IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.898 of 2019 (O&M)
Date of decision:-18.10.2019

Jaswinder Singh

.......Petitioner

versus

The Punjab State Warehousing Corporation and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Tahaf Bains, Advocate for the petitioner.

Mr. Anhad S. Miglani, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J.(ORAL)

Pleadings on record would indicate that while the petitioner was serving on the post of Technical Assistant under the Punjab State Warehousing Corporation, an order dated 16.12.2005 came to be passed by the punishing authority/Managing Director of the Corporation at Annexure P-9 imposing upon the petitioner a punishment of stoppage of two annual increments with cumulative effect. Appeal having been preferred has led to the passing of an order dated 12.04.2018 by the Appellate authority at Annexure P-10 whereby the order passed by the Punishing authority/Managing Director has been set aside and the matter has been remanded for passing of a fresh order by following prescribed procedure.

Instant writ petition is directed against the order dated 12.04.2018 passed by the Appellate Authority (Annexure P-10). Challenge has also been laid to a charge-sheet dated 10.12.2018 (Annexure P-11) that has been issued pursuant to the order passed by the Appellate

Authority. A writ of mandamus is sought for directing the respondent corporation to release an amount of Rs.9,53,506/- alongwith interest that had been deposited by the petitioner at a stage prior to passing of the order dated 16.12.2005 by the punishing authority/Managing Director.

Counsel for the parties have been heard at length and pleadings on record have been perused.

Beief factual matrix that would require notice is that an allegation of defalcation of large quantity of wheat stocks was raised against the petitioner while he was officiating as a Warehouse Manager. A show cause notice contemplating the imposition of a major penalty of dismissal from service dated 31.10.2005 was served upon him. Apparently, the reply submitted by the petitioner to the show cause notice was not found to be satisfactory and an opportunity of personal hearing was afforded to him on 23.11.2005 by the Managing Director. Perusal of the impugned order dated 16.12.2005 (Annexure P-9) contains an observation that during the course of personal hearing petitioner had admitted his guilt and had furnished a written undertaking that he was ready to make good the loss which had been depicted in the stocks which were under his charge at the State Warehouse, Zira and had made a further request to make good the loss in four installments. Such request was acceded to and the petitioner accordingly deposited an amount of Rs.9,53,506/- to make good the short fall in the wheat stock. Be that as it may the punishing authority proceeded further in the matter and imposed upon the petitioner the major penalty of stoppage of two annual increments with cumulative effect. It is such penalty that has been set aside by the Appellate Authority vide order dated 12.04.2018 at Annexure P-10 by observing that no charge-sheet had been issued, no regular enquiry had been conducted and the principles of natural justice had been given a complete go bye. Accordingly, the matter was remanded back for passing an order afresh but after following prescribed procedure.

In the considered view of this Court no exception can be taken to the view taken by the Appellate Authority as regards proper procedure to be followed prior to imposing any penalty upon the petitioner.

Counsel for the parties would be in agreement that the procedure for imposition of minor/major penalties is prescribed under the Punjab State Warehousing Corporation Staff (Conditions of Service) (Group 'C' and 'D') Regulations 2002 (hereinafter to be referred to Regulation 2002). Clearly in terms of the remand order passed by the Appellate Authority, it would be imperative for the competent authority under the Corporation to follow the procedure prescribed under the Regulations and only thereafter to come to a conclusion as regards imposition of a penalty, if at all.

For the reasons recorded above, challenge raised by the petitioner to the order of remand by the Appellate Authority is not well-founded. No infirmity as such is found in the charge-sheet dated 10.12.2018 (Annexure P-11) that has now been issued to the petitioner.

There is, however, merit in the contention raised by counsel for the petitioner that the Appellate Authority having set aside the order dated 16.12.2005 passed by the Punishing Authority/Managing Director at Annexure P-9, whereby a penalty of stoppage of two annual increments with cumulative effect had been passed, the direct consequence that is to flow is that increments in question have to be restored to the petitioner. Counsel representing the Corporation concedes that the increments have till date not been restored. Such action is patently unjust and unfair. The order of punishment having been set aside by the Appellate Authority, there would be no justification and basis for the petitioner to continue suffering such major penalty of stoppage of two annual increments with cumulative effect. It is accordingly directed that status-quo ante be restored and two annual increments that had been directed to be stopped with cumulative effect be restored to the petitioner forthwith.

There is yet another aspect of the matter.

The order dated 16.12.2005 passed by the Managing Director at Annexure P-9 reflects that during the course of personal hearing afforded to the petitioner, under threat of a show cause notice contemplating dismissal from service, he had admitted his guilt as regards shortage of wheat stocks and had even furnished a written undertaking to make good the loss and had accordingly deposited the amount of Rs.9,53,506/-.

Counsel for the petitioner would vehemently contend that the undertaking had been furnished under duress and even though the departmental proceedings now initiated in terms of charge-sheet dated 10.12.2018 (Annexure P-11) may proceed but such amount be refunded to him. Court is unable to accept such prayer. The amount of Rs.9,53,506/- is relatable to the alleged short fall in wheat stocks. This is precisely the subject matter of departmental proceedings that have now been initiated vide charge-sheet dated 10.12.2018 (Annexure P-11). The departmental proceedings would be regulated by the 2002 Regulations and the authorities under the Corporation would be mandated to follow the prescribed procedure. The issue with regard to refund of the amount of Rs.9,53,506/- as such would be subject to the final outcome of the enquiry proceedings that are now underway.

For the reasons recorded above, writ petition is partly allowed. Directions are issued to the respondent-corporation to restore to the petitioner two annual increments that had been stopped with cumulative effect pursuant to an order dated 16.12.2005 passed by the Managing Director and which already stands set aside by the Appellate Authority vide order dated 12.04.2018 at Annexure P-10.

Needless to observe that interim directions if any, passed during the course of hearing would now cease to operate.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

18.10.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No