

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

CWP-26704 of 2015

Date of decision: 10.07.2019

Ram Sawrup

.... Petitioner

versus

State of Haryana and others

.... Respondents

CWP-6960 of 2016

Ram Dhari

.... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Gupta, Advocate
for the petitioner (s) in both the writ petitions.

Ms. Safia Gupta, AAG, Haryana.

Mr. B.R. Mahajan, Advocate General, Haryana with
Mr. Pawan Kumar Longia, Advocate
for respondents No.2 and 5 and
Mr. Padamkant Dwivedi, Advocate
for respondents No.3 and 4.

HARSIMRAN SINGH SETHI, J.

By this common order, above mentioned two Civil Writ Petitions are

being disposed of in the light of common question of law and similar facts involved. For the sake of convenience, the facts are being extracted from CWP-26704 of 2015 titled as Ram Sawrup vs. State of Haryana and others

The grievance which is being raised by the petitioner is that vide order dated 05.10.2015 (Annexure P-1), the petitioner has been held liable for the recovery of sum of Rs.13,55,331/- on account of less gain given by the petitioner at the time of storage of wheat. While challenging the order of the punishment of recovery the petitioner is also challenging the show cause notice dated 26.3.2015 (Annexure P/6) issued to the petitioner in pursuance to which, the impugned order dated 05.10.2015 (Annexure P/1), was passed.

The facts as stated in the writ petition are that the petitioner joined the services of the respondent-Corporation on 13.05.1980 as Storekeeper. He continued working as such, till he attained the age of superannuation and retired on 28.02.2015. While the petitioner was in service, a charge sheet dated 12.11.2014 (Annexure P/2) was served upon him, wherein certain allegations of negligence and causing loss to the respondent-Federation were levelled. Though, the reply to the said charge-sheet was filed by the petitioner, but the same was found to be unsatisfactory and an Enquiry Officer was appointed to conduct the enquiry. After conducting an enquiry, Enquiry Officer gave his report dated 09.01.2015 (Annexure P/4) wherein, the charges against the petitioner were proved. Enquiry report along with show cause notice served upon the petitioner on 26.03.2015 and the petitioner submitted a detailed reply/representation (Annexure P7) to the said show cause notice on 27.04.2015. Ultimately, the respondents have passed the impugned order dated 05.10.2015 (Annexure P-1) imposing punishment of recovery of sum of Rs.13,55,331/- which was 70% of the total loss. This order has been challenged

by the petitioner before this Court in the present writ petition.

The grounds to challenge the said order as well as the charge sheet are that there were no rules and regulations at the relevant time under which an employee is to give excess wheat in respect of storage, which was under his charge and in the absence of any norms fixed for less gain, no allegation can be levelled against the petitioner that he caused loss and hence the resultant recovery order passed is bad in law and liable to be set aside.

Upon notice of motion, reply has been filed by respondents and in the reply, the same stand has been taken by the respondents that the petitioner has given less gain in wheat during the *Rabi* season of 2011, therefore, was found liable to reimburse 70% of the total amount i.e. Rs.13,55,331.

I have heard learned counsel for the parties and have gone through the records with their able assistance.

Counsel for the petitioner(s) argues that question of law which is being raised in the present writ petition already stands answered more than once by this Court. This question had come up for hearing in CWP No.3239 of 1993 in **Punjab Warehousing Fields Employees Union, Patiala and others Vs. State of Punjab** which was allowed by this Court on 20.06.1994 and it was held that there is no manner prescribed, under which, employees who are posted at storage houses could be made accountable for maintaining particular moisture content and the demand notices issued to the employees for being responsible for the less gain were set aside. Though, the permission was given to the Corporation to frame the rules with regard to the less storage gain but the show cause notices issued to the employees making them liable for the less storage gain were set aside.

Thereafter, the same question again came up for consideration

before this Court while deciding CWP No.12950 of 1999 in **Haryana Warehouse Corporation vs. State of Haryana**. The Division Bench of this Court again, by taking into consideration, the order passed by this Court in CWP-3239 of 1993 titled as **Punjab Warehousing Fields Employees Union, Patiala and others Vs. State of Punjab** held that as there is no provisions under the rules for making an employee accountable for giving less storage gain, no action can be taken against the employees and the action being taken against the employees for the recovery of amount was set aside. The said decision rendered by the Division Bench of this Court in CWP-12950 of 1999 was challenged before the Hon'ble Supreme Court of India. The said SLP was dismissed by the Hon'ble Supreme Court and the judgment attained finality.

Thereafter, once again this Court in CWP-11041 of 2001 which was decided on 20.01.2015 keeping in view the order passed by this Court in CWP-3239 of 1993 as well as in CWP-12950 of 1999, demand notices for recovery issued to the similarly situated employees as the petitioner herein were quashed. The relevant judgment passed in CWP-11041 of 2001 is as under:-

“Both these writ petitions challenge the credibility of certain storage norms which were introduced at warehouses where wheat stocks were stored and making liable its employees for sums depending upon the moisture content that were found in the stocks. The cases came up from both the States of Punjab and Haryana and they have been considered through the decision dealt with by this Court in CWP No. 3230 of 1993 in Punjab Ware House Field Employees Union Patiala and other. The Court has held that the norms themselves cannot be a matter for intervention by the Court since there were issues brought on assimilation of technical facts over which the Court cannot exercise any judicial review but all the same, found that there could be no manner by which the employees posted at the storage houses could be made accountable for maintaining particular moisture content. Even while not interfering with the changed norms, the Court found that demand notices issued

against the employees was not justified. The court by its judgment dated 20.06.1994 also held that the Corporation shall not preclude from taking the appropriate measures for amendment of the Punjab Warehousing Rules, but declared illegal the demand made against the employees for alleged “less storage gain”. This decision was applied later to a case coming from the State of Haryana CWP No. 12950 of 1999, Haryana Warehouse Corporation Vs. State of Haryana. The Division Bench referred to the decision in CWP No. 3239 of 1993 and disposed of the writ petition on the same lines, giving liberty to the Haryana Warehousing Corporation to take appropriate action by way of amendment to the Rules and in accordance with law. It appears that the Haryana Government took the matter further in appeal to the Hon'ble Supreme Court in CWP No.1644 of 2001 but the Hon'ble Supreme Court dismissed it holding that the judgment rendered in CWP No. 3239 of 1993 had attained finality, there having been no appeal by the State of Punjab and the principle laid down in the said judgment would also govern the issues which had been brought by the Haryana Corporation.

In the light of the decisions, the demand notices issued against the petitioner would stand quashed. There is no requirement for the revised norms (annexures P7 to P10) to be quashed and no intervention is called for, for the same reasoning as adopted in the judgment referred to above. The writ petition is disposed of on the above terms.”

Against the said judgment, LPA No.1272 of 2015 was filed by the State of Haryana which was also dismissed by this Court on 10.09.2015. The order passed by the Division Bench is as under:-

“The State of Haryana and its officers have filed the instant intra-court appeal under Clause X of the Letters Patent against the order dated 20.01.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 11041 of 2001) filed by the Haryana Food & Supplies Field Staff Association and its members (respondents herein) was allowed and the demand notices (Annexure P-17) issued against the members of the respondent No.1 Association on account of loss of weight in storage, were quashed.

The aforesaid impugned order was passed by the learned Single Judge in view of the earlier decision of Division Bench of this court in *CWP No. 12950 of 1999, Haryana Warehouse*

Corporation Versus State of Haryana, decided on 14.09.2000, which was given on the basis of another decision of this Court in *CWP No. 3230 of 1993, Punjab Warehousing Field Employees Union Patiala and others Versus State of Punjab and others, decided on 20.07.1994*, and the said decision was upheld by the Hon'ble Apex Court in Civil Appeal No. 1644 of 2001. It was held that under the Punjab Warehousing Rules, 1958 (hereinafter referred to as '1958 Rules') which are also applicable to the State of Haryana, there is no provision to recover the loss of shortage from the employees.

In the grounds of appeal, it has been stated that the appellants have already proposed an amendment in Rule 28 of 1958 Rules by adding sub rule (2) thereto, but till date the said amendment has not been carried out. Thus, by proposing the aforesaid amendment, in our opinion, the appellants have accepted the Division Bench decision of this court in CWP No. 12950 of 1999 (supra).

In view of the above, we do not find any ground to interfere with the impugned order passed by the learned Single Judge, based on the judgment rendered in CWP No. 3230 of 1993 (supra), which has been affirmed by the Apex Court.

Dismissed.

Though, the aforementioned question of law decided by this Court has already attained finality but different corporations, such as respondent-Corporation herein, kept on issuing the charge sheets to the employees without there being any provisions of law in their rules governing the services holding the employee liable for recovery on account of less gain of items stored under their supervision. One Devat Ram, who was also working in the same Federation, as the petitioner herein, was issued charge sheet for showing less gain in wheat in the stock which was stored under his supervision. He was also imposed punishment, as done in the case of the petitioner. He had filed CWP-4667 of 2016, challenging the charge sheet as well as order of punishment. The said writ petition was allowed by this Court on 6.2.2019 keeping in view the

settled principle of law that in absence of any rules fixing the parameters for showing moisture content, no punishment can be imposed upon the employees. While deciding the said writ petition, the co-ordinate Bench has taken into account the decision rendered by this Court in CWP-11041 of 2001 and CWP-3239 of 1993 as well as the judgment passed in CWP-12950 of 1999. The relevant order passed in the case of **Dewat Ram Vs. Managing Director, The Haryana State Federation of Consumer's Cooperative Wholesale Stores Ltd. and another** is as under:-

“The petitioner is seeking quashing of the chargesheet dated 03.08.2015 (Annexure P-1) issued by respondent No. 1 containing allegation of causing loss as having failed to gain weight in stock and has given less gain in delivery to FCI ordering recovery of 70%.

The petitioner had been in the service of respondent-Confed from 14.03.1980 and retired as a Clerk on 30.11.2013 on attaining the age of superannuation. While working as Clerk in Confed, he was to perform duties of Incharge of Chander Kalan Mandi (Fatehabad) during the season 2011-12 and during this period of Rabi season 2011, various crops of wheat were stocks and deliveries were made to various agencies including Food Corporation of India (FCI). During this season, total purchase of 115432 bags of 50 Kg each of wheat i.e. total 57716 quintal was made. The chargesheet (Annexure P-1) was issued to the petitioner on 03.08.2015. A perusal of the chargesheet shows that the charge against the petitioner was that he had given less gain in the delivery of wheat stock to the FCI during the Rabi season 2011-2012 and this was against the norms fixed vide head office letter No. 5977-92 dated 27.07.1999. This chargesheet further reflects that decision had been taken by the Board of Administrator to effect recovery of less gain from the concerned employee and in this regard instructions have been issued vide letter dated 14.03.2003.

After issuing statements alongwith chargesheet, all the allegations in details were given to the petitioner and after holding the enquiry, punishment order dated 12.09.2016 (Annexure R-5) was passed whereby it was ordered that recovery of Rs.1,31,195/- will be made from the retiral dues of the petitioner.

Learned counsel for the petitioner has referred to a decision given by this Court in ***CWP-11041-2001 Haryana Food and Supplies Field Staff Association and others V/s. State of Haryana and others***, decided on 20.01.2015 (Annexure P-13) whereby the demand notices issued to the petitioner on account of less gain, had been quashed. While allowing the said writ petition, reference was also made to a decision given in ***CWP- 3239-1993 in Punjab Warehousing Fields Employees Union, Patiala and others***, decided on 20.06.1994, whereby it was held that employees posted in storage houses cannot be made accountable for maintaining particular moisture content and the demand notices issued against the employees were not justified. This judgment was again followed in ***CWP-12950-1990***, disposed of on 14.09.2000 which is reproduced as under:-

“Counsel for the petitioners and respondents 4 and 5 are agreed that this case is squarely covered by the decision of this Court in civil writ petition No. 3239 of 1993 dated 20.06.1994. Therefore, this petition has to be disposed of in terms of the order passed in the above said civil writ petition, a copy of which has been produced as Annexure P-22. But the learned counsel for the 5th respondent states that certain amendments have been proposed in the regulation, but these amendments have not so far been issued and have not come into force. Therefore, we dispose of this writ petition in terms of the order in CWP 3239 of 1993 dated 20.06.1994 subject to the right of the 5th respondent to take action in accordance with law, if and when the regulation is amended. Consequently, annexures P-3 and P-16 are quashed.”

The judgment of ***CWP-12950-1999*** has also been followed by this Court in ***CWP-7284-2008 Ravel Singh V/s. State of Haryana and others***, decided on 16.04.2009 (Annexure P-14).

Learned counsel for the respondents is not able to show that the judgments of ***CWP-11041-2001*** (Annexure P-13) and ***CWP-7284-2008*** (Annexure P-14) were ever modified/set aside in subsequent appeals.

Keeping in view that these judgments have attained finality and instructions dated 27.07.1999 cannot be made basis for issuing chargesheet (Annexure P-1) to the petitioner as has been done in the present case, the writ petition deserves to be allowed and the chargesheet dated 03.08.2015 (Annexure P-1), inquiry report dated

07.12.2015 (Annexure R-3), show cause notice dated 21.03.2016 (Annexure R-4) and the punishment order dated 12.09.2016 (Annexure R-5) are being quashed. The respondents are directed to release the retiral benefits of the petitioner alongwith 6% interest per annum from the date they due to the petitioner within a period of three months from the date of receipt of certified copy of this order.”

Learned Senior counsel appearing for the respondents is unable to dispute the arguments, raised by the counsel for the petitioner that the question of law that no punishment can be imposed upon the employees without there being any norms fixed for showing any less gain in the moisture content is already settled and, therefore, the order of punishment which has been passed against the petitioner on 05.10.2015 is contrary to the settled principle of law. Learned Advocate General, Haryana very fairly submits that the petitioner is also covered by the said decision, which relates to same respondent-Federation.

Keeping in view the above, both the writ petitions are allowed. Impugned order of punishment dated 05.10.2015 in CWP-26704 of 2015 and impugned order dated 16.10.2015 in CWP-6960 of 2016 are set aside.

Counsel for the petitioner states that keeping view the said punishment, retiral benefits of the petitioner have been withheld. Counsel for the respondents states that keeping in view the decision rendered by this Court today, appropriate decision will be taken by the respondents for the release of pensionary benefits of the petitioner within a period of one month from the date of receipt of certified copy of this order and the arrears, for which the petitioner is found to be entitled, will be released to him within a period of one month thereafter. Counsel for the petitioner states that in Dewat Ram's case (supra) the retiral benefits were directed to be released along with 6% interest, which fact is again admitted by the learned Senior counsel for the respondents. Therefore, the petitioner will also be entitled for interest @ 6% per annum on the retiral

benefits as well, from the date it became due, till they are actually released by the respondents.

Both the petitions stand allowed in above terms.

10.07.2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |