

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9469 of 2013

DATE OF DECISION: 23.04.2015

Amir Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. J.B. Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

Mr. Suresh Ahlawat, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The present petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing of impugned order dated 21.2.2013 (Annexure P-5) passed by respondent No.2, vide which, recovery of an amount of ₹ 31,914/- imposed upon the petitioner has been effected after his retirement without issuing any charge-sheet and holding any inquiry. A further prayer has also been made for issuing directions to the respondents to refund the amount deducted from the retiral benefits along with interest.

Briefly, the facts of the case are that the petitioner was working

as an Assistant Secretary in respondent-Corporation and retired as such on attaining the age of superannuation vide order dated 19.7.2012 w.e.f. 31.7.2012. A show cause notice was issued to the petitioner on 14.6.2010 to explain as to why recovery of an amount of ₹ 19,785.20/- be not made from him. Reply to the said notice was filed by the petitioner stating therein that he is not responsible for the recovery of the said amount. Thereafter, another memorandum was issued to the petitioner on 7.6.2012 for recovery of an amount of ₹ 1,08,138/- and the same was also replied by him. Ultimately, respondent No.2. passed the impugned order for recovery of an amount of ₹ 31,914/- (₹ 12129/- principle amount + ₹ 19785 as interest) from the retiral benefits due to the petitioner.

Learned counsel for the petitioner contends that neither any notice nor any opportunity of hearing was given to the petitioner and the aforesaid recovery has been made after retirement. Learned counsel further contends that before passing the order of recovery, neither any regular inquiry was conducted nor any responsibility was fixed. Even the reply filed by the petitioner has not been considered. Learned counsel also submits that only on the basis of audit objection, the recovery has been effected, whereas, the petitioner was neither in-charge nor supervisor and he has not even sold the seeds on credit. He was dealing with the Court cases only and cannot be held responsible in any manner for making recovery of the amount in dispute. Lastly, learned counsel for the petitioner contends that no recovery can be effected without conducting any inquiry. Learned counsel has also relied upon the Division Bench judgment of this Court in **Satyam Yadav Vs. State of Haryana and another** (C.W.P. No. 10161 of 2007 decided on 28.2.2008), in support of his contentions.

Learned counsel for respondent No.2 submits that the petitioner was dealing with Court cases and record of the cases was not

produced before the Court, which has resulted in financial loss to the Corporation. The petitioner was issued a notice to explain his position as to why recovery be not effected from him and after considering his reply, recovery was ordered to be made from him.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on record.

Admittedly, the petitioner retired from the post of Assistant Secretary on attaining the age of superannuation w.e.f. 31.7.2012 vide order dated 19.7.2012. It is also not disputed that no proceedings were initiated against the petitioner before his retirement. Neither any regular inquiry was conducted against the petitioner nor any charge-sheet was even issued to him but he has been held responsible on the basis of audit objection only. A perusal of letters dated 11.8.2008 (Annexure P-6) and 9.9.2009 (Annexure P-7) would show that the Regional Manager, Hisar while replying to the audit paras has specifically mentioned that the amount recoverable from the growers is very old and recovery is not possible as concerned record is not available. He has also requested to settle the pending case by writing off the recoverable amount being old recovery. The petitioner cannot be held responsible as it was not the duty of the petitioner to recover any amount. Learned counsel for respondent No.2 is not in a position to produce any document to show as to how the petitioner was instrumental in not recovering the amount. The petitioner has also mentioned in his reply that Sh. Y.K. Gupta, Ex Manager was solely responsible for the said recovery and this fact was also reported to higher authorities. The power of supervision was with Regional Manager. Nothing has been shown as to whether the petitioner was in-charge or supervisory officer or he was to recover the amount in any manner. Moreover, without conducting any regular inquiry, the responsibility cannot

be fixed. The amount has wrongly been recovered from the petitioner, which is contrary to law laid down by Hon'ble the Apex Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** 2015 (1) JT 95.

In view of the facts as mentioned above, the present petition is allowed and impugned order of recovery dated 21.2.2013 (Annexure P-5) is set aside. Respondent No.2 is directed to refund the amount recovered to the petitioner within a period of one month from the date of receipt of certified copy of the order passed by this Court.

April 23, 2015
pooja

(DAYA CHAUDHARY)
JUDGE