

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

**CWP No.10824 of 2016
Decided on : 27.05.2016**

Gian Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.ADS Jattana, Advocate, for the petitioner.

G.S. Sandhawalia , J.

Petitioner challenges the order dated 18.10.2010 (Annexure P14) whereby the appeal of the petitioner was dismissed and recovery of penalty to the tune of Rs.1,45,301/-, imposed vide order dated 07.02.2009 (Annexure P7), was upheld.

It was noticed by the Appellate Authority that the petitioner and one Sukhwinder Singh had transferred 3 vehicles of paddy to M/s Kamboj Agro Food, Fatehgarh Panjtoor, on their own level. On account of non-delivery of the rice, the Corporation had suffered a financial loss of Rs.3,90,602/-. Resultantly, both the employees had been held liable and recovery of Rs.1,45,301/-, i.e., 50% share of each employee, was ordered to be recovered from them. After giving the petitioner an opportunity of personal hearing on 18.10.2010, the appeal was dismissed.

Counsel has vehemently argued that the interest element which was part of the recovery order and the same could not have been imposed upon the employee and the amount had also been claimed from the miller, M/s Kamboj Agro Food.

The argument raised that the amount could not be recovered from the petitioner, is without any basis. On account of the negligence of the petitioner as the 3 vehicles of paddy had been sent to the miller without taking sanction from the competent authority, which has resulted in the loss to the Corporation for the crop year 2001-02, for which, it was rightly seeking the principal amount along with interest. The said issue was never raised before the enquiry proceedings or in the appeal, which would be clear from the grounds of appeal, attached as Annexure P8 and therefore, for the first time, this issue cannot be raised in a writ Court. This Court is examining the appellate order, in consonance to the irregularities and illegalities committed, in pursuance to the arguments raised before the Appellate Authority and in the absence of any such issue being raised, the same cannot be raised, for the first time, in a writ Court. It is settled principle that this Court is not sitting as a Court of appeal and is only to examine whether the departmental proceedings were without any jurisdiction and did not suffer from any such illegality whereby, the whole process was vitiated and the employee was prejudiced in such a manner that the proceedings had to be set aside.

The Apex Court in '*Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant*' 2001 (1) SCC 182 while examining the issue of disciplinary action taken on the departmental side held that examining the adequacy and inadequacy of evidence is not permitted and only if there is a finding that shocks the judicial conscience of the Court, the Court would interfere. The principles of natural justice having been complied with and

the procedure prescribed having been followed, the Court should not interfere in the punishment imposed.

Similarly in '**Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and others'** Vs. 2012 (5) SCR 994, the scope of departmental proceedings was discussed and it was held as under:-

“12. It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. (See: Shashikant S. Patil & Anr. (supra)).”

Similarly, the Apex Court in '**West Bengal State Electricity Board and others Vs. Hari Bhakta Ghosh'** 2015 (1) RSJ 745 has held that the strict rules of evidence are not required to be followed by the Enquiry Officer and the High Court cannot substitute the findings of the Enquiry Officer by way of its subjective opinion.

It is also pertinent to mention that the appeal had been filed on 14.05.2009 (Annexure P8) and the same stood decided on 18.10.2010

(Annexure P14). A period of more than 6 years has expired since then. It is the case of the petitioner that the appeal had not been decided and he had also come to this Court earlier and got a direction issued for decision of his appeal on 30.04.2015 (Annexure P11). However, a perusal of the Appellate order would go on to show that personal hearing was given to the petitioner on 18.10.2010 itself. In spite of that, this Court was approached with the plea that the appeal was not decided whereas it had already been decided in the presence of the petitioner. The petitioner, thereafter, also served a legal notice dated 21.01.2015 (Annexure P10) before approaching this Court, in which mention of the pendency of the appeal was given but nothing was mentioned that he had put in appearance on 18.10.2010. In such circumstances, this Court is of the opinion that this is not a fit case for interference, on account of the conduct of the petitioner.

The argument raised by the counsel that the miller was liable to pay the amount on account of the cheque having been issued, is without any basis. The punishing authority has found that the petitioner, at his own level, along with one Sukhwinder Singh, had transferred 3 truck loads of rice, without the sanction of the competent authority, in favour of M/s Kamboj Agro Food, Fatehgarh Panjtoor and has given benefit of Rs.1 lac, by reducing the amount of recovery to Rs.2,90,602 from Rs.3,90,602/-. It is, in such circumstances, recovery had been ordered.

Resultantly, finding no merit in the present writ petition, the same is, hereby, dismissed in limine.

MAY 27, 2016
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(G.S. SANDHAWALIA)
JUDGE