

CWP- 5254 of 2005 and other connected cases

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP- 5254 of 2005
Date of decision: 30.09.2019**

Nirmal Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP- 23386 of 2016

Sukhjinder Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another Respondents

CWP-28788 of 2017

Nath Ram Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another Respondents

CWP-22816 of 2019

Raj Paul Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another Respondents

**For Subsequent orders see CM-13463-CWP-2020 Decided by HON'BLE MR. JUSTICE HARSIMRAN
SINGH SETHI**

CWP- 5254 of 2005 and other connected cases

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CWP-5226 of 2017

Rajinder Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-6617 of 2015

Dilbag Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd
and another

.... Respondents

CWP-13785 of 2018

Raj Pal

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-19444 of 2017

Jasbir Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-9454 of 2015

Haricharan

.... Petitioner

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CWP- 5254 of 2005 and other connected cases

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versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-7817 of 2006

Sat Paul Jindal

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-6353 of 2015

Amarjit Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-11856 of 2005

Harkirat Singh Grewal

.... Petitioner

versus

State of Punjab and others

.... Respondents

CWP-12702 of 2005

Manjit Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

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CWP-3680 of 2015

Gurbachan Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-16945 of 2017

Amrik Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd

.... Respondent

CWP-18360 of 2017

Jagdev Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-20957 of 2018

Balwinder Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-20923 of 2018

Nachhatar Singh

.... Petitioner

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CWP- 5254 of 2005 and other connected cases

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versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent
CWP-14123 of 2018

Prabhjot Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent
CWP-4916 of 2018

Gurdev Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd Respondent
CWP-16433 of 2017

Balwinder Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd Respondent
CWP-15305 of 2019

Som Dutt Petitioner

versus

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CWP- 5254 of 2005 and other connected cases

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Managing Director, Punjab State Civil Supplies Corporation
Ltd and others

.... Respondent

CWP-16936 of 2017

Nand Lal

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd

.... Respondent

CWP-20773 of 2017

Nanak Chand

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-1437 of 2016

Subhash Johar

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondents

CWP-12815 of 2019

Santokh Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and others

.... Respondents

CWP-14666 of 2019

Avtar Singh

.... Petitioner

versus

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Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-9802 of 2019

Surinder Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) ... Respondent

CWP-10055 of 2019

Jagjiwan Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-9970 of 2019

Gurpritam Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-12193 of 2005

Nirmal Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-10244 of 2019

Rajinder Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-12418 of 2005

Nirmal Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-9755 of 2019

Harjinder Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-9760 of 2019

Ramesh Kumar

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-12068 of 2019

Sikandar Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-9706 of 2019

Sikander Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-29563 of 2017

Jasbir Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-16638 of 2018

Vijay Kumar Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another Respondents

CWP-14562 of 2017

Vijay Kumar Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another Respondents

CWP-10176 of 2016

Harmesh Kumar Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-5264 of 2016

Suresh Kumar Sharma Petitioner

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versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-17353 of 2017

Jagjiwan Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-25307 of 2018

Ravi Kumar

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-27410 of 2018

Kulwant Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-4546 of 2016

Albel Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and others

.... Respondents

CWP-8154 of 2017

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CWP- 5254 of 2005 and other connected cases

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Baldev Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

CWP-14548 of 2017

Harmesh Kumar

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-10266 of 2019

Mohinder Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-20879 of 2018

Baj Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondents

CWP-21802 of 2018

Sham Lal

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)

.... Respondent

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CWP-11135 of 2019

Sikandar Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-8085 of 2017

Harmesh Kumar

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-10243 of 2019

Malkit Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-13741 of 2018

Nirmal Singh

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP)
and another

.... Respondents

CWP-20944 of 2018

Babbar Sher

.... Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-13170 of 2018

Jagjiwan Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-10310 of 2019

Sikandar Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) and another Respondents

CWP-10272 of 2019

Sikandar Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) and another Respondents

CWP-25627 of 2018

Kirpal Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-4372 of 2016

Karnail Singh Petitioner

versus

State of Punjab and others Respondents

CWP-1530 of 2018

Balwinder Singh Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CWP-2192 of 2018

Nand Lal Petitioner

versus

Punjab State Civil Supplies Corporation Ltd (PUNSUP) Respondent

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vipin Mahajan, Advocate for the petitioner(s)
in CWP No.5254,12702,11856,12193 of 2005
and CWP No.5256 of 2017.

Mr. J.P. Rana, Advocate for the petitioner(s)
in CWP Nos.1437,10176,5264 of 2016;
CWP Nos.17353,8154 of 2017
CWP Nos.13170,21802,25307,1530,2192,20879 &
20944 of 2018.
CWP Nos.10055,10244,5714,9706,9755,9760,9802
and 9970 of 2019.

Mr. Amrik Singh, Advocate for the petitioner(s)
in CWP Nos.10266,10243,12068,11135,10310,10272 of 2019.

Mr. Vipin Mahajan, Advocate for
the petitioner in CWP-12418 of 2005.

Mr. Kamaldip Singh, Advocate with Mr. Amardeep Singh,
Advocate for the petitioner in CWP No.29563 of 2017.

Mr. Sarwan Singh Sabar, Advocate for the petitioner
in CWP No.4546 of 2016.

Mr. Prateek Pandit, Advocate for petitioner in

CWP No.4372 of 2016.

Mr. K.S. Sidhu, Advocate with Mr. A.S. Sidhu, Advocate for the petitioner in CWP-19444 of 2017.

Mr. K.S. Rekhi, Advocate for the petitioner in CWP-23386 of 2016 and CWP-3680 of 2015.

Mr. D.S. Gurna, Advocate for the petitioner in CWP-28788 of 2017.

Mr. J.S. Rana, Advocate for the petitioner in CWP-22816 of 2019 and CWP-7817 of 2006.

Mr. Amarjit Singh, Advocate for the petitioner in CWP-13785 of 2018 and CWP-6353 of 2015 .
Mr. Parveen K. Garg, Advocate for the petitioner in CWP-9454 of 2015.

Mr. A.D.S. Jatana, Advocate, for the respondent/PUNSUP.

Mr. Tarun Vir Lehal, Advocate for the respondent in CWP-19444 of 2017.

Mr. Athar Ahmed, Advocate for respondent in CWP-6353 of 2015.

Ms. Deepali Puri, Advocate for respondent/PUNSUP in CWP Nos.10272,10243,10266,10244,10055,11135 and 9970 of 2019

Mr. Manpreet Dhaliwal, Advocate for respondent/PUNSUP in CWP Nos. 9706,9755,9760, 9802,12068, of 2019 and CWP Nos. 20944,16638 of 2018

Mr. Anup Singh, Advocate for the respondent-PUNSUP in CWP Nos. 14548, and 17353 of 2017.

Mr. Tarun Vir Lehal, Advocate for respondent in CWP No.21802 of 2018

Mr. Amit Kumar, Advocate for respondents No.1 and 2 in CWP-8085 of 2017.

Mr. Deepak Sabherwal, Advocate for respondent/PUNSUP in CWP Nos. 4546 and 5264 of 2016.

Ms. Sunint Kaur, AAG, Punjab.

HARSIMRAN SINGH SETHI, J.

By this common order, the bunch of writ petitions, details of which have been given in the heading, are being decided as all the writ petitions involve the same question of law and similar facts.

In this bunch of writ petitions, the employees, who have retired from Punjab State Civil Supplies Corporation Limited (in short, 'PUNSUP'), have approached this Court challenging the charge sheets issued to them after their retirement for conducting disciplinary proceedings. Further challenge is to the jurisdiction of the respondent/PUNSUP to continue with the disciplinary proceedings in respect of the charge sheets, which were though issued to them during their service career but the same were not taken to their logical end before their retirement. Contention of the petitioners is that no disciplinary proceedings can be initiated after retirement of an employee or can be continued against the employees of the PUNSUP after their retirement as there is no power with the PUNSUP in that regard under the rules governing service, especially, when the post, from which the petitioners retired, is not pensionable.

Learned counsel appearing on behalf of the petitioners argues that in order to issue a charge sheet to a retired employee to conduct disciplinary proceedings or to continue with the disciplinary proceedings after retirement, a specific power has to be there under the rules governing the service authorising the employer in that regard, which is missing in the rules governing the service of PUNSUP. Learned counsel for the petitioners argues that as no rule governing service entitles the respondent/PUNSUP to issue charge sheet to a retired employee to conduct disciplinary proceedings or to continue with the disciplinary proceedings after retirement, issuance of the charge sheet after

retirement or continuing the disciplinary proceedings after retirement is beyond the jurisdiction of PUNSUP, hence, charge sheets pending against the petitioners, who are retired employees are liable to be set aside.

Facts, as stated in the petitions are not disputed by the learned counsel for the respondents.

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

The question of law, which has been raised in the present writ petitions, as to whether, employer has right to initiate disciplinary proceedings after the retirement of an employee or to continue with the disciplinary proceedings pending against an employee after his/her retirement or initiating a disciplinary proceedings after retirement or to continue the disciplinary proceedings after retirement depends upon the rules governing the service. In case, the rules authorise an employer to continue with the disciplinary proceedings even after the retirement or to initiate disciplinary proceedings after retirement, no grievance can be made by an employee. Once the rules do not provide any power to an employer to initiate disciplinary proceedings after retirement or to continue with the disciplinary proceedings after retirement, initiating/continuing the same is beyond the jurisdiction of an employer and same will be impermissible as master and servant relationship ceases on retirement. In the present writ petition, no rule, which authorises the department to initiate disciplinary proceedings after retirement or to continue disciplinary proceedings after retirement has been cited by the respondents so as to rebutt the claim as raised by the petitioners in the present writ petitions.

This question of law has already been decided by the Hon'ble Supreme Court of India as well as by this Court more than once.

The Hon'ble Supreme Court of India while deciding Civil Appeal No.2101 of 1999 titled as **Bhagirathi Jena vs. 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.”

Hon'ble Supreme Court of India in **Chandra Singh vs. State of Rajasthan and another 2003(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 Deen Garg, 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.”

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 vs 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.”

Further, a co-ordinate Bench of this Court by relying upon judgement in **S.C. Jain's Case (supra)** while deciding **Jogi Ram Vs. Haryana State Federation of Consumer's Co-operative Wholesale Stores, 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 vs State of Rajasthan and another 2003(6) SCC 545** and of this Court in **S.S. Arya vs 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.”

A bare perusal of the above would show that question of law raised in these petitions has already been decided more than once by the

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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.

Nothing has been shown to this Court as to whether any rule governing the service authorises the respondent-PUNSUP 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-PUNSUP does not have any jurisdiction to continue with the disciplinary proceedings after the retirement or to initiate disciplinary proceedings against the retired employee. As per the law laid down in **Bhagirathi Jena's case (supra)**; **Chandra Singh's case (supra)**; **S.C. Jain's case (supra)** and **Jogi Ram's case (supra)**, the employer only gets right to issue charge sheet to initiate disciplinary proceedings against retired employee or to continue with the disciplinary proceedings after retirement of an employee in case any rule governing the service permits the same and in the absence of any such rule, there is no jurisdiction with the employer to initiate disciplinary proceedings against an employee after retirement or to continue the disciplinary proceedings after retirement.

Further, reliance placed upon Rule 2.2 of Punjab Civil Service Rules, by the respondent-PUNSUP, which grants power to an employer to

continue with the proceedings initiated against an employee during his service career, even after his retirement or to initiate disciplinary proceedings in respect of the charges, which are not four years old at the time of initiating of the disciplinary proceedings, is not applicable upon the employees of PUNSUP. This is for the reason that the said rule 2.2 of Punjab Civil Services Rules only allows the department to impose cut in pension, whereas, the employees working with the PUNSUP does not enjoy the benefit of pension after their retirement.

Faced with this, learned counsel for the respondent/ PUNSUP states that though, PUNSUP might not have the jurisdiction to initiate disciplinary proceedings after the retirement of its employees or to continue with the disciplinary proceedings after retirement, keeping in view the provisions in the rules governing the service as they exist as of today, but department is well within its jurisdiction to recover the amount of loss caused by an employee after following due procedure of law by filing a civil suit after prima facie being convinced that the employee has caused loss due to his act of commission or omission, as the case may be, by holding a fact finding enquiry into the allegations alleged in the charge sheets.

Counsel for the respondent/ PUNSUP argues that this Court while deciding CWP-26728 of 2014 titled as **Gurinder Singh vs. Punjab Agro Industries Corporation (PAIC) Ltd** on 24.01.2017 has held that though, it might not be within the jurisdiction of an institution to initiate disciplinary proceedings against a retired employee or to continue with the disciplinary proceedings against the retired employee, but the institution is well within its right to hold a fact finding enquiry and file a civil suit to implement the

recommendations of the fact finding enquiry in case it is established that loss has been caused to the employer due to an act of omission or commission of an employee so as to recover the said loss. Learned counsel further states that decision which has been taken by respondent/ PUNSUP is on the basis of law as settled by this Court in Gurinder Singh's case (supra).

It is pertinent to note here that writ petitions, which are being decided today came up for motion hearing on 31.05.2019, on which date the following order was passed:-

“Learned counsels for the respondents state that a writ petition bearing CWP No.13227 of 2016 titled as Santokh Singh Vs. Punjab State Civil Supplies Corporation Limited and others, wherein also the retiral benefits were withheld due to pendency of the charge-sheet, had come up for hearing before a Coordinate Bench on 30.05.2019 and on the said date, an order has been passed, which has direct impact upon the writ petitions which are listed today before this Court but as the order is yet to be uploaded on website, counsels request for an adjournment so that the said order could be produced before this Court before any decision in these writ petitions is taken so that there is no contradictory order passed by this Court in two different writ petitions involving similar controversy.

Counsel appearing on behalf of the respondents-PUNSUP, on instructions from Sh. Amandeep Bansal, P.C.S., Addl. Managing Director, PUNSUP, states that as the matter is under reconsideration, in order to avoid any harassment to the retired employee, the enquiry proceedings have been kept in abeyance and only fact finding enquiry will be conducted into the allegations so as to reach a stage to know as to whether there was any role of a concerned employee due to which there was any loss which was caused to the Corporation or not and in case, any fact comes to the knowledge of the department about any action of commission or omission on the part of the employee, due to which any loss has been suffered by the Corporation, Corporation will initiate appropriate proceedings as per law.

In case any employee offers his services to render assistance in the said fact finding enquiry, the same shall not be refused by the respondents-Corporation.

Learned counsel(s) for the respondents state that the decision to keep in abeyance the charge-sheet is in respect of all the retired persons, who have been issued charge-sheet after retirement or the proceedings have been continued against them after retirement, whether challenged or not, have been decided to be kept in abeyance.

Counsel(s) for the respondents further state that in case where the enquiry officer in respect of a charge-sheet already, has submitted the enquiry report, the said enquiry report will also be treated as a report of fact finding and not to be used for imposing any punishment upon the employee under the service rules but the Corporation will be free to have its own remedy in respect of the findings arrived at by the enquiry officer to redress their grievances.

Learned counsel(s) for the respondents state that they be given liberty to file an affidavit in respect of the statement which has been made today in Court, in case need so arises, by the next date of hearing.

Keeping in view the above, learned counsel for the petitioners, prays that once no punishment is to be imposed on the basis of the charge sheet and they are to be kept in abeyance then under what circumstances and under what provision of law, the retiral benefits of the petitioners, are being withheld.

Learned counsel for the respondents state that with regard to the release of the benefits, the department will also take an appropriate decision, which will be placed before this Court on the next date of hearing.

Adjourned to 30.09.2019.

A photocopy of this order be placed on the files of other connected cases.”

Learned counsel appearing on behalf of the PUNSUP states that keeping in view the settled legal position, it has been decided by the PUNSUP to file all the charge sheets, which are pending against the retired employees for conducting disciplinary proceedings but the same is done

with condition that the allegations, which are being alleged against the retired employees in those charge sheets will be enquired into as a fact finding enquiry, wherein the employees have an option to associate themselves in case they exercise said option and the authorities in PUNSUP, will initiate appropriate process of filing the civil suit to recover the amount, in case in the fact finding enquiry, it is found by the department/PUNSUP that a particular employee has caused loss to the PUNSUP due to his/her act of commission or omission, as the case may be.

Learned counsel for the respondent/PUNSUP states that the recovery in pursuance to the fact finding enquiry will be done by filing an appropriate civil suit, which is permissible as per judgement of this Court in **Gurinder Singh's case** (supra) and, therefore, as the charge sheets for conducting disciplinary proceedings have been filed against all the retired employees and no departmental proceedings are pending against the petitioners, who are the retired employees of the PUNSUP, the present writ petitions have been rendered infructuous.

Learned counsel for the petitioners argues that once the charge sheets have been filed by the respondents themselves upon reconsideration, keeping in view the rules governing the service that respondent does not have power to issue charge sheet after retirement or to continue with the disciplinary proceedings after retirement, the pendency of these charge sheets cannot cause prejudice to them as they were deprived of receiving their retiral benefits immediately upon their retirement or within a reasonable period as envisaged by the Full Bench of this Court while deciding **A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468.** It has

been held by the Full Bench in **A.S. Randhawa's case (supra)** that an employee will be entitled for release of his pensionary benefits within a reasonable time after his retirement in case there is no impediment and the reasonable time as per the Full Bench is two months. Counsel for the petitioner(s) argues that the charge sheets were issued to the petitioners were without jurisdiction and after realising the said fact, the same have been filed by the respondents, therefore, the pendency of the said charge sheets cannot cause prejudice to them and as their retiral benefits have been retained by the respondents without any justification, hence the petitioners needs to be compensated by way of grant of interest for the delay in the release of the pensionary benefits.

Learned counsel for the petitioners argues that a direction needs to be issued to the respondents for the release of the pensionary benefits along with interest as the charge sheets, due to which, the pensionary benefits of the petitioners were withheld, have been filed. Learned counsel for the petitioners argues that it is a matter of fact that pensionary benefits of all the petitioners have been withheld, after their retirement, due to the pendency of the charge sheets, which have been filed now.

Learned counsel appearing on behalf of the respondents argues that once, the department upon reconsideration has decided to file the charge sheets, the benefit of gratuity, for which the petitioner(s) are entitled under the Payment of Gratuity Act, 1972 will be released but other benefits i.e. leave encashment will be released after the proceedings, which the respondent/PUNSUP might initiate against the petitioner(s) for the recovery of the alleged loss, if any, caused by the particular petitioner(s) keeping in

view the fact finding enquiry, therefore, as fact finding enquiry and consequential proceedings have not come to an end completely against the petitioners as the respondents still have the right to recover the amount after adopting due process of law, therefore, petitioner(s) are not entitled for interest on gratuity and the release of leave encashment.

After giving thoughtful consideration to the contentions of the learned counsel for the parties, I have reached to a conclusion that charge sheets have been filed on the ground that PUNSUP did not have jurisdiction to initiate the disciplinary proceedings after retirement or to continue with the disciplinary proceedings after retirement of the employees, withholding of the retiral benefits by the respondent-PUNSUP was beyond their jurisdiction. A retired employee is entitled for the release of his/her pensionary benefits within a reasonable time after retirement so as to lead a dignified life. Once the benefits were withheld by the respondent/PUNSUP without there being any jurisdiction, the said action which was beyond the jurisdiction of the respondents, cannot cause prejudice to the petitioners. Once the respondents themselves have filed the charge sheets after reconsideration, it clearly means that there was no valid power with the respondents to initiate disciplinary proceedings by issuing those charge sheets on account of which retiral benefits were withheld, therefore, withholding of the retiral benefits, was based upon the said illegal act, hence, once the act of the respondents withholding the retiral benefits was without justification/jurisdiction, an employee needs to be compensated for the said illegal act, due to which the employee has suffered prejudice, in view of the law laid down in **A.S. Randhawa's** case (supra). Relevant

paragraph of the judgment is as under:-

“Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in *M. Padmanabhan Nair's case* (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

Not only this, a Co-ordinate Bench of this Court in *J.S. Cheema Vs. State of Haryana 2014 (13) RCR (Civil) 355* has held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. Relevant paragraph of the judgment is as under:-

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

In the present writ petitions, the amount, which the respondents are going to release after filing the charge sheets, was retained and used by

the respondents without there being any jurisdiction to do the same and the amount is being released after inordinate delay, hence, case of the petitioners is covered by A.S. Randhawa's case (supra) and J.S. Cheema's case (supra) for the grant of interest.

The argument of the learned counsel for the respondents that the proceedings against the petitioners have not come to an end and the respondents will have right to recover the amount of loss, if any, by availing the appropriate remedy of filing suit for recovery and, hence, no interest is liable to be paid, cannot be accepted. As of today, retaining of the amount of pensionary benefits i.e. gratuity and leave encashment is without any valid justification as no impediment in the release of the same is cited before this Court. In the absence of any valid impediment for the release of the pensionary benefits, same cannot be retained. Respondents have remedy to recover the amount of loss. In case, at any subsequent given point of time, it is found that the respondents are entitled for the recovery of any loss, which a particular employee has caused, the same can be recovered with interest but merely on probabilities, an employee, who is entitled for release of the retiral benefits cannot be denied the same only on the ground that tomorrow, he/she might be held liable for making good the loss. Respondents are directed to release all the withheld pensionary benefits of the petitioners, in case there is no other impediment in the release of the same.

Petitioner(s) are also held entitled for interest @ 7% per annum on the delayed release of retiral benefits by the respondents after the charge sheets have been filed. Interest shall be calculated from the date of expiry of two months after the retirement of the petitioner(s), till the same is

actually released to them.

Let computation of the interest, for which the petitioner (s) are entitled as per this order be carried out within a period of two months from the date of receipt of certified copy of this order and the payment so calculated be released to the petitioner(s) within a period of one month thereafter.

It is made clear that this order in no way restrains the respondent-PUNSUP to recover the amount from any employee, in case it is found in the fact finding enquiry that a particular employee has caused loss with the act of omission and commission due to which, the Corporation has suffered loss. The said recovery of the loss will only be done by filing an appropriate civil suit before the competent Court of law.

30.09.2019
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/non-speaking?	Yes/No
2. Whether reportable?	Yes/No