

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16496-2014 (O&M)
Date of decision: 15.07.2016

Vijay Kumar Garg

.....Petitioner

versus

Punjab State Warehousing Corporation and another

.....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Vivek Sethi, Advocate for the petitioner
Mr. S. S. Bedi, Advocate for the respondents

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Facts of the case so far as relevant for the purpose of disposal of the present writ petition are that the petitioner was working as Ware Housing Manager at Dirba. He was served with a charge sheet levelling three charges. As a result of the inquiry, two charges were held to be not proved and third charge was held to be proved regarding not sending reply to the explanations called by the head office. However, no further action was taken on the said charge sheet and the matter was ended there. Later on the petitioner was served with fresh charge sheet which is reproduced as under:-

“That after wheat 1999-2000 lying at State Warehouse Dirba got damaged 4535 kattas weighing 2239.50 qtls. wheat had to be auctioned as a result of which including 50% incidental charges where has been a loss of Rs.13,33,575/- on account of book value of the stocks and the amount received after auction and for compensating this loss you are responsible.”

The petitioner submitted the reply. Dissatisfied with the reply, the inquiry officer was appointed, who submitted the report dated 25.7.2007 (Annexure P9). The inquiry officer concluded as under:-

“The charge levelled against the CO is not proved because he discharged his duties and in case had shown any negligence during the first year of storage in damaging the stocks he can be held responsible to that extent partially about which light can be thrown by the Quality control/ concerned district authorities on the basis of the record.”

Initially, the petitioner was issued a show cause notice dated 3.10.2007 (Annexure P10), assuming that he has been held guilty. However, later on, after receiving the reply Annexure P11, vide office order dated 10.1.2008 (Annexure P12), the show cause notice dated 3.10.2007 was withdrawn, reserving the right to issue fresh show cause notice on re-examining the inquiry report. Later on, the fresh show cause notice dated 23.6.2008 (Annexure P13) (colly) was issued, vide which, the Managing Director disagreed with the conclusions drawn by the inquiry officer and issued a show cause notice for recovery of Rs.13,33,572/-. A dissenting note was also enclosed with show cause notice, in which the punishing authority had given reasons for disagreeing with the inquiry report. After receiving the reply, Annexure P14 the punishment order dated 24.9.2008 (Annexure P15) was passed vide which, the petitioner was held responsible for financial loss caused to the corporation and penalty of actual loss of Rs.8,89,049/- was ordered to be recovered from the pay of the employee @ Rs.5000/- per month and the balance amount was ordered to be adjusted from the retiral benefits of the employee.

The petitioner preferred an appeal before the appellate authority (Annexure P16) against the order of awarding the punishment by the Managing Director. Since the appeal was not decided, the petitioner approached this Court by way of filing CWP No.612 of 2011, wherein this Court vide order dated 14.1.2011 directed the appellate authority to decide the appeal preferably within three months. Accordingly, the appeal was decided by the appellate authority vide order dated 25.4.2012 (Annexure P21), wherein the appeal was partly allowed and the penalty was reduced to 50% of Rs.8,89,049/-i.e. Rs.4,44,525/-. The operative part of the said order is reproduced as under:-

“Appeal of Sh.V.K. Garg, G.A. now Warehouse Manager (retd.) was fixed on 25.4.2012 before the appellate authority whose members were Chairman, Punjab State Warehousing Corporation and Director, Food and Supply Department, Punjab. In order to putforth his side, Sh.V.K. Garg, G.A. Now Warehouse Manager (retd.) himself appeared. During the course of hearing while mainly considering the record submitted by him and report submitted by District Manager, Sangrur it was found that all steps were taken by the appellate to dispose the stock, but he could not dispose the stock. In the report of the present District Manager, it was also confirmed that complete steps were taken by Sh.V.K. Garg, G.A. now Warehouse Manager (Retd.) to protect and dispose this stock.

During the course of hearing of appeal, after considering contentions submitted by Sh.V.K.Garg, G.A. Now Warehouse Manager (Retd.) record and reports of District Manager,

Sangrur, it has been found that the appellant is not fully responsible for this loss. For this, full recovery of Rs.8,89,049/- imposed upon Sh.V.K.Garg, G.A. Now Warehouse Manager (Retd.) is reduced to 50 percent and recovery of Rs.4,44,525/- is imposed upon him.”

The petitioner is aggrieved of the said orders passed by the punishing authority as well as the appellate authority.

I have heard learned counsel for the parties and have also carefully gone through the file.

The factual position is not disputed by the respondents. It has been argued on behalf of the respondents that the punishing authority was competent to disagree with the report and for the reasons given in the dissenting note, the punishing authority disagreed with the report of the inquiry officer and imposed penalty. It is stated that the petitioner failed to dispose of the stock and failed to protect the same. The same was found heavily infested. The wheat was stocked in the year 1999-2000 and it was after four years that the same is found to be heavily infested for which the petitioner is held liable. The operative part of the order of the appellate authority shows that during the course of hearing, the report was submitted by the District Manager, Sangrur, wherein it was stated that all the steps were taken by the appellant to dispose of the stock but he could not dispose of the same. The present District Manager also reported that complete steps were taken by the appellant V.K.Garg, now Warehouse Manager (Retd.) to protect and dispose of the stock. After going through the said report, the appellate authority held that it is of the view that the appellant is not fully responsible for causing loss to the corporation and accordingly reduced the

penalty.

I am of the view that the order of the appellate authority is not sustainable in the eyes of law.

First of all, in the inquiry, the petitioner was exonerated. The punishing authority was competent to disagree with the report. The allegation against the petitioner was that a wheat stock in the year 1999-2000 lying at State Warehouse, Dirba got damaged. 4535 kattas weighing 2239.50 quintals wheat had to be auctioned. Once, it is reported that all the steps were taken by the petitioner to dispose of the stock and also to protect the same, it cannot be understood that how he could be found partly responsible for the loss. Once the wheat is stocked for over four years in open, it is likely to be heavily infested. Even if, heavy insecticide is used, it is likely to damage the wheat.

In these circumstances, I am of the view that the order of the appellate authority, without disagreeing with the report of the District Manager that the petitioner took all the steps to protect and dispose of the stock, could not hold the petitioner fully responsible for the loss. Accordingly, the order dated 24.9.2008 (Annexure P15) passed by the punishing authority and order dated 25.4.2012 (Annexure P21), passed by the appellate authority are hereby quashed. The petition is accordingly allowed.

15.07.2016
gk

(Kuldip Singh)
Judge