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

**CWP No. 18722 of 2014(O&M)
Date of decision : 06.04.2015**

R.D.Verma .... Petitioner

versus

Haryana State Federation of Consumer's Cooperative Wholesale Stores Ltd. and another ...... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present: Mr. Namit Kumar, Advocate for the petitioner.

Ms.Shruti Goyal, AAG, Haryana.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By way of the present writ petition the petitioner has challenged the order whereby an amount of Rs. 1,05,921/- was ordered to be deducted from his retiral dues.

The petitioner was posted as an Assistant Manager at Cheeka. In the year 2003 there was defalcation of 2570 bags of wheat by the storekeeper and the Chowkidar. An FIR was lodged against them. During this interregnum a chargesheet was issued on the aforesaid two employees and the District Manager as well as the petitioner. As per learned counsel the order of punishment has only been passed against the petitioner. However, he has not stated unequivocally that proceedings against the other three persons have been withdrawn. During the pendency of the disciplinary proceedings the petitioner retired and, since the disciplinary proceedings were not being brought to an end, the petitioner filed CWP No. 18234 of 2011 which was disposed of on 27.09.2011 with a direction to the respondent-CONFED to finalise the disciplinary proceedings. It is pursuant to that that the impugned order has been passed. The Appellate Authority has noticed that prior to the retirement of the petitioner a regular inquiry had been lodged into the allegations of omission and commission by the petitioner and the inquiry officer had come to an unequivocal conclusion that the defalcation took place because of the lack of supervision by the petitioner and also concluded that if the petitioner had undertaken proper checks on his subordinate employees, they would not have been able to misappropriate the wheat. Since by the time the order was passed, the petitioner had retired, the punishing authority imposed a punishment of recovery of 10% of the loss from the retiral dues of the petitioner. His appeal having been dismissed, he is before this Court.

First argument of learned counsel is that no action was taken against the other three employees. I am afraid it is a half truth. Had it been the case of the petitioner that proceedings against other persons had been withdrawn then things would have been different but admittedly those proceedings are continuing.

The second argument raised by learned counsel is that it was only after the amendment made in Rule 60 on 25.04.2013 that the regulations permit the respondents to make any recovery from the retiral dues of the petitioner.

The third argument is that the Appellate Authority has not given any reasons while deciding the appeal.

The fourth argument raised by learned counsel is that in the punishment order itself it has been noticed that the matter was put before the Board of Directors to fix norms about taking action in shortage cases but that meeting was admittedly not held and, therefore, there were no norms and the discretion of recovering 10% of the loss from the retiral dues is completely uncanalysed.

As regards the first argument it may be noticed that in the absence of an averment that other co-delinquents have been absolved without any reason this argument would have no effect.

As regards second argument existing regulation 26.3 which deals with penalties for misconduct is to the following effect:-

"**26.3 Penalties for misconduct**

An employee found guilty of gross misconduct may be awarded any one or more of the following punishments <u>apart from the recovery of actual loss or damage caued by him to the Federation</u>(emphasis supplied).

(i) Depriving from payment of bonus

(ii) Withholding of increments.

iii) Barring of promotion to the higher-grade post for a specific period .

(iv) Reversion to a lower grade post.

(v) Suspension (Deleted by RCS vide letrter No. 21/9/88/CS-I dated23.8.89).

(vi) Dismissal

(vi) Fine not exceeding Rs. 250/-.

(viii) Termination of service."

The argument is that the existing regulation did not provide for recovery from retiral dues and recoveries would have been made only during the service of the petitioner. It is argued that it is only with effect from the amendment made on 25.04.2013 that such recovery became permitted. This argument loses its sting because admittedly disciplinary proceedings were initiated during the service career of the petitioner. The mere fact that he retired in the interregnum would not give him a right to claim that he was immune from disciplinary action.

As regards the third argument that the appellate order is a non-speaking order, in view of the fact that there is no attack on merits and the only points taken in the grounds of appeal were those which have been listed out above, I do not see it an appropriate case of invoking powers under Article 226 of the Constitution of India. Even otherwise the petitioner cannot wish away the fact that about 13 tonnes of wheat was stolen from under his guard.

As regards the fourth argument the case of fixing of norms for shortages may not be similar to the present case. The present case is of active negligence and, therefore, the mere fact that no norms have been fixed for taking into account shortages would have no impact on this case. The argument that in the absence thereof completely uncanalysed power has been exercised has also to be rejected because only a token recovery of 10% of the loss(without interest) has been imposed upon the petitioner.

The petition is dismissed.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

April 06, 2015
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