

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

**CWP No.6602 of 2000 (O&M)
Date of decision : May 19, 2017**

Jai Parkash Gupta

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Petitioner was working as District Primary Education Officer and later on retired as Deputy Director on 31.03.1999 on attaining the age of superannuation. During his service, he was served with a charge-sheet dated 23.07.1996 (Annexure P-1), in which allegations were levelled that for the period 21.08.1991 to 18.11.1993, when he was working as District Primary Education Officer at Panipat, for a sum of ₹4,61,254.15/- neither any receipts were submitted nor any entries were made in cash book and that a sum of ₹46,192.02 was shown in the cash book on 19.05.1992 but not deposited in the bank. Further allegation was that a sum of ₹5,007.75/- was drawn vide bill dated 31.03.1993 for repair of jeep from the contingency fund and this amount was shown in the cash book in the month of 8/91. This amount was shown made in advance, which is an irregularity. He was further charged that during the period from 10/91 to 06/93, he withdrew a

sum of ₹38,400/- from the sports fund for seven times repair of the jeep and purchase of red cross ticket in advance, which was not deposited for two years. Therefore, a total sum of ₹5,50,854.10/- was withdrawn from the treasury and misutilized. Thereafter, after obtaining the reply from the petitioner, the inquiry officer was appointed, who submitted the inquiry report, on the basis of which, the impugned order dated 12.05.1999 (Annexure P-5) was passed. The operative part of the same is as under:

“I have perused all documents, enquiry report regarding this case and have come to the conclusion that as this case of misutilisation of funds/embezzlement is pending in the hon'ble court against Shri. Kuldip Sharma for consideration and has not been decided, till the case is decided, I hereby order for stoppage of gratuity or Shri. Gupta as if Shri. Kuldip Sharma is acquitted of the charge by the Hon'ble Court, the embezzled amount can be recovered from gratuity amount of Shri Gupta.”

At that time, the petitioner had already retired from service. The petitioner had sought quashing of the said order and seeks mandamus for the release of gratuity and leave encashment, pay of suspension period and interest on the delayed payment. Petitioner further claims that the report of the inquiry officer was not supplied to him. Therefore, the impugned order of punishment is illegal.

In the written statement, respondents have asserted that a sum of ₹5,50,854/- was embezzled by the petitioner. It was stated that the inquiry was held in which he was held guilty. Regarding the inquiry report, it was stated that there is no necessity to supply the copy of the inquiry report when the proceedings were signed by him and he could have the copy

of the proceedings during the course of regular departmental inquiry. It was admitted that a criminal case was lodged against one Kuleep Sharma, Clerk, but the petitioner was the D.D.O. and it was his duty to ensure that all the financial transactions were made in accordance with the rules and no money was embezzled.

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

It comes out that regarding misutilization of funds, one Kuldip Sharma, Clerk, was booked in a criminal case and the pleadings show that said criminal case was going on against him. The petitioner is sought to be made liable as he was D.D.O. and it was his duty to over see that bills were prepared and submitted in accordance with rules.

However, this Court will restrict to the legal points only. Firstly, when the inquiry report was not supplied, whether the punishment could be imposed under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987?

I am of the view that in the said Rule, major and minor penalties are mentioned. Penalty of withholding the gratuity till the decision of criminal case registered against any employee, is not one of the punishments, prescribed under rule 7 of the rules *ibid*. If the punishing authority was of the view that the petitioner is liable for the punishment, as he was held by the Inquiry officer, any major/minor penalty, could have been awarded. It is established law that a criminal case and departmental proceedings can go side by side and even if the employee is acquitted in the criminal case, he can be held guilty in the departmental proceedings. Here,

there is no need to await the decision of the criminal case against Kuldeep Sharma. Therefore, the impugned order is not the punishment order covered under any of the major or minor penalties under Rule 7 of the Rules *ibid*.

Moreover, in the present case, admittedly the copy of the inquiry report was not supplied to the petitioner. Without supplying the copy of the inquiry report, which is mandatory and without affording any opportunity of hearing to the petitioner, no punishment order could be otherwise passed.

It being so, the impugned order dated 12.05.1999 (Annexure P-5) is hereby quashed. The respondents are ordered to release the amount of gratuity and leave encashment to the petitioner along with interest @ 9% per annum, starting three months from the date of retirement till its payment. Regarding the pay of the suspension period, the respondents are also directed to take a decision within two months from the date of receipt of certified copy of this order and follow up action be taken, accordingly.

As such, the present petition is allowed.

(KULDIP SINGH)
JUDGE

May 19, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No