

CWP No. 5280 of 2014 (O&M)

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

CWP No. 5280 of 2014 (O&M)

Date of Decision: 12.12.2017

Surinder Kumar Sharma

.....Petitioner

Vs.

Haryana Agro Industries Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. J.K. Goel, Advocate,
for the petitioner.

Mr. Pankaj Gupta, Advocate,
for the respondents.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 17731-CWP-2017

By this application, the applicant-petitioner seeks to place on record two judgments and decrees of the Additional and District Judge, Karnal, dated 09.01.2017, as Annexures P-10 and P-11, respectively.

The application is allowed and the aforesaid judgments and decrees are taken on record as Annexures P-10 and P-11 with the accompanying petition.

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The petitioner has challenged issuance of the impugned charge-sheet dated 01.01.2009, Annexure P-7, alleging therein against him that while he was deployed as the Mandi Inspector-cum-Store Keeper in Indri Mandi, during the Rabi marketing season 2000-01, he had caused a wrongful loss to the Corporation amounting to Rs. 15,02,300/-, and for the season 2002-03 a further loss of Rs. 7,52,741/-

The said charge-sheet was issued to him about 2½ years after his superannuation from service on 31.05.2006, though earlier two charge-sheets, dated 28.06.2005 and 21.02.2006, had been issued to him, which were substituted vide the impugned consolidated charge-sheet. Both the aforesaid charge-sheets are stated to have been duly served upon him during the time that he was still in service.

On account of the issuance of the aforesaid charge-sheets, the petitioner was denied his retirement benefits, leading to his filing Civil Suit no. 542 of 2012, seeking therein release of those benefits, which suit was decreed in his favour.

Prior to that however, the respondent-Corporation had also instituted Civil Suit no. 668 of 2007 on 04.08.2007, seeking recovery of an amount of Rs. 23,10,776/- (i.e. a total of the two amounts that were subject matter of the two separate charge-sheets).

The suit of the respondent-Corporation was dismissed by the learned Additional Civil Judge (Senior Division), Karnal, vide his judgment and decree dated 19.09.2011 (a copy of which has been annexed as Annexure P-5 with the petition), whereas the suit of the present petitioner (plaintiff in Civil Suit no. 542 of 2012), as noticed, was decreed in his favour, vide a judgment dated 29.05.2013 (Annexure P-8 with the petition.).

Against the aforesaid two judgments and decrees, the respondent-Corporation herein filed two 'first appeals', which were both dismissed vide separate judgments passed by the learned Additional District Judge, Karnal, on 09.01.2017, (copies of which have been taken on record today as Annexures P-10 and P-11).

The petitioner therefore naturally contends in this petition that the issue of recovery of the aforesaid amount from him having been dealt with on merits in the civil suit for recovery by the learned Civil Court, it having been held that he was not responsible in any manner for causing the losses to the Corporation, in both the suits, with those judgments having become final, (no Regular Second Appeal having been filed by the respondent-Corporation before this Court), the respondents are disentitled now from trying to make a recovery from him by pursuing the charge-sheet issued to him on the same cause of action, even though it remained pending at the time when the civil suits were pending before the Civil Court.

In the reply filed by the respondents to this petition, it is stated that as per the report of the enquiry officer dated 11.06.2014, a copy of which has been annexed as Annexure R-1 with the reply, the petitioner has been held guilty of having caused losses to the Corporation, as per the charges framed against him, and therefore action was to be taken against him by the competent authority, accordingly.

Learned counsel for the respondent-Corporation has also produced in Court today an order dated 13.03.2015, passed by the Managing Director of the Corporation, accepting the report of the enquiry officer and imposing a punishment of recovery of Rs. 23,10,776/- along with the interest thereupon, "at the rate of CCL" (Cash Credit Limit), the interest running from the date that the amount was deducted by the FCI from the respondent-Corporation, till the date of realization of the amount from the petitioner.

He therefore submits that the petitioner having been found 'duly guilty' of having caused the aforesaid losses in the enquiry proceedings, the impugned charge-sheet cannot be quashed.

The matter having come up earlier, this Court had made an observation, *prima facie*, that with the Civil Court already having decided this matter in favour of the petitioner, specifically holding that he was not responsible for the losses caused and those judgments having been upheld in first appeal, with no challenge thereto, the respondent-Corporation could not have thereafter in fact continued with the disciplinary proceedings against the petitioner.

However, the matter had been adjourned till today, to enable learned counsel for the respondents to address arguments on the basis of any judgment that he wished to cite on the subject.

Though no judgments have been cited by learned counsel for the respondent Corporation to support his contention, that even in the face of the judgments of the learned Civil Courts, the disciplinary proceedings can continue, he reiterates what he had earlier submitted, further submitting today that with even a punishment order already passed, pursuant to the disciplinary proceedings, this petition deserves to be dismissed.

Having considered the pleadings and the aforesaid arguments of learned counsel, in the opinion of this Court, the petition deserves to be allowed, as the question here is not with regard to continuing disciplinary proceedings in the face of criminal proceedings, but civil proceedings on exactly the same cause of action.

Obviously, had the petitioner been acquitted in criminal proceedings on benefit of doubt or otherwise, the parameters for such acquittal would be wholly different to the parameters applied while deciding a civil case on an identical cause of action, with the parameters to be adopted in criminal proceedings being far more stringent for holding a person guilty and punishing him thereafter for the commission of any crime.

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Hence, continuation of disciplinary proceedings despite criminal proceedings on the same cause of action also being pending, is a wholly different matter, to two civil suits having been decided in favour of an employee on an identical cause of action in respect of which disciplinary proceedings were also pending against him.

If such disciplinary proceedings are allowed to continue, with the punishing authority arriving at a different conclusion to the Civil Court, obviously, implementation of any such order by the punishing authority would amount to overriding and negating the decree of the Civil Court, which decree cannot be overridden by a departmental/corporate authority.

Therefore, the petitioner having been specifically held by the Civil Court to be not responsible for having caused the losses alleged to have been caused by him, I see no ground whatsoever on which the disciplinary proceedings could have continued against him thereafter, culminating in the order dated 13.03.2015, produced in Court today by learned counsel for the respondents.

Therefore, even though specifically that order is not under challenge, but the charge-sheet itself, dated 01.01.2009, having been impugned in the present petition, the petition is allowed and the impugned charge-sheet is hereby quashed, with all consequential benefits due to the petitioner to be released to him in terms of the decree in his favour, issued by the Civil Court.

No order as to costs.

December 12, 2017
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes