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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21136 of 2011
Date of decision: February 11, 2016

Gobind Ram Jindal

.......Petitioner

Versus

Food Corporation of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Pankaj Jain, Advocate for
Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate
for the respondents.

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SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the orders dated 22.06.2005 (Annexures P-5) and dated 30.11.2007 (Annexure P-6).

The case of the petitioner, in brief, was that at the relevant time, petitioner was working as an Assistant with the respondent-Management and mischief was committed in the office at Sirsa, wherein, 500 cheques were obtained and certain bungling was done. A criminal case was got registered by the respondent-Corporation. During investigation of the criminal case, an amount of ₹60,74,320/- was recovered out of the total amount of

₹64,29,320/-, which had been fraudulently withdrawn from the account of the Corporation. With regard to loss qua amount of ₹3,55,000/- caused to the Corporation, charge-sheet was issued to the petitioner. On the basis of the Inquiry report, order dated 22.06.2005 (Annexure P-5) was passed, whereby, it was ordered that the recovery of ₹2,75,000/- be effected from the petitioner. The said order was upheld by the Managing Director in appeal filed by the petitioner vide order dated 30.11.2007 (Anexure P-6). Hence, the present petition.

Learned counsel for the petitioner has submitted that Corporation had filed suit for recovery of ₹5,32,000/- against the Bank. Trial Court held that the Corporation had failed to establish that the cheques in question vide which the amount in question had been withdrawn, were forged. It could not be established by the Corporation that the cheques in question did not bear the signatures of Krishan Chand, Accounts Manager. So far as the petitioner is concerned, the allegation against him was that he had been negligent in keeping the cheque-books in safe custody. Since the cheques in question were issued by Krishan Chander authorised signatory, petitioner could not be foisted with the punishment of recovery of the amount in question. Major portion of the amount withdrawn vide cheques in question had been recovered in the criminal proceedings.

Learned counsel for the respondents, on the other hand has opposed the petition and has submitted that the petitioner was liable to pay the amount sought to be recovered from him as he was negligent in performing his duty.

Admittedly, an amount of ₹64,29,320/- had been withdrawn from the account of the Corporation vide four cheques. FIR was registered in this regard and during investigation, an amount of ₹60,74,320/- was recovered. Corporation filed suit against the Bank qua recovery of the remaining amount along with interest. However, the said suit was dismissed by the Civil Court vide judgment/decree dated 21.08.2009 (Annexure P-9). A perusal of the said judgment reveals that the Corporation had failed to establish that the cheques in question were forged cheques and did not bear the signatures of Krishan Chander, the then Accounts Manager. Thus, the cheques in question were signed by the Accounts Manager who was the authorised signatory of the Corporation.

Annexure P-4 is the copy of the inquiry report. The article of charge against the petitioners reproduced in the said report reads as under:-

> *"x x x x x x*
>
> *Shri G.R. Jindal, A.G.I (A/Cs) while working as such at Pay Office Sirsa during the year 2003*

failed to maintain absolute integrity and due devotion to duty in as much as due to his negligence four cheque from FCI cheque book were removed by the miscreants and Rs.64,29,320/- were fraudulently withdrawn from the account of FCI maintained at SBI, Sirsa. Though a sum of Rs.60,74,320/- has been received on superdari through Court subject to the final decision still by the acts of omission and commission on his part, a loss of Rs.3,55,000/- has been caused to the Corporation besides other expense on investigation and pursuance of this case.

Thus, he has contravened Regulation 31, 32 & 32 (a) of FCI (Staff) Regulations, 1971."

x x x x x x"

Annexure P-3 is the preliminary investigation report. The relevant paragraph qua the petitioner reads as under:-

"On enquiry, Shri Jindal admitted that he had counted each cheque book and signed in the receit book on dated 03.05.03. It is also a fact that he had only counted the five cheque books but not the leaves in the each cheque book. On further grilling, he told that the cheque books were kept in the almirah. It is also gathered and confessed by all officials working at Pay Office Sirsa that they work as a team and, therefore, all have access to all the documents including the cheque books all the time."

The Inquiry Officer vide inquiry report (Annexure P-4) held against the petitioner as under:-

"From the above, it may be seen that the C.O. though had collected the cheque books from the Bank had failed to deliver the same but his AM (A/Cs) and ensure proper lock and key to the Almirah as per PW-1. The failure to act as per instructions seems to be collective responsibility of Sh. Jindal but others also including Sh. Ashwani Kumar AG along with AM (A/cs). The negligent and carelessness has result into removal of cheques by the miscreants and fraudulently withdrawing FCI's money from the Bank. The involvement of Bank officials for their carelessness can not also be ruled out for which the matter is already subjudice and known to the competent authority. Under the circumstances taking circumstancial facts and documents brought on record, it has been found that the charge leveled against Sh. G.R. Jindal stands partially proved."

The punishing authority after going through the inquiry report ordered that recovery of ₹2,75,000/- be effected from the petitioner. Punishing authority gave a finding that it was the personal responsibility of the petitioner to ensure that the cheque-books were kept under lock and key. It has been further held that this all was more important because duties and responsibilities in the Pay Office had not been specifically defined. Thus, it was the collective responsibility of all the Pay Office to function in such a manner that there could be no probability of such incidents. This showed the negligence attitude in handling the documents of the Corporation which led to removal of cheques by miscreants and fraudulent withdrawal of money belonging to the Corporation.

A perusal of the order Annexure P-5 shows that the punishing authority was conscious of the fact that the responsibility in the Pay Office had not been specifically defined and rather, it was the collective responsibility of the Pay Office to function in such a manner that there could not no probability of such incidents. It appears that at the time of passing of the impugned order, the punishing authority was of the opinion that cheques in question had been removed by the miscreants and the amount in question had been fraudulently withdrawn from the account of the Corporation. However, in civil suit filed by the Corporation for recovery of unrecovered amount shows that the Corporation had failed to establish that the cheques in question were forged. Hence, it is evident that the cheques in question were signed by Krishan Chander Accounts Manager. Since the cheques in question were signed by the authorised signatory of the Corporation, petitioner cannot be made liable to pay the amount of ₹2,75,000/-.

During arguments, it has transpired that departmental proceedings were also initiated against Krishan Chander and recovery of ₹2,75,000/- was ordered to be effected from him.

The impugned order of recovery against the petitioner was passed before the judgment/decree dated 21.08.2009 (Annexure P-9) were passed by the Civil Court. Apparently, due to this reason, punishment order had been passed on the assumption that the cheques in question had been forged by the miscreants and were not signed by Krishan Chander Accounts Manager.

Hence, it would be just and expedient to set aside the impugned orders and direct the punishing authority to pass a fresh order in accordance with law after considering the judgment/decree dated 21.08.2009 (Annexure P-9) passed by the Civil Court.

Accordingly, this petition is allowed. Impugned orders dated 22.06.2005 (Annexures P-5) and dated 30.11.2007 (Annexure P-6) are set aside. The punishing authority is directed to pass a fresh order in accordance with law after considering the impact of the judgment/decree dated 21.08.2009 (Annexure P-9) passed by the Civil Court.

(SABINA)
JUDGE

February 11, 2016
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