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

**CWP No.28593 of 2013
Date of decision : 17.09.2015**

Gordhan Singh Jain ....Petitioner

Versus

State of Haryana & anr. ....Respondents

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr. R.K.Malik, Sr. Advocate with
Ms. Rimple Sohi Kadyan, Advocate
for the petitioner.

Mr. G.S.Wasu, Addl. AG, Haryana.

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Mahesh Grover, J. (Oral)

This writ petition has been filed under Article 226 by the petitioner impugning orders Annexures P-7, P-9, P-11 & P-12. The effect of all these orders is an admitted recovery of an amount of Rs.22,71,399/- from the petitioner and withholding of the pension of the petitioner in entirety.

Reply was not filed despite opportunities leading to striking of, of the defence of the respondents in terms of the order dated 07.05.2015.

The petitioner was appointed as Clerk with the respondent department on 31.12.1958 and promoted as Assistant to retire as such on 20.08.1992.

A charge-sheet was issued on 08.09.1987 to the petitioner with the following allegations:

> *Sh. G.S.Jain, Assistant while working as Sales Officer at Delhi in Haryana Lotteries Department committed the following acts of omission and commission for which he is charged as under:*

He issued lottery tickets from 30.11.1986 to 12.02.1987 direct to the lottery agent located at Hindupur without seeking the prior approval of the Director of Lotteries thus, causing loss to the State government to the tune of Rs.22,71,399.50 ps. on account of non-realisation of the sale proceed of lottery tickets.

The lapses detailed above on the part of Sh. G.S.Jain constitute grave misconduct rendering him liable for disciplinary action."

An inquiry was conducted in this regard where the inquiry officer exonerated the petitioner and held one Sh. S.K.Bhargava, Assistant Superintendent (Treasuries) as the main culprit, who had caused loss of Rs.37,68,163.58 ps., which was ordered to be recovered from him vide order dated 18.09.2003.

For the purpose of reference the relevant portion of the findings of the inquiry officer are extracted herebelow:

"The Departmental letter dated 01.04.1986 produced by Sh.Jain regulating charges about loading/unloading etc. in cases where tickets are supplied direct to the agents; Finding of the Vigilance Department in its report placing no reliance case the statement of Sales Officer, Banglore eschewing the responsibility from sale and concluding that the appointment of Sales Officer, Banglore was only to sell the tickets and to posting the amount; rendition of account worth Rs.3,99,500.50 out of tickets sent by Sh. Jain to the party, amply how that Sh.Jain cannot be held directly responsible for causing the loss to State Exchequer. However, as a matter of abundant precaution, the official should have sought confirmation from the Director of Lotteries to the arrangement made. To this extent, the official remained negligent in the discharge of his duties."

A show cause notice was issued to Sh. S.K.Bhargava.

After the regular inquiry, he was found guilty and as observed earlier, was required to make up the entire loss vide order dated 18.09.2003. Despite the above, even though there was no conclusive finding of the inquiry officer proving the charge against the petitioner, he was still proceeded against.

The petitioner then filed a declaratory suit questioning the action of the respondents, which was decreed with a declaration that order bearing No.13918-TA-HR(9T)92/10183 dated 18.08.1992 imposing penalty of recovery of Rs.22,71,399.50 ps. against the petitioner was illegal, void and so was the order passed by the Commissioner and Secretary to Govt. of Haryana bearing No.29/43/92-5FA dated 10.08.1998 rejecting his appeal and the petitioner was thus, held entitled to all the dues and retiral benefits which were illegally withheld from him on account of the aforesaid penalty, along with future interest @ 12% per annum till the time the payment was made.

Appeals were filed but were rejected lending conclusivity to the controversy.

Despite the decree of the Civil Court passed on 03.08.2004, Annexure P-7 was passed by the respondents on 30.12.2005 by holding the petitioner wholly responsible for dispatching the tickets to the selling agents on credit basis whereas he was required to sell those tickets through the Sales Officer posted at Bangalore. This conclusion was patently without any basis as the inquiry officer had exonerated the petitioner and Civil Court had accepted the plea thereby rendering the contention of the respondents invalid. The petitioner filed an appeal against the said order by virtue of Annexure P-8, which was negated by the respondents by virtue of

Annexure P-9 passed by the Financial Commissioner on 25.08.2006 precisely on the very same ground as the initial order Annexure P-7. For the purpose of reference the relevant portion of the order dated 25.08.2006 passed by the Financial Commissioner is extracted herebelow:

> *"I have deeply inspected all the documents of the files related to this matter and found that the Director Lotteries has perused all the documents of this subject, order dated 30.12.2005 passed by the Director, Treasuries & Accounts Department and even the order passed by the different courts. He concluded after seeing the related points of accounts related to the matter that Sh.G.S.Jain, Asstt. (Retd.) is only responsible to the loss against the Govt. of amount Rs.22,71,395/- which was lying with the lottery agent and was not collected from him. In this matter, Sh. G.S.Jain by violating the Government's order sold it to the agents directly instead through the medium of Sales Officer. Therefore, the orders passed by the Director are lawful and I do not find any different reasons. As a result of that I pass an order to dismiss the appeal filed by the employee."*

The petitioner then submitted another appeal to the respondents to reconsider the issue, which was also declined as the government refused to review its own order in quasi judicial orders.

It is necessary to state here that the proceedings in the case of Sh. S.K.Bhargava, who was actually held responsible by the inquiry officer for the entire loss, were also affirmed by the Director Treasuries & Accounts Department, Haryana, Chandigarh vide order dated 18.09.2013.

Once the entire amount stands recovered from Sh. S.K.Bhargava, who was held responsible in the inquiry, there was no occasion to proceed against the petitioner particularly when he had been exonerated by the inquiry officer and the Civil Court had decreed his suit. The impugned orders were passed without any basis and on no sustainable material. The impugned orders would show that the respondents had merely parroted a singular line that 'Sh.G.S.Jain is responsible for dispatching the tickets to the selling agents on credit basis whereas he was required to sell those tickets through the Sales Officer posted at Bangalore'. Once the entire responsibility has been fixed on Sh.S.K.Bhargava, the petitioner, who was merely acting on his instructions, could not be proceeded against and there was absolutely no justification to order recovery of that amount particularly when the department stood re-compensed of the entire loss.

Consequently, the writ petition is accepted with a costs of Rs.50,000/-, which shall be given to the petitioner. The impugned orders are set aside and the respondents are directed to release the pensionary dues of the petitioner and other consequential benefits, which have been illegally withheld by them as expeditiously as possible but not later than three months. The petitioner would also be entitled to interest as decreed by the Civil Court. A report of action taken against the officer responsible for not filing the reply be placed on record as the whole case smacks of arbitrariness.

17.09.2015 **(Mahesh Grover)**
sonia **Judge**