

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

CWP No. 648 of 2014

Date of decision : 07.04.2016

Manphool Singh Nain

...Petitioner

versus

**Hry. State Fed. Of Consumers
Co-op Wholesale Stores Ltd & anr.**

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Kumar, Advocate
for the petitioner.

Mr. Aseem Rai, Advocate
for the respondents

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioner has filed the present writ petitioner seeking a writ in the nature of certiorari quashing order dated 03.09.2009 and order dated 23.10.2013.

Initially the petitioner was appointed as Clerk in the Indian Army and served there from September 1974 to May 1980. Thereafter, petitioner was appointed as Store Keeper in the year 1981 and retired on 30.04.2008 on attaining the age of superannuation. However,

petitioner was placed under suspension on 25.10.2002 and was reinstated in service on 27.01.2003 and was issued charge sheet vide order dated 31.10.2003 (P-1) for negligence in the performance of his duties. Petitioner gave his reply to the above said charge sheet, vide letter dated 20.11.2003 (P-2). A regular enquiry was conducted and the Enquiry Officer vide report dated 02.08.2006 partially proved the charge while holding his Supervisory Officer i.e District Manager/Asstt Manager also responsible for the negligence (P-3). Subsequently, petitioner was issued show cause notice, vide letter dated 27.02.2008 seeking recovery of Rs.5,32,174/- despite the fact that the State Government had forwarded the case of damaged wheat stocks to Government of India to reimburse the cost of damaged wheat stocks, vide letter dated 28.03.2008 (P-5). Subsequently, petitioner retired from service on 30.04.2008, subject to outcome of pending disciplinary proceedings against him and all his retiral dues were withheld on that account. A copy of order dated 24.04.2008 retiring the petitioner w.e.f 30.04.2008 is Annexure P-4.

Thereafter, petitioner filed CWP No. 5506 of 2009 as his retiral benefits were withheld by the department. This Court disposed of the writ petition on 15.04.2009 with a direction to the respondents to decide the charge sheet within four months (P-6).

In pursuance to the above said order (P-6), the competent authority sought the comments of the petitioner on the enquiry report vide letter dated 29.05.2009 and petitioner gave its reply dated 15.06.2009. The comments were also sought from District Manager, Kaithal under whom the petitioner was working as Store Keeper, who exonerated the petitioner and stated that in fact the petitioner had given gain of 136.97 and 22.72 quintals of wheat in excess (P-7). Thereafter, respondents vide order dated 03.09.2009 ordered recovery of Rs.5,32,174/- for the shortages and ordered that the petitioner will not be paid anything beyond the subsistence allowance during the suspension period i.e 25.10.2002 to 27.01.2003 (P-8). An appeal was preferred against this order on the ground that the Ministry of Food, Government of India had already reimbursed the State Government a sum of Rs.158.97 crores (P-9). This appeal was rejected vide order dated 23.10.2013 (P-10) and ordered that the amount which had already been recovered from the petitioner i.e Rs.86,553/- be adjusted from the amount of Rs.5,32,174/- and further ordered that the recovery of difference amount between payment received from FCI and cost realized from the auction of damaged stock, be also made.

At the very outset, learned counsel for the petitioner has referred to order dated 15.12.2012, which was passed in identical

situation by the Director, Food and Supplies under which the respondent-Federation operates, wherein one B.K. Goyal, Inspector was charge-sheeted for negligence for not protecting the wheat stock from rain, resulting into damages and losses. After the disciplinary proceedings, it was observed by the then Director, Food and Supplies that it was the duty of Food Corporation of India to lift the wheat within 6 months, which the F.C.I had not done and thus, B.K., goyal was not held responsible for the above said loss.

Learned counsel for the petitioner submits that the petitioner in view of the above order dated 15.02.2015 cannot be held responsible and he should be rather rewarded for giving excess gain.

Today, an additional affidavit dated 07.04.2016 of Mr. Sukhpal Singh, General Manager (Legal) Confed has been filed stating therein that show cause notice for recovery of Rs.5,32,174/- stood withdrawn against the petitioner, vide letter dated 29.05.2009. It could not be properly explained therein that such withdrawal of show cause notice was preceded by a letter dated 29.05.2009 that a copy of enquiry report was made available to the petitioner so that he may file his comments. Thereafter, impugned order dated 03.09.2009 (P-8) was passed.

Once the department had withdraw show cause notice

seeking recovery of Rs.5,32,174/-, there was no occasion to pass the impugned order.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Ravel Singh vs. State of Haryana and others, passed in CWP no. 7284 of 2008, decided on 16.04.2009*** whereby this Court while dealing with a case of an employee who had worked with the Corporation for 23 years, the department did not release the amount of gratuity and leave encashment after his retirement. He was given some amount on his representation but some amount was withheld till the decision of his case of less gain of wheat for the crop years 2002-03 and 2003-04 by Head Office. Reference has been made to circular dated 29.04.1999. This Court held that the department-Federation is not justified in withholding the amount towards 70% less gain and allowed the writ petition by observing as under:-

A perusal of the impugned order shows that the respondents have issued circular to the storekeepers requiring them to give the gain as per the norms fixed vide letter dated 29.4.1999, which were made applicable to all the procuring agencies. On the basis of the said letter, every procuring agency, including the respondents, issued instructions to all

the District Managers of the Confed. Those instructions were challenged by the employees of the various procuring agencies in CWP No. 12950 of 1999 and the said petition was disposed of in view of the decision of this Court in CWP No. 3209 of 1993, decided on 20.6.1994, subject to the right of the respondents to take action in accordance with law, as and when regulations in this regard were framed. Concededly, till date, the respondent Federation has not framed any Regulations or Rules for effecting the recovery from its employees on the basis of less gain in the wheat stock. The impugned recovery has been made only on the basis of the circular issued by the Director, Food and Supplies, Haryana, vide letter dated 29.4.1999.”

In the present case, once the show cause notice was withdrawn vide letter dated 29.05.2009, there was no occasion with the department to pass the impugned order dated 03.09.2009. In the absence of any Rule being framed by the respondent-Federation, the petitioner has to face the harassment at the hands of the department.

Applying the ratio of the above said judgment to the facts of the present case, the present petition is allowed with a cost of Rs.25,000/- to be paid to the petitioner and order dated 03.09.2009

and order dated 23.10.2013 are hereby set aside. Petitioner is entitled to all consequential benefits. A direction is given to the respondents to release the withheld amount of the petitioner by giving 9% interest from the date of retirement of the petitioner i.e 30.04.2008 till the payment is made.

(RITU BAHRI)
JUDGE

07.04.2016

G Arora