

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

**CWP-9414-2014 (O&M)
Date of decision : 29.08.2018**

Manjit Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Geeta Sharma, Advocate for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN, J.

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner, *inter alia*, seeks quashing of impugned charge-sheet and memorandum dated 30.08.2011 (Annexure P-3); impugned action of recovery of Rs.1,90,671/- deducted vide letter No.1176 dated 25.03.2011; and for refund of the amount so recovered along with interest.

Heard.

It is the case of the petitioner that tenders for the work of remodelling/re-constructing the Bridge-cum-fall of Bari Doab Canal during closure period were floated by the then Executive Engineer, Gurmail Singh. The work was issued to "The Bemiyal Co-op L&C Society". The work was initiated by the contractor as per directions of Executive Engineer, Gurmail Singh and SDO, Om Parkash Ahuja along with other officials including the

petitioner. The work was undertaken and completed by the contractor to the entire satisfaction of the authorities within the stipulated period. The petitioner was transferred from the office of respondent No.6 in July, 2003. The petitioner handed over the complete charge to Bhupinder Singh, JE, along with M.B. No.31212, wherein, the entries of the aforesaid executed/completed work had also been entered by the petitioner so that the estimates on actual basis prepared by the petitioner and duly signed by the SDO concerned may be got sanctioned from the competent authority for release of payment to the society as per rules. However, after the transfer of the petitioner, the concerned JE and other officials failed to get the estimate/rates sanctioned resulting into non-payment of dues to the contractor. After completion of work, estimate regarding the cost of work was prepared by O.P. Ahuja, SDO-defendant No.3 and Manjit Singh, JE, after spot inspection. Thereafter, entries of the work done were made in MB No.31212 at pages 105 to 108 on 13.05.2002. The actual cost was assessed as Rs.1,02,139/- by OP Ahuja, SDO. A civil suit was filed by the contractor on 04.02.2004 for recovery of Rs.1,02,139/- along with interest for the work executed as per tender form No.275 dated 08.02.2002, which was decreed by learned Civil Judge, Gurdaspur. The judgment and decree passed by learned Civil Judge attained finality in the appeal preferred by the defendants vide judgment of dismissal dated 05.06.2010 (Annexure P-2). No RSA was filed by the Department. In compliance of the judgments rendered by the Civil Courts, a sum of Rs.1,90,671/- has been made to the contractor vide letter No.1176 dated 25.03.2011.

Thereafter, the respondents have issued memo of charges dated 08.10.2011 holding the petitioner personally liable for the loss caused while alleging that “you made the entry in the measurement book for the work of Remodelling Bridge-cum-Fall of RD 92142 of UBDC main line without work order and without sanction of estimates/rates and you have misutilized the power and caused loss to the state exchequer”.

It is the case of the respondent-Department that in fact, no work was allotted by it to the contractor and the measurement book was prepared in connivance with the petitioner. However, this factual aspect of the matter has been gone into by the trial Court which has returned the following findings:-

“In view of this admission on the part of DW.1, it is clear that after completion of the work, the measurement book was prepared by JE Manjit Singh and SDO Om Parkash Ahuja, whose signatures have been identified by DW.1, on Ex.:P3 and Ex:P4. As such in case no construction work was done by the plaintiff as per the instructions of the defendants, then there was no need to JE Manjit Singh and SDO Om Parkash Ahuja to prepare the Measurement Book. As such when DW.1 has admitted the signature of SDO Om Parkash Ahuja, along with signatures of Manjit Singh JE, it is clear that construction work was allotted by the defendants to the plaintiff. Accordingly, when the plaintiff completed the construction work, it was entered by the then J.E. and S.D.O. in the Measurement Book of the defendants, but after measurement, no payment was made by the defendants to the plaintiff.”

Once, it is proved that after completion of the work, entries in the Measurement Book were made by petitioner-Manjit Singh, JE and OP Ahuja, SDO, no liability could be fastened upon the petitioner alone. It has also come in the testimony of Dalbir Singh Dhaliwal, SDO, Canal Lining, Sub Division No.2, Bathinda, who appeared as DW-1 that as a matter of routine, no work order is issued by the defendants and rather, the estimate is prepared on actual basis after completion of the work.

In view of the above discussion, the instant petition is allowed; impunged charge-sheet and memorandum dated 30.08.2011 (Annexure P-3) along with all consequential proceedings arising therefrom, including impugned action of recovery of Rs.1,90,671/- deducted from the Death-cum-retirement Gratuity, vide letter No.1176 dated 25.03.2011, are set aside; and the amount so recovered is ordered to be refunded to the petitioner along with interest @ 6.5% per annum from the date of recovery, till its payment.

Allowed.

29.08.2018
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No