IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 7917 of 2012(O&M)

Date of Decision: January 8 , 2016.

Joginder Singh ...... PETITIONER (s)

Versus

Board of Directors, The Punjab State Cooperative Supply and Marketing Federation Limited and others

...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Amit Sharma, Advocate
for the petitioner.

Mr. B.S.Mangat, Advocate
for the respondents.

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1. Whether reporters of local papers 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?

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LISA GILL, J.

Prayer in this writ petition is for setting aside order dated 11.08.2011 Annexure P10 as well as order dated 26.03.2012 Annexure P11 whereby punishment of recovery of ₹1,64,820/- has been imposed upon the petitioner.

Brief facts are that, petitioner Joginder Singh working as Driller Grinder was charge-sheeted for pilferage of 48.18 quintals of wheat crop for the year 2006-2007 causing a loss of ₹44,540/-. Another charge-sheet was served

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upon the petitioner alongwith another employee, Sunil Chopra (Shift Incharge) for pilferage 245.88 quintals of wheat crop for the year 2006-2007 valuing ₹2,20,000/-.

During the course of inquiry, petitioner alongwith Sunil Chopra deposited a sum of ₹2,28,952/- with the respondent- Markfed against the loss reflected in charge-sheet dated 25.03.2007. During the course of inquiry itself, petitioner attained the age of superannuation and he was permitted to retire from service w.e.f. 09.01.2009 vide order dated 22.12.2008 Annexure P5. Disciplinary authority vide order dated 06.10.2010 Annexure P7 held the petitioner as well as Sunil Chopra to be responsible for shortage of 8.99 quintals as well as 245.88 quintals of wheat crop. They were brought down by two stages in time-scale of pay besides directing recovery on account of loss caused. Appeal was preferred by the petitioner which was partially allowed vide order dated 11.08.2011 Annexure P10. While taking a lenient view, two increments of the petitioner were restored but recovery on account of loss caused alongwith interest has been upheld.

Argument raised by the learned counsel for the petitioner is that in the absence of any specific rules, continuation of disciplinary proceedings beyond petitioner's retirement/superannuation, punishment could not have been imposed upon the petitioner as the relationship of employer-employee ceased on the date of superannuation whereas, order of punishment has been passed subsequent thereto. Reliance is placed on the judgment of the Hon'ble in Bhagirathi Jena v. Board of Directors, OSFC and others, *RSJ 1999(2) 375* as well as judgment of this Court in Kanwaljit Singh, General Manager (Retd.) v.

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State of Punjab and others, *2010(5) SLR 238*.

Abovesaid contention is not acceptable in view of rule 5.7 of the Markfed Employees (Common Cadre) Service Rules, 1990 which specifically provides that if the Rules are silent on an issue or no provision has been made on any specific point, the Punjab Government Rules/Instructions on that issue will apply. Therefore stand of the respondents that petitioner can be proceeded against in terms of rule 2.2 of Punjab Civil Services Rules, Vol.II is correct. Proceedings were initiated much prior to the superannuation of the petitioner. Therefore, impugned orders are not vitiated on this count. Reliance by learned counsel for the petitioner on Bhagirathi Jena's case (supra) and Kanwaljit Singh's case (supra) is misplaced for the reason that in the present case there is a specific provision in the Markfed Employees (Common Cadre) Service Rules for the applicability of rules/instructions of the Punjab Government where the said Rules are silent or there is no particular provision.

Another argument raised is that the norm adopted by the respondents to determine the shortfall in "excess wheat" to be delivered on account of moisture content was not as per norms approved by the competent authorities i.e., the Board of Directors. Punishment was imposed on the basis of norms which had not received approval of the competent authority.

It is relevant to note that in view of this contention, this Court on 10.02.2015 had directed respondent No.2 to file an affidavit stating therein whether for the period in question, when shortage was allegedly detected for which the petitioner charge-sheeted, the adopted norms were approved by the Board of Directors/competent authority or not and if they were approved, such

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approval was directed to be placed on record. Pursuant thereto, affidavit dated 08.04.2015 was filed, relevant part of which reads as under:-

> "2. That deponent states that realization of norms of excess on account of wheat stocks stored in godown/plinth on wheat stored during the 1st year is for Covered godown 1 Kg an for open storage 700 grams per qtl. as per the decision taken by cabinet vide No.SES-S5(399)-99/2826A 2826 dated 16.04.1999. It was also mentioned in abovesaid letter that the different procuring agencies shall be free to formulate their own proposals in consultation with their employees to motivate them to give maximum excess. It was also mentioned that no excess would be taken on the stocks which would be stored/dispatched up to 31st July of every year. True copy is enclosed herewith as A-1.
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> 3. That as per the decision of the Punjab Cabinet conveyed by letter No.2826 dated 16.4.1999 it was decided to formulate norm of excess of wheat stored. Then Markfed formulated the incentive scheme to employees vide No.Acctt/sao/inc/2001/2294/25.01.2001. The target for the accountably of excess was fixed as:-

Period	Target of covered	Target of open
1st year 1st August to 31st of March	1000 grams	700 grams
2nd year 1st April to 31st of March	600 grams	400 grams
3rd year April to 31st of March	350 grams	100 grams

> 4. That the incentive scheme was deferred vide No.CMFG/SFS/01/3141 dated 10.07.2001. True copy enclosed herewith as A-2. The incentive scheme was again restored vide letter No.CMF/SA(Stocks)02/4451 dated 09.12.2002. True copy is attached herewith asA-3. Later on, vide letter No.SPE/04/5287-91 dated 21.04.2004 it was decided to modify the incentive scheme applicable for excess on

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movement in 1st year which shall also be applicable in 2nd and 3rd year and it would remain same i.e. 1000 grams per qtl. from covered and 700 grams from open storage. True copy is enclosed herewith as A-4.

5. That the incentive scheme issued vide Leter No.2294 dated 25.01.2001 and 5287-91 dated 21.04.2004 was deferred by Chief Manager (FG) vide office letter No.SPE/04/5691 dated 27.01.2005 and D.Ms were advised to act accordingly. True copy is enclosed herewith as A-5.
6. That BOD Markfed vide decision dated 27.11.2009 took a decision that Markfed will follow the system followed by DFS&C. True copy is enclosed herewith as A-6. The approved norm of excess were the same decided by cabinet vide No.2826 dated 16.04.1999 forwarded to district vide letter No.FG/SMM/SAM/10/ 1740 dated 17.02.2010. However, the FCI deducted the payment of excess @1000/700 grams irrespective of the period of despatch. True copy is enclosed herewith as A-7."

It is pointed out by the learned counsel for respondents that at the relevant time Board of Directors not being functional, the Administrator was exercising the power thereof. It is, thus, clear that necessary approval had been afforded by the Administrator, Markfed exercising the power of Board of Directors as reflected in Annexure A1/1.

Further, affidavit dated 08.04.2015 reveals that norms followed, while imposing the punishment, were the same as decided by the Cabinet vide memo No.2826 dated 16.04.1999. Therefore, it cannot be said that punishment has been imposed upon the petitioner as per norms which did not have approval from the competent authority. It is further not denied by the petitioner that he

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alongwith Sunil Chopra had accepted responsibility for shortage of the wheat stock of 245.88 quintals as is reflected in their undertaking dated 17.10.2006 annexed alongwith Annexure R1. Pursuant to this undertaking, deposit had been made by the petitioner as well as the other employee.

Learned counsel for the petitioner is unable to point out any ground for interference in the impugned orders. A lenient view has already been taken by the authority and punishment initially imposed upon the petitioner has been reduced by the appellate authority.

Consequently, this writ petition is dismissed.

(LISA GILL)
JUDGE

January 8 , 2016.
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