amount has already been recovered from his pensionary benefits.

3. Learned counsel for the petitioner argues that on the date when the show cause notice was issued, the petitioner had already retired and there was no master-servant relationship between the petitioner and the respondent-corporation and keeping in view the rules governing his service, there is no power with the respondent-corporation to initiate any proceeding against a retired employee, therefore, show cause notice dated 15.10.2015 and consequential order dated 23.12.2015 (Annexure P-13) are beyond the jurisdiction of the respondent-corporation and the same are liable to be set aside.

4. Learned counsel for the respondents submits that the petitioner was found responsible

for shortage of the missing parts within the area for which he remained Incharge while in service and, therefore, the shortage was recovered. Learned counsel for the respondents further submits that it is their inherent right to recover the shortages for which an employee was liable for while performing his duties.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It is not a disputed fact that petitioner retired from service on 31.10.2010. The show cause notice has been issued only in the year 2015 i.e. after 5 years of the retirement of the petitioner. Nothing has been brought to the notice of this Court as to how, the shortages have been calculated and attributed to the petitioner. The order imposing the punishment is totally cryptic and non-speaking. It is a matter of fact that after the retirement, the area would have remained under various officers for a period of 5 years. Hence, the attribution of shortage can only be attributed to the petitioner with cogent evidence, which needs to be stated in the impugned order so that the petitioner could be made liable for the recovery of the shortages. The order passed by the respondents is totally cryptic and non-speaking and does not give the detail as to how, the petitioner has been found liable for the shortages and that too after a period of 05 years of his retirement.

7. Not only this, the question of law which also arises in the present proceedings is whether, after retirement an employee can be proceeded against. It is a settled principle of law that after the retirement, the employee can only be proceeded against in case, the rules governing the service permit for the said action. No provision in law has been brought to the notice of this Court by learned counsel appearing on behalf of the respondents so as to justify its authority to serve a show cause notice so as to initiate disciplinary proceeding against a retired employee. In the absence of any authority shown by the respondents, it can be safely held that the respondents did not had any authority to initiate disciplinary proceedings against a retired employee.

8. The Hon'ble Supreme Court of India while deciding Civil Appeal No.2101 of 1999 titled as *Bhagirathi Jena v. Board of Director O.S.F.C.* has held that in case, there is no provision under the rules governing the service for continuation of disciplinary proceedings after retirement of an employee, no punishment or no deduction from the retiral benefit can be done as the proceedings after the retirement automatically lapses. Relevant paragraph is as under:-

"In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

9. Hon'ble Supreme Court of India in *Chandra Singh v. State of Rajasthan and another*¹2003(3) SCT 694 also held that any proceedings, which have been undertaken after the retirement becomes without any authority or jurisdiction and any order passed in pursuance to the said proceedings initiated or continued after retirement, without there being any provisions giving jurisdiction to an employer to the said effect, are nullity in law. Relevant paragraph of the said judgment is as under:-

"We also cannot accept the contention of Mr.Rao that in the case of Mata DeenGarg, the departmental proceedings could be kept pending despite the passing of the

impugned order. The High Court had not passed any order in the departmental proceedings. It sought to invoke the jurisdiction which was conferred on the High Court and the State by reason of a statutory rule. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer the employee cannot be made to retire. There must exist specific provision in the pension rules in terms whereof, whole or a part of the pension can be withheld or withdrawn wherefor a proceeding has to be initiated. Furthermore, no rule has also been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. In absence of such a proceeding, the High Court or the State cannot contend that the departmental proceedings against the appellant Mata Deen Garg could continue."

10. This Court has also decided the same question of law, as to whether, an employee who is already retired from service can be charge sheeted or the charge sheet issued to an employee while in service can continue after his retirement, while deciding CWP No.15247 of 2011 titled as *S.C. Jain v. Managing Director Confed and others*, and held as under:-

"A perusal of the aforesaid provisions clearly shows that the penalties, as provided for under the Rules, can be imposed only on an employee, who is drawing salary, either appointed on temporary or permanent basis. The penalties, which can be inflicted, show that the same are also of the kind which can be on an employee in service. None of the punishments, as extracted above, suggest that it can be imposed after an employee has retired from service. The issue as to whether departmental proceedings, even if initiated against an employee during service, can continue after retirement was gone into by Hon'ble the Supreme Court in *Chandra Singh's case* (supra), wherein it was opined that in the absence of specific Rule to that effect and once an employee is permitted to retire, the proceedings cannot continue. In view of my aforesaid discussion, once no provision in the Rules has been cited, in terms of which the proceedings against retired employee can be initiated, in my opinion, the action of the authorities in issuing charge-sheets to the petitioners after their retirement is without jurisdiction and is liable to be set aside. Ordered accordingly.

Withheld retiral benefits of the petitioners be released within one month."

11. Further, a co-ordinate Bench of this Court by relying upon judgement in *S.C. Jain's Case* (supra) while deciding *Jogi Ram v. Haryana State Federation of Consumer's Co-operative Wholesale Stores*,²(2014-4)??? PLR 460 held as under:-

"7. On perusal of aforesaid provisions, it is clear that the penalties, as provided under the Rules, 1975, can be imposed upon an employee, who is drawing salary, either appointed on temporary or permanent basis. It is also clear that the penalty can be imposed only on an employee but after retirement, the petitioner cannot be termed as an employee and as such, no penalty can be inflicted upon him.

8. The issue as to whether the departmental proceedings can be initiated against an employee after retirement was gone into by Hon'ble the Supreme Court in *Chandra Singh v. State of Rajasthan and another* 2003(6) SCC 545 and of this Court in *S.S. Arya v. Uttar Haryana Bijli Vitran Nigam, Panchkula and others* 2009(8) SLR 53.

9. It was held in the aforesaid judgements that in the absence of any specific Rule to this effect, no proceedings can be continued/initiated, once an employee is permitted to retire.

Similar view was also held in the judgement of *S.C. Jain's case* (supra).

10. In view of the facts and law position as mentioned above, it is clear that when there is no provision in the Rules as to the issuance of charge sheet or imposing a penalty upon an employee after retirement, the charge sheet issued to the petitioner is without jurisdiction and the same is liable to be set aside.

11. Accordingly, the present petition is allowed and the impugned charge sheet dated 12.09.2012 as well as the statement of allegations with the charge sheet dated 10.12.2012 are set aside.

The respondents are directed to release the retiral benefits to the petitioner within a period of two months from the date of receipt of certified copy of this order."

12. A bare perusal of the above cited law would show that question of law raised in this petition has already been decided more than once by the Hon'ble Supreme Court of India as well as by this Court holding that without there being any specific rule giving jurisdiction to an employer to initiate disciplinary proceedings after retirement or to continue the disciplinary proceedings after retirement, employer cannot initiate disciplinary proceedings against an employee who has already retired from service and cannot continue the proceedings against him/her after his/her retirement though, the same have been issued during his service career.

13. Nothing has been shown to this Court as to whether any rule governing the service authorises the respondent-UHBVNL either to continue with the charge sheet, served upon an employee during his service career, even after his retirement or to initiate disciplinary proceedings after the retirement of an employee. In the absence of any rule, it can be safely held that the respondent-UHBVNL does not have any jurisdiction to continue with the disciplinary proceedings after the retirement or to initiate disciplinary proceedings against the retired employee.

14. Keeping in view the above, the impugned order of recovery passed by the respondents dated 23.12.2015 (Annexure P-13) is liable to be set aside on the merits of the case itself given the facts of jurisdiction to serve show cause notice.

15. Consequently, the impugned order dated 23.12.2015 (Annexure P-13) is set aside. The recovery, if any, made from the petitioner be refunded to him within a period of two months of the receipt of copy of this order.

Petition is allowed in above terms.

R.M.S. – Petition allowed.