

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 7164 of 2009

L.L.Shivhare S/o Shri N.D.Shivhare, aged 60 years, Retd. Junior Superintendent : C.G.State Warehousing Corporation, R/o 21, Chhapadak Marg : Ghasmandi, Guru-Kripa Bhawan, Freeganj, Ujjain (M.P.).

---Petitioner

Versus

1. C.G.State Warehousing Corporation, Through : The Chairman, C.G.State Warehousing Corporation, 22, Anand Nagar, Raipur (C.G.).
2. The Managing Director (Disciplinary Authority), C.G.State Warehousing Corporation, 22, Anand Nagar, Raipur (C.G.).

---Respondents

For petitioner : Shri Anurag Dayal Shrivastava, Advocate.
For respondent : Shri S.S.Baghel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/04/2018

1. The challenge in the present Writ Petition is to the order dated 31/08/2009 – Annexure P/1 whereby the respondents have issued an order of recovery to the tune of Rs.3,47,913.60/- being 40% of the loss sustained by the respondent corporation in the process of alleged termite treatment detected in the various depots of the respondent corporation.
2. The primary contention of the counsel for the petitioner against the impugned order is that, the order is in total violation of the service regulations governing the employees of the respondent corporation. He further submits that no power has been conferred upon the respondent corporation for initiating recovery proceedings from the retiral dues of the

retired employees. It was further contended that even the service regulations does not envisage a clause whereby a proceedings could had been initiated against a retired employee much less issuance of order of recovery. It was further contended that, the impugned order of recovery as per the regulations amounts to a major penalty and procedure for major penalty has been prescribed under the regulations which again in the instant case has not been complied with. For all these reasons, the impugned order is per-se illegal and deserve to be set aside/quashed and thus prayed for the same.

3. The State counsel however opposing the petition submits that, the petitioner in the course of detecting termite treatment in the year 2004 is said to have committed certain irregularities which were detected quite late and therefore the show cause notice was initially issued to the petitioner to which he had replied and finding the reply being not satisfactory, the authorities have issued an order of recovery. He further contended that, it is only a recovery of the loss caused to the department and as such it should not be considered as an order of punishment in any manner and thus he prayed for rejection of the Writ Petition.

4. Having heard the contentions put forth on either side what clearly comes out is that all the service conditions of the employees working in the respondent corporation are governed by the Chhattisgarh State Warehousing Corporation Staff Regulations, 1962. Chapter IV deals with discipline. Rule 22 refers to imposition of different penalties. One such penalty is reflected in clause 1(e) of Rule 22 which deals with the recovery from pay the whole or part of pecuniary loss casued to the Corporation by

the employee. Likewise, sub-clause 4 of Rule 22 envisages a clause that before passing any punishment order, formal charges has to be framed against the employee and he should be given an opportunity for tendering an explanation in writing and cross examining the witness against him, if any.

5. In the instant case, except for the issuance of show cause notice, no enquiry whatsoever has been conducted and if at all if there was an enquiry conducted, it must be at the back of the petitioner and he has never been called for by any of the authorities in the course of any enquiry to put up his case before the department.

6. Moreover, the said regulations does not envisage any provision of initiating any proceedings against a retired employee.

7. Another aspect which cannot be lost sight of is that the alleged termite treatment in the respondent corporation was carried out in the year 2004. The petitioner in the instant case has retired from the respondents on 31/07/2007. That means there was about 3 years period between the date of the alleged termite treatment carried out and the date of retirement of the petitioner.

8. No proper explanation has been provided by the respondents as to why any proceedings could not be initiated while the petitioner was working with the respondents.

9. It is much after the retirement that for the first time, the show cause notice dated 24/09/2008 was issued and thereafter also given, no enquiry

was conducted or an opportunity was granted to the petitioner to defend his case before the competent authority.

10. As such, the impugned order – Annexure-P/1 imposing order for recovery of an amount of Rs.3,47,913.60/- is not sustainable and the same is without the authority and is also in violation of the principles of natural justice.

11. Further it is also in excess of powers conferred upon the respondents under the regulations of 1962.

12. In view of the same, Annexure-P/1 being not sustainable and the same deserve to be and is accordingly set aside.

13. The amount recovered by the respondents should be forthwith refunded to the petitioner within a maximum period of 60 days from the date of receipt of certified copy of this order.

14. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE