

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**Civil Writ Petition No. 28180 of 2013 (O&M)**

Date of decision : September 29, 2015

Satinder Kumar Jindal

.....Petitioner

Versus

Punjab State Warehousing Corporation and another

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Vipul Jindal, Advocate  
for the petitioner.

Mr. Amit Kundra, Advocate  
for the respondents.

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**LISA GILL, J.**

Petitioner has filed this writ petition for setting aside order dated 09.02.2013 (Annexure P-6) passed by the Managing Director of Punjab State Warehousing Corporation whereby recovery of ₹3,19,682/- has been imposed upon the petitioner on account of financial loss caused to the Corporation. Said amount is directed to be recovered from his salary in such a manner that he would draw 40% of his salary and balance amount, if any, would be recovered from his retiral benefits. Petitioner has also been censured to remain careful in future vide impugned order. Order dated 28.10.2013 (Annexure P-8) passed by Special Secretary (Agriculture) i.e. appellate authority dismissing the petitioner's appeal is also

impugned in this writ petition.

Undisputed facts are that petitioner was appointed as Officiating District Manager, Punjab State Warehousing Corporation, Sangrur where he remained posted till 04.09.2012. He was thereafter posted as Officiating Deputy Manager (Commercial) at Head Office of the respondent-Corporation at Chandigarh. Notice dated 22.06.2012 was issued to the District Managers of the Corporation, Sri Muktsar Sahib, Moga and Sangrur alleging that some of the millers have not been charged by them for driage on MSP. It is mentioned in the said notice, Annexure P-1, that as per instructions of Government of India for crop year 2003-04, in the provisional rates, only the bills of the Millers regarding driage were to be settled on MSP but it was found on inspection of the reports sent by District Managers that even after crop year 2002-03, amount of ₹29,250/- and ₹2,90,432/- is to be obtained from the Millers on account of driage for crop years 2004-05 and 2005-06. On receiving no reply, reminder dated 10.07.2012 (Annexure P-2) was again addressed to District Managers, Punjab State Warehousing Corporation, Sri Mukatsar Sahib, Moga and Sangrur. As the petitioner did not reply, show cause notice dated 11.10.2012 (Annexure P-3) was issued to him proposing recovery of ₹3,19,682/- as well as additional/minor punishment. Petitioner submitted his reply dated 30.10.2012 (Annexure P-4), explaining that he was not even posted at Sangrur at the relevant time, thus, no recovery should be effected from him. However, impugned order dated 09.02.2013 (Annexure P-6) was passed against the petitioner imposing penalty as detailed above.

Petitioner's appeal was also dismissed vide order dated 28.10.2013 (Annexure P-8).

Learned counsel for the petitioner submits that petitioner was posted at District Office, Sangrur from 04.08.2011 to 03.09.2012. Amount reflected in communication dated 22.06.2012 (Annexure P-1) relates to crop year 2004-05 and 2005-06, therefore, he cannot be held guilty for the action/inaction of another incumbent as it is apparent that petitioner was nowhere in picture at the relevant time. Therefore, in this situation not replying to communication (Annexure P-1), should not even invite any minor punishment leave alone recovery of the abovestated amount. Furthermore, it is mentioned in communication dated 07.11.2012 (Annexure P-5) that no benefit has in fact been given to the Millers and the amount has been shown recoverable from the Millers. In this situation, impugned orders are liable to be set aside.

Refuting the said arguments, learned counsel for the respondents supports the impugned orders and prays for upholding them.

While noting that petitioner was not posted at Sangrur during years 2004-05 and 2005-06 and finding no explanation as to why show cause notice had been issued for alleged loss to the respondent-Corporation caused 6-7 years prior to his posting at the station, following order was passed by this Court on 15.09.2015:-

“ Learned counsel for the petitioner has pointed to the fact that recovery of ₹3,19,682/- has been ordered by the Managing Director, only on the ground that the petitioner has not replied to the show cause notice issued to him,

which though otherwise is not, factually incorrect, however, the petitioner specifically pointed out subsequently, on 13.10.2014, that he was not posted at the place in question, i.e. Sangrur, till 2011, where benefits were allegedly given to certain millers, thereby causing the aforesaid loss to the Corporation. The losses, admittedly, even as per the show cause notice (Annexure P-3) pertain to the years 2004-05 and 2005-06. Strangely, even the appellate authority, in its order dated 28.10.2013 (Annexure P-8), upon an appeal filed by the petitioner against the aforesaid order dated 27.02.2013 (Annexure P-6), specifically stated that he was posted in Sangrur only for the period August 2011 to August 2012. However, the appellate authority also, without even advertng to this contention of the petitioner, has passed the order, Annexure P-8.

The Managing Director of the respondent Corporation shall file an affidavit as to how, if the petitioner was not even posted at Sangrur during the year 2004-05 and 2005-06, he was issued a show cause notice for having caused losses to the respondent-Corporation, about 6-7 years prior to his posting to that station.

The appellate authority, i.e. Smt. Madhvi Kataria, who passed the order Annexure P-8, dated 28.10.2013, on the appeal filed by the petitioner, shall also file an affidavit, stating as to how such a basic contention was overlooked by the appellate authority. Without a doubt, the order in appeal by the appellate authority in a *quasi judicial* capacity. However, when an order, at least *prima facie*, seems to be without proper application of mind (subject to whatever is to be stated on affidavit by the above named officer), this Court would exercise jurisdiction to seek an explanation from such appellate

authority.

The aforesaid affidavits be filed within 10 days, failing which the Managing Director of the respondent Corporation and the officer named above, shall both remain personally present on the next date of hearing.

Adjourned to 29.09.2015.”

Pursuant thereto, affidavits dated 23.09.2015 were filed by Managing Director, Punjab State Warehousing Corporation as well as the appellate authority. It is mentioned therein that issue of recovery of amount from the Millers on account of driage and MSP rates arose as a result of audit objection. Procurement branch of respondent-Corporation observed on 06.06.2012 that amount is recoverable from the Millers on the said count from 2003-04 onwards pertaining to Districts Moga, Sri Muktsar Sahib and Sangrur. Pursuant thereto, letter dated 22.06.2012 (Annexure P-1) was issued to the District Managers of the said places.

An attempt is made to justify action against petitioner by stating that though the amount in question pertains to the years as mentioned above but being District Heads it was the duty of District Managers to take up the matter with Millers, ensure recovery and convey the same to Head Office, Chandigarh. It was their duty to organise the same but petitioner did not even choose to reply. Imposition of recovery and penalty of censure is sought to be justified in this manner.

It is apparent that there is no dispute about the petitioner not being in the picture at the relevant time in the years 2004-05 and

2005-06. To saddle him with recovery solely on the ground that it was his duty to have taken necessary action in the year 2012 is palpably unjustified. It is to be noted that no action has been taken against any other person or previous incumbents of the said post, by the Department. This fact is confirmed by learned counsel for the respondents. There is no justifiable reason or ground for imposition of such recovery upon the petitioner. Said action is clearly unjustified and uncalled for. Therefore, punishment of recovery of ₹3,19,682/- is set aside. However, minor punishment of censure is justified in the facts as circumstances as it was incumbent upon the petitioner to have taken action of that stage and submit a proper reply to communication (Annexure P-1) at the very outset, apprising the authorities of the ground reality and factual position.

This writ petition is disposed of with the above said modification in the impugned orders dated 09.02.2013 (Annexure P-6) as well as dated 28.10.2013 (Annexure P-8).

September 29, 2015  
rts

**(Lisa Gill)**  
**Judge**