

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18518-2014

Date of decision : 01.02.2017

Malkeet Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sandeep Kumar Bokolia, Advocate,
for the petitioner.

Mr. Y.P.Singla, Advocate,
for the respondents.

KULDIP SINGH J. (ORAL)

Petitioner, who retired as Assistant Foreman and was working as a Storekeeper with the respondent department, i.e, Punjab State Seeds Corporation Ltd., retired on 30.11.2012. Petitioner challenged the order dated 02.09.2013 (Annexure P-8), vide which the gratuity of the petitioner has been withheld, prayer for release of gratuity and payment of interest on the delayed payment of leave encashment.

Respondents, in the reply, has taken the stand that when petitioner was posted as Assistant Foreman/Storekeeper, an audit was conducted and it was found that a sum of Rs.42,680/- is recoverable from the petitioner. It was also found that seeds worth Rs.5,89,800/- were supplied to different Cooperative Societies as per bills/S.R. issued by one Smt. Darshan Kaur, Senior Assistant, and gate pass was issued by the petitioner. The said amount has not been recovered, regarding which, a civil suit has been filed against the said societies. As per Para Nos.5 and 8 of the Office Order dated 30.10.1986 (Annexure R-1), seeds were to be supplied

on payment of cash except in case there are specific instructions from the Headquarters and that it was duty of the Storekeeper to ensure that seeds were issued only against proper documents and that in case of the failure Cashier and Storekeeper shall be equally liable. Therefore, it is stated that said Smt. Darshan Kaur and the petitioner are equally liable and for proportionate recovery of 50%, a sum of Rs.2,94,900/- is recoverable from the petitioner.

I have heard learned counsel for the parties and also gone through the record of the case.

The impugned order dated 02.09.2013 (Annexure P-8) shows that a sum of Rs.42,680 and Rs.2,94,900/- total amounting to Rs.3,27,580/- has been withheld till the final decision of the Court. Apparently referring to civil suit filed against the societies, leave encashment of Rs.4,42,040/- was paid on 13.03.2013, which is after a delay of about 13 days. Keeping in view the negligence of 13 days, no interest is payable on the leave encashment. Now, coming to the withholding of the gratuity as discussed above, it comes out that there are instructions dated 30.10.1986 of the respondent (Annexure R-1). The relevant instructions are reproduced below:

“1. In future all the seeds shall be sold only on cash & carry basis, except in case there are specific instructions from Head Office.

XXX XXX XXX

5. The Store-keeper shall see that the seeds are issued only against proper documents duly signed by the persons concerned as well as the Cashier both, failing which the Storekeeper shall be equally responsible for wrong supply of seeds. The recover in such cases shall be made from their personal dues.

XXX XXX XXX

8. The efforts shall be made for making recovery of old outstandings also by fixing the responsibility of

individuals who have made the credit sale. The recoveries from their personal dues shall be made on either side failing to make recovery within a specific period under intimation to the undersigned.”

A perusal of the said relevant instructions relied upon would shows that petitioner who was posted as Storekeeper is stated to have violated those instructions. Therefore, the department is first required to decide whether these instructions were violated by the petitioner or not whether he is responsible for the loss or not. In the civil suit petitioner is not a party. Therefore, without fixing the liability of the petitioner, if any, no order of withholding of gratuity would be passed.

In the circumstances, impugned order dated 02.09.2013 (Annexure P-8) is hereby quashed. However, the respondents shall be at liberty to fix the responsibility by issuing show cause notice to the petitioner and after obtaining his reply and giving him appropriate opportunity of hearing and examination of the documents whatsoever submitted by the petitioner, first pass the speaking order as to whether the petitioner is responsible for the said loss and if so, to what extent and then the department can pass the order. Needful be done within two months from the date of receipt of the certified copy of the order, failing which the amount of gratuity shall be released to the petitioner with interest at the rate of 9% per annum starting from three months after the date of retirement till the date of actual payment to the petitioner.

(KULDIP SINGH)
JUDGE

01.02.2017
adhikari

Whether speaking/reasoned : ***Yes/No***
Whether Reportable : ***Yes/No***