IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18967-2019
Decided on : 21.11.2019

G.S.Verma

... Petitioner

Versus

Food Corporation of India & others ... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Rohit Mittal, Advocate, for the petitioner.

G.S. Sandhawalia, J. (Oral)

Challenge in the present petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 15.02.1997 (Annexure P-4) whereby penalty of reduction in pay by 4 stages for a period of 3 years was imposed upon the petitioner while he was working as Technical Assistant Grade-I. A further stipulation was put that during the currency of penalty, he would not be entitled for any increment and on expiry of the penalty period, he would start from the reduced scale. In addition to that, loss sustained by the Corporation to the extent of one year's basic pay was to be recovered from him in 36 instalments. Challenge has also been raised to the subsequent dismissal of the appeal on 14/19.12.2000 (Annexure P-6) and the review order dated 06.05.2005 (Annexure P-8) whereby the recovery of Rs.94,713/-, which was to be done in 36 easy instalments, was set aside. Similarly, the mercy petition filed which was rejected on 05.03.2013 (Annexure P-10) is also subject matter of challenge.

A perusal of the paperbook would go on to show that the charge-sheet was on the basis of the superfine rice (raw) stocks which had been dispatched from Patti to Wardha and had been diverted and unloaded at Nagpur on 27/28.03.1993. After receipt of the stocks, it was observed by the consignee of the region that the stocks received were not confirming to the specifications. The consignee had lodged quality complaint for the receipt of sub-standard rice and the stocks were inspected by the AM(QC) of the region on 31.03.1993 to 04.04.1993 and the complaint made by the destination complainant was found to be justified. An opportunity was granted to the petitioner to visit the destination for joint inspection of the stocks which he did not avail and resultantly, departmental proceedings were initiated to hold an enquiry against the petitioner. Shri Manmohan Huria, IAS (Retd.) had been appointed as the Inquiry Officer by the Authorities, who submitted his report on 29.12.1995 (Annexure P-3), which was supplied to the petitioner.

The Punishing Authority noticed that opportunity was given to visit the destination and came to the conclusion that the inquiry report was exhaustive and reflected that the rice stocks in 24 wagons were found broken ranging from 28.50% to 33.50% against the permissible rejection limit of 23% acceptance. The dispatch of the inferior quality of rice was found to be motivated and with mala fide intentions and resultantly, the penalty had been imposed. The appeal was also rejected after giving personal hearing to the petitioner, by the Zonal Manager on the ground that appropriate penalty had been imposed. The Chairman and the Managing Director, vide order dated 06.05.2005 (Annexure P-8), however, granted the benefit of recovery which had been imposed, on the ground that the rice stocks were liquidated without incurring extra expenditure by the Corporation, after finalization of the disciplinary proceedings against him.

Despite the petitioner being aware that there was no such provision to file a mercy petitioner, he opted not to challenge the said order, at that point of time. Eventually, his mercy petition was dismissed on 05.03.2013 (Annexure P-10). Thereafter also, the petitioner chose to sleep over the issue and did not challenge the same for a period of 6 years and filed the writ petition only on 09.07.2019.

Counsel for the petitioner has submitted that on account of the bereavement of his daughter and on account of suffering from heart disease, the order could not be challenged at an earlier point of time.

The argument, as such, does not impress the Court. Despite giving concession of condoning the delay for a period of 2 years due to the family circumstances, still the challenge is belated, at this stage. As noticed, the appeal had been dismissed on 06.05.2005. The proceedings had become final at that point of time and 14 years have passed since then. Mere pendency of a mercy petition, without a statutory provision, as such, would not revive a dead cause of action.

Resultantly, this Court is of the opinion that the present writ petition is barred by laches and the discretionary jurisdiction of this Court under Articles 226/227 of the Constitution of India, is not liable to be exercised. Even otherwise, this Court is of the opinion that the enquiry had been conducted and the fact that the petitioner had also been given an opportunity to put-forth his case and that he was also given an opportunity to visit the destination at Nagpur when the adverse report had come against the rejected consignment but he did not avail the same, at that point of time.

The authorities had already given the benefit of recovery by noticing that without incurring extra expenditure by the Corporation, the rice stocks were liquidated, after finalization of the disciplinary proceedings against him. In such circumstances, no case is made out to grant any relief to the petitioner in the present writ petition and the same is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

NOVEMBER 21st, 2019
SAILESH

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*