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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8400 of 2010 (O/M)

Date of decision : 14.3.2017

Ved Parkash Gupta

..... Petitioner (s)

Versus

Haryana State Federation of Consumers Co-operative Wholesales Stores
Limited and another

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mrs. Anu Chatrath Kapur, Senior Advocate, with,
Ms. Richa Bansal, Advocate, for the petitioner.

Mr. Amit Jaiswal and Mr. Deepak Balyan, Advocates,
for respondents

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 ?

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KULDIP SINGH J. (ORAL)

The petitioner has impugned the punishment order dated 21.9.2005 (Annexure-P-7), vide which he has been dismissed from service, just 9 days before his retirement. He has also impugned the order of the appellate authority i.e. Board of Directors, conveyed vide letter dated 25.8.2009 (Annexure-P-13), vide which his appeal has been rejected. The prayer is for quashing the order passed by the punishing authority as well as by the appellate authority. The petitioner would have superannuated on 30.9.2005, but due to dismissal order dated 21.9.2005 (Annexure-P-7), he was dismissed from service, just 9 days before his retirement.

The brief facts of the case are that the petitioner was working as a General Manager with respondent-CONFED since 27.10.1975. During

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the Kharif Marketing Season 2001-2002, he was post as a District Manager, CONFED at Karnal. The petitioner was placed under suspension, vide order endorsed on 11.12.2001 (Annexure-P-1) and charge was handed over to Mr. O.P. Sharma, District Manager, CONFED, Kurukshetra. Later on, the petitioner was served with a chargesheet dated 15.12.2003 (Annexure-P-2) under Rules 26.1 and 26.2 of the Staff Service Rules of the Federation, in which it was alleged that during the Kharif Marketing Season 2001-2002, he entered into an agreement with M/s Mahabir Rice Mills, Indri, on 10.10.2001 for storage and milling of paddy and delivery of Custom Milling Rice (in short 'CMR') to Food Corporation of India (in short 'FCI'). 1641.05 MT paddy was handed over to M/s Mahabir Rice Mills, Indri, by the petitioner, which failed to mill the paddy and deliver the CMR to the FCI upto 31.1.2002. Therefore, the action was directed to be taken by the District Manager, CONFED, Karnal, against M/s Mahabir Rice Mills, Indri. It was further found that on 10.10.2001, an agreement executed between the petitioner and M/s Mahabir Rice Mills, Indri, was not signed by the partner. Therefore, no action could be taken against the said mill. In this way, the petitioner has caused a loss to the CONFED to the tune of Rs. 1,11,26,111/- (value of stocks + gunny bags = 91,51,129/- + interest of Rs. 19,74,982 upto 31.10.2003) by not getting agreement signed from the authorized representative of M/s Mahabir Rice Mills, Indri, on 10.10.2001. Moreover, he also failed to make efforts to get the paddy milled and deliver the CMR to FCI as per the agreement, which amount to gross misconduct under the Staff Service Rule 26.1 of the Federation.

In the reply to the chargesheet, the petitioner denied the charges and claimed that after the paddy was not milled by M/s Mahabir Rice Mills,

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Indri, the paddy was shifted from M/s Mahabir Rice Mills, Indri, to M/s Hari Ram Paras Ram. It is further claimed that after the suspension of the petitioner on 11.12.2001, it was the responsibility of his successor to make arrangement of milling of the paddy and deliver CMR to FCI. It was further claimed that as per the agreement, the entire stocks of paddy was shifted to another mill. Thereafter, the inquiry officer submitted the inquiry report dated 15.12.2003 (Annexure-P-4). In the inquiry report (Annexure-P-4), it was held that the agreement executed between the petitioner and M/s Mahabir Rice Mills, Indri, was defective and not a proper agreement. However, it was found that the petitioner is not responsible for the loss. It was further held that the petitioner is responsible for wrong milling/non delivery of CMR upto 11.12.2001. The operative part of the findings record by the inquiry officer is reproduced as under :-

“ From the facts on record and gathered during enquiry proceedings, it was established that Sh. V.P. Gupta while working as D.M. Karnal had entered into the agreement for the milling of paddy with M/s Mahabir Rice Mill, Indri and the agreement entered into with M/s Mahabir Rice Mill, Indri was defective and was not proper. Sh. V.P. Gupta pleaded that he was placed under suspension on 11.12.2001 and his successor got the stock physically verified and got the stock of 1641-05 MT paddy intact with the Miller and the entire stocks were shifted from M/s Mahabir Rice Mill, Indri to M/s Hari Ram Paras Ram, Indri on 30.1.2002 by his successor on the direction of H.O. as well as District Administration.

From the foregoing facts, it is established that agreement entered into with M/s Mahabir Rice Mill, Indri by Sh. V.P. Gupta was not proper and agreement was defective. However, in view of admission of P.O. and Sh. B.S. Saini, witness of the P.O. loss of Rs. 1,11,26,111/- pertains in the shortage of stock

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was not caused due to negligence of Sh. V.P. Gupta as the stocks were transferred from M/s Mahabir Rice Mills, Indri to M/s Hari Ram Paras Ram, Indri. However, Sh. V.P. Gupta was responsible for non milling/non delivery of CMR to the FCI upto 11.12.2001 as per the terms of the agreement. The charge that Sh. Gupta entered into an agreement with M/s Mahabir Rice Mill, Indri, wrongly and agreement was defective is proved.”

On the basis of the said chargesheet, a show cause notice dated 11.7.2005 (Annexure-P-5) was issued, wherein it was added that due to negligence of the petitioner, the CONFED has to suffer. Therefore, tentative penalty of dismissal from service was proposed. The relevant extracts from the show cause notice (Annexure-P-5) is reproduced as under :-

“1. Negligence in the performance of duties causing loss to the Federation.

The charges have been explained in detail in the said chargesheet. To know the facts of the case, Sh. A.S. Dhillon SAE Confed was appointed as Enquiry Officer, vide order No. EA-2/19483 dated 28.1.2004 under intimation to you. The Enquiry Officer conducted the enquiry in association with you and the Prosecuting Officer. The Enquiry Officer submitted his report vide letter No. 130 dated 15.6.2005. As per findings of Enquiry Officer allegations levelled against you stood prove (copy of enquiry report is enclosed). I agree with the findings of Enquiry Officer. Due to your negligence the Confed has to suffer a loss of nearly Rs. 92 lacs as you did not execute a proper agreement with the Mill, which resulted into non delivery of CMR of huge quantity valued nearly Rs. 92 lacs.”

Thereafter, after obtaining the reply dated 28.7.2005

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(Annexure-P-6), the punishment order endorsed on 21.9.2005 (Annexure-P-7) was passed, wherein while observing that due to execution of the defective agreement with M/s Mahabir Rice Mills, Indri, the CONFED has suffered the loss to the tune of Rs. 92 lacs. It was further held that the petitioner failed to get the approval from the District Milling Committee, headed by Deputy Commissioner, which was mandatory before giving stocks of paddy to the mill. Accordingly, the punishment of dismissal from service was imposed, vide order dated 21.9.2005 (Annexure-P-7). It was further held that the petitioner made contract with the firm, which was not even registered. Hence, the firm was bogus. Secondly, he did not even convene a meeting, which was to be headed by the Deputy Commissioner. Thirdly, he also did not send this to the Head Office for final approval. All this establishes his total connivance with the parties. Had all this not happened, Confed would have been saved from incurring losses to the tune of Rs. 1 crore approximately. It was observed that such persons are rogue in service and they have not right to continue in service. The relevant extracts from the punishment order dated 21.9.2005 (Annexure-P-7) are reproduced as under :-

“ Shri V.P. Gupta GM (u/s) was present on 17.8.2005 in connection with the Show Cause Notice issued to him vide letter No. estt./EA-2/5551-52 dated 11.7.2005. I heard Shri V.P. Gupta, GM (u/s) and during personal hearing, he pleaded for his innocence. I have gone through the record and I agree with the findings of the Enquiry Officer. He failed to produce any cogent proof in his defence. Due to the negligency of Shri V.P. Gupta, Confed suffered a loss of approximately Rs. 92.00 lacs as Shri V.P. Gupta executed an agreement with M/s Mahabir Rice Mills, Indri, which was defective/not proper as not signed by the partner. He failed to execute proper

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agreement with M/s Mahabir Rice Mills, Indri, which resulted into non-deliver of CMR. He also failed to take approval from District Milling Committee headed by Deputy Commissioner, Karnal, which was mandatory before giving stocks of paddy to the mill.

He made contract with the firm, which was not even registered. Hence the firm was bogus. Secondly, he did not bother to convene a meeting, which was to be headed by Deputy Commissioner. Thirdly, he also did not send this to Head Office for final approval. All this establishes his total connivance with the parties. Had this all not happened, Confed would have been saved from incurring losses to the tune of Rs. 1.00 crore (Approximately). Such personnel are rogue in the service and they have no right to continue in service.”

Against the said order, the petitioner preferred an appeal before the appellate authority on 28.9.2005 (Annexure-P-8), which was dismissed, vide order dated 29.12.2006 (Annexure-P-9). The petitioner challenged the said order before this Court by way of filing CWP No. 2157 of 2007, titled as Ved Parkash Gupta Versus Haryana State Federation of Consumers Co-operative Wholesale Stores Limited and another, which was decided by a Division Bench on 3.9.2008 (Annexure-P-11) and the same was allowed. It was held that one of the members of the Board of Directors, namely, R.R. Jowel, was not competent to sit in the meeting of the Board of Directors-appellate authority because he himself has passed the order of punishment, which was subject matter of appeal before the Board of Directors. It would tantamount becoming a Judge in his own cause which is impermissible in law. Therefore, the punishment order was set aside and the case was sent back to the Board of Directors for fresh decision. Thereafter, the impugned order dated 25.8.2009 (Annexure-P-13) was passed, practically on the same

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ground alleging the negligence of the petitioner in defective agreement, which resulted in loss of approximately Rs. 1 crore to CONFED.

In the written statement, respondents have taken the plea that the petitioner was guilty of executing defective and non executable agreement with M/s Mahabir Rice Mills, Indri. The issuance of show cause notice, passing of the punishment order and the order of the appellate authority were asserted to be corrected. It was further stated that the defective contract has resulted into loss of Rs. 1,11,26,111/- to the Confed.

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

Admittedly, it is an established law that this Court is not to re-appreciate the charges and re-assess the evidence, on which the charges were proved. The inquiry report clearly shows that the inquiry officer held that the loss to the Confed is not proved. Apparently, for the reason that the entire paddy of 1641.05 MT was shifted from M/s Mahabir Rice Mills, Indri to M/s Hari Ram Paras Ram after the suspension of the petitioner. The petitioner has been held guilty on two counts, one is that he had entered into a defective agreement with a person, who was not authorized to sign on behalf of M/s Mahabir Rice Mills, Indri and the second is for non milling and non delivery of rice paddy upto 11.1.2001 in terms of the agreement. The petitioner was placed under suspension on 11.12.2001 and the show cause notice dated 11.7.2005 (Annexure-P-5) shows that the punishing authority went beyond the findings of the inquiry officer. Without recording a dissent note and contrary to finding of the inquiry officer, it was observed that due to the negligence of the petitioner, Confed suffered a loss of Rs. 92 lacs, whereas there are clear cut findings of the inquiry officer that

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no such loss was suffered by Confed. It was on the assumption of loss of Rs. 92 lacs that the punishing authority proceeded and passed the dismissal order. Even the dismissal order shows that the dismissing authority was of the view that due to the negligence of the petitioner, Confed suffered the loss of nearly Rs. 92 lacs.

It also comes out that the punishing authority also considered the extraneous matter, which were not the subject matter of the chargesheet or findings of the inquiry. First is the loss of Rs. 92 lacs, as discussed above and the second is that the contract was with the firm, which was not even registered and hence the contract was done with a bogus firm. The other was that he did not even convene the meeting, which was to be held by the Deputy Commissioner and the next is that he also did not sent this to the head office for approval, which according to the punishing authority, is in connivance with the party. It was observed that if this had been done, the Confed would have been saved from incurring the loss of Rs. 1 crore. It was further observed that such person like the petitioner are rogue in service and they have no right to continue in service. These allegations were never part of the chargesheet. The fact remains that the petitioner had signed an agreement with M/s Mahabir Rice Mills, Indri, and supplied the paddy to the tune of 1641.05 MT on 10.10.2001. It was found that the person, who signed on behalf of said firm, was not even authorized to do so. Consequently, the petitioner was placed under suspension on 11.12.2001 and the entire paddy stock was handed over to another firm, namely, M/s Hari Ram Paras Ram, Indri. In this way, the entire paddy was recovered without any loss. The other is that from 10.10.2001 to 11.12.2001, the petitioner did not supervise the milling of the paddy, which means that the

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firm did not mill the paddy and the petitioner did not take any action. For that, the said firm is also to be made liable for not adhering to the terms of the agreement. However, according to the Confed, this could not be done as it was a bogus firm. In any case, the paddy was handed over to new firm by the successor of the petitioner, namely, Mr. O.P. Sharma and for any act after 11.12.2001, only Mr. O.P. Sharma is responsible.

Keeping in view the abovenoted facts and circumstances, I am of the view that the punishing authority went beyond the report of the inquiry officer and took into consideration extraneous facts, to pass the extreme order of dismissal from service, just 9 days before the retirement of the petitioner. In these circumstances, the punishment order dated 21.9.2005 (Annexure-P-7) and the order dated 25.8.2009 (Annexure-P-13) on the appeal of the petitioner are found to be illegal and are hereby quashed. Respondent (the punishing authority) is directed to hear the petitioner again and confine only to the allegations, which have been proved in the inquiry report and then pass a fresh punishment order within two months from the date of receipt of certified copy of this order. Needless to say that during the hearing on the punishment order, the petitioner can raise all the pleas available to him including his advanced age, grant of lesser punishment and grant of pension etc. The fresh order, if passed, shall be effective from the date the first punishment order dated 21.9.2005 (Annexure-P-7) was passed. The present writ petition is allowed to the abovenoted extent.

(KULDIP SINGH)
JUDGE

14.3.2017

sjks

Whether speaking / reasoned	:	Yes
Whether Reportable	:	Yes