IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 28263 OF 2013
DATE OF DECISION : 08.02.2019

Mangal Singh

... Petitioner

versus

The Punjab State Warehousing Corporation and another

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Jagdeep Bains, Advocate,
for the petitioner.

Mr. K. B. Raheja, Advocate,
for respondent No.1.

<u>ARUN MONGA, J. (ORAL)</u>

1. The present petition has been filed, inter alia, for issuance of a writ in the nature of certiorari to quash the order dated 28.10.2013 (Annexure P-11) passed by respondent No.2/ Special Secretary, Department of Agriculture, Government of Punjab in his capacity as Appellate Authority of respondent No.1 i.e Punjab State Warehousing Corporation (hereinafter referred to as "the Corporation").

2. Vide the appellate order, the punishing authority's order dated 15.05.2012 (Annexure P-7) has been upheld, whereby, the petitioner was held negligent of causing loss of ₹15,00,000/- to the corporation. The punishing authority directed

that a sum of ₹15,00,000/- be recovered from the salary of petitioner and until the same is recovered, he would get only 40% carry home salary.

3. The petitioner retired on 31.05.2012, almost immediately after passing of the punishing authority's order. Ever since, the said amount of ₹15,00,000/- has been withheld from his retiral benefits.

4. Succinctly, the facts of the case relevant for the decision of present petition are that the respondent-corporation entered into an agreement dated 15.11.1995 with M/s Bedi Rice Mills, for milling of paddy, wherein a bank guarantee of ₹15,00,000/- was furnished by the rice miller. Owing to certain dispute, the said bank guarantee was invoked by Corporation. However, the rice miller filed suit for permanent injunction qua invocation of the bank guarantee against the petitioner-corporation herein. The civil suit was decreed by the learned Trial Court against the Corporation and the said decree was upheld by both first and second Appellate Courts. An SLP filed before the Supreme Court against second Appellate Court, was also dismissed.

5. Thereafter, the rice miller filed an execution petition to execute the decree against the Corporation for recovery of ₹15,00,000/-. The Corporation filed an application praying for issuance of a direction to rice miller to furnish the bank guarantee before the Executing Court. The said application was

dismissed vide order dated 23.05.2007 by Executing Court. Against the said order, an appeal was filed by the corporation. Notice of appeal was served on the respondents, at the address given in the execution petition. However, the appeal was dismissed by learned Appellate Court vide an order dated 01.06.2010, on the ground that correct addresses of the legal heirs of respondent No.4-Surjan Singh had not been supplied by appellant/Corporation.

6. A civil revision petition was filed before this Court by the Corporation assailing orders of Executing Court and Appellate Court, ibid, which was allowed vide order dated 09.03.2011 (Annexure P-15). Order dated 01.06.2010, of Appellate Court was set-aside and Corporation's appeal before the Additional District Judge was restored. The operative part of the order dated 09.03.2011 passed by this Court is as below :

> " *In view of these facts, the present revision petition is accepted. Impugned order is set-aside. Learned Additional District Judge is directed to give an opportunity to petitioner to get the service effected upon legal representative of respondent No.4 through their counsel appearing before Executing Court."*

7. However, the petitioner and one Shri Sawinder Pal were charge-sheeted vide order dated 19.08.2010 (Annexure P-13) with the following charge :

" That you and Sh. Sawinder Pal, G.A remained incapable for tracing the home address of Bedi Rice Mills, Bhikhiwind and his legal heirs due to which, because of non issuance of summon to these millers, this case has been dismissed by the court and the Corporation has suffered a financial loss amounting to sum of Rupees 15 lac, for which both of you are responsible."

8. The petitioner filed a detailed reply to charge-sheet, *inter-alia,* submitting that the Court proceedings were still pending against the miller. Enquiry Officer submitted his report dated 19.10.2011 (Annexure P-6), exonerating the petitioner and concluding as hereunder :

"(7) Conclusion

As per law of the land there is a set procedure for service under order 5 Rule 20 of CPC. Application along with affidavit has to be moved giving last known address of the respondent miller for publication of Public Notice.

In view of this position and discussion in forgoing para No.6, the prosecution has failed to prove the charge against the C.O.s. The financial loss of Rs.15 lacs caused by the C.O.s has not been proved and does not seem to be a reality and appears to have based on conjectures and surmises."

9. Notwithstanding, the Managing Director of the Corporation vide impugned order dated 17.05.2012 (Annexure P-

7) dissented with the view of the enquiry officer. In spite of the fact, that the recovery proceedings were pending against the Rice Miller, he passed an order directing recovery of the entire amount of ₹15 lacs from the petitioner.

10. The petitioner states that the impugned order is totally contrary to the enquiry report dated 19.10.2011 (Annexure P-6) as well as subsequent letter dated 22.01.2012 (Annexure P-8), whereby, addresses were furnished by petitioner to the Managing Director of the Corporation by the reply of petitioner dated 10.03.2012 (Annexure P-9), to the Show Cause Notice .

11. Petitioner in his reply to the Show Cause Notice stated that to trace the above addresses, the petitioner had deputed Satish Kumar, the then Accounts Clerk posted at State Warehouse, Bhikhiwind. He stated that this fact is clear from the letter dated 20.10.2017 written to him by the Corporation and the letters dated 07.07.2010, 20.07.2010 and 05.11.2007 addressed to the District Manager, Punjab State Warehouse Corporation, Amritsar. Copies of these communications were furnished by petitioner to respondents. The addresses traced and given by him were also conveyed to the District office of the Corporation.

12. Petitioner states that the concerned official, who was provided him the information, should have been proceeded against and the petitioner was wrongly charge-sheeted.

13. He further states that he could not be blamed for any

financial loss in this case. It was only alleged and never proved that he was in connivance with the successors of the miller in not conveying the correct addresses to the higher authorities.

14. I have gone through the respective pleadings filed by the parties herein and heard the rival contentions of learned counsel for the petitioner as also learned counsel for the respondent-Corporation. I am of the opinion that punishing authority's order dated 15.05.2012 (Annexure P-7) as also the appellate authority's order (Annexure P-11) do not stand judicial scrutiny and are not tenable.

15. Reasons are more than one. The pointed stand of the petitioner is that prior to the dismissal of the appeal, the addresses were provided by him to the concerned official, who did not take any steps for the service to the legal heirs of the Decree Holder. There is no specific denial to this assertion in the reply. Undoubtedly, service of summons was to be effected on the address given in the petition. If for any reason, the same could not be effected, then the Corporation had opportunity to file an appropriate application before the Court seeking service of the Decree Holder by substituted mode. But it was also not resorted to by the Corporation. Further, the plea of the Corporation that due to non-service upon the legal heirs of Decree Holder, it had to suffer financial loss, stands falsified from the fact that when the Corporation approached this Court by way of Civil Revision No. 8426 of 2010, challenging the order passed

by Additional District Judge, Tarn Taran, a liberty was given to it to effect service upon the Decree Holder through the counsel representing before the Executing Court. There were ample alternative ways available with the Corporation to effect service upon the Decree Holder in the execution proceedings. I am of the view that without resorting to the legal remedies, in a haste, the petitioner was charge-sheeted and the penalty recovery was imposed.

16. Leaving that aside, there is another aspect of the matter. All said and done, on the directions of the High Court the case in question stands reopened in the Court of Additional District and Sessions Judge, Tarn Taran, which had earlier dismissed the case of Corporation. All 6 persons stand served with the summons of the Appellate Court, as per details given in the table below :

Sr. No.	Name	Service of summons
1.	Shri Iqbal Singh Bedi	Received on 28.02.2012 (copy of summons with at Annexure 4)
2.	Shri Rajan Bedi s/o Shri Iqbal Singh	Shri Rajan Bedi was not present on 28.02.2012. His father Shri Iqbal Singh Bedi who was present refused to receive it. Service to Shri Rajan Bedi was thus complete (copy of summons with at Annexure A-5)

3.	Smt. Balbir Kaur w/o Iqbal Singh Bedi	Smt. Balbir Kaur was not present on 28.02.2012. His husband Shri Iqbal Singh Bedi who was present refused to receive it. Service to Smt. Balbir Kaur was thus complete (copy of summons with at Annexure A-6)
4.	Shri Prince Bedi s/o late Harjit Singh Bedi	Refused to receive summons on 24.02.2012 (coipy of summons with at Annexure A-7)
5.	Smt. Geeta Bedi w/o late Harjit Singh Bedi	Refused to receive summons on 24.02.2012 (copy of summons at Annexure 8)
6.	Shri Sandeep Bedi s/o late Harjit Singh Bedi	Refused to receive summons on 24.02.2012 (copy of summons with at Annexure 9)

17. Since the appellate proceedings have been revived, in which all the above persons stand summoned, the case of the corporation against the petitioner that due to his lapse resulting in non service of summons earlier, the case of corporation failed in the Court and thus, the corporation suffered a loss of ₹15 lacs, stands demolished.

18. In view of my discussion above and reasoning therein, the impugned appellate order dated 28.10.2013 (Annexure P-11) and the punishing authority's order dated 15.05.2012 (Annexure P-7), are set-aside. The respondents are consequently directed to release all the retiral benefits of the petitioner along with interest @ 6% per annum from the date of his retirement until actual disbursement thereof.

19. The writ petition is allowed in above terms, with no order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 08, 2019
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Whether speaking/reasoned : Yes/No
Whether reasoned : Yes/No