

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 206

Civil Writ Petition No.4433 of 2015 (O & M)
Date of Decision: *March 25, 2019*

Balwinder Singh

..... PETITIONER(S)

VERSUS

State of Punjab & another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

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PRESENT: - Mr. Kamalreet Singh, Advocate, for Mr. B.S. Bhalla,
Advocate, for the petitioner.

Ms. Mehardeep Singh, Additional Advocate General,
Punjab, for respondent No.1.

Mr. P.K.S. Gill, Advocate, for respondent No.2.

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Harsimran Singh Sethi, J (Oral)

In the present writ petition, grievance raised by the petitioner is in respect of order dated 07.08.2007 (Annexure P-1), by which, punishment of recovery of an amount of ₹ 2,30,000/- i.e. the loss which was caused to the Market Committee, Barriwala, has been ordered to be recovered from his salary. Further, an appeal filed by the petitioner against the said order has been dismissed on 26.12.2014 by the Secretary, Department of Agriculture, Punjab.

The facts as stated in the petition are that petitioner was working as Secretary, Market Committee, Barriwala, District Muktsar in the year 2005. Local Audit (finance), while verifying the record of the Market Committee, Barriwala, found that for the period 01.04.2005 to 31.03.2006, collection of market fees of Sabzi Mandi and Rural Development Fund was given to one Mr. Anil Kumar son of Lal Chand. The contract fees, to be deposited by the contractor was ₹ 2,30,000/- for the waste of the Mandi, which was also given to the same contractor. During the verification, it transpired that the contractor while executing the contract, took ₹ 4,000/- as market fees and ₹ 4,000/- as rural development fund as security, but according to the contract, contractor was required to take ₹ 11,500/- as market fees and ₹ 11,500/- as rural development fund i.e. total of ₹ 23,000/-. As the contractor took only ₹ 8,000/- instead of ₹ 23,000/-, the Committee suffered a loss of ₹ 15,000/- every month.

As the petitioner was working as Secretary of the Market Committee, according to the respondents, it was the duty of the petitioner to ensure that correct amount is deducted by the contractor and deposited with the Market Committee. As the petitioner failed to his duties, a sum of ₹ 2,30,000/- was given less by the contractor to the Market Committee, Barriwala.

Further, an allegation made against the petitioner is that another contract was given to Mr. Vikas for collecting the waste of Mandi at ₹ 17,000/- per month, which was not passed by the Market Committee and was not approved in any manner.

As per the averments in the writ petition, without giving any opportunity of hearing to the petitioner, Punjab Mandi Board passed an

order on 07.08.2007 holding him liable to pay an amount of ₹ 2,31,500/- and ordered the recovery from his salary. Against the said order, petitioner approached the Government under Section 42 of the Punjab Agriculture Produce Markets Act, 1961 by filing a revision petition. The said revision petition was also rejected by the Government on 16.05.2014 (Annexure P-4). Against the said order, petitioner has approached this Court impugning the order of recovery dated 07.08.2007 as well as order dated 16.05.2014, by which, the revision petition of the petitioner filed against the order of recovery was dismissed.

Upon notice of motion, respondents have filed the reply and controverted the facts as stated by the petitioner in the writ petition. In the written statement, respondents have mentioned that a show cause notice bearing No.1980 dated 15.05.2006 was served upon the petitioner under Rule 10 of the State Agriculture Marketing Services (Punishment and Appeal) Rules, 1988 (for short, '1988 Rules') and the said show cause notice was duly replied by the petitioner vide his letter dated 02.06.2006 and thereafter he was called for personal hearing, which the petitioner did not avail, order of recovery as passed on 07.08.2007. Alongwith the reply, show cause notice as well as reply filed by the petitioner has been appended as Annexure R2/1 and R2/2, respectively by the respondents.

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

The only point argued by counsel for the petitioner during the course of arguments was that the punishment has been imposed upon the petitioner without following the rules of natural justice. Counsel for the

petitioner has stated that no opportunity of hearing was given by the respondents before passing an order of recovery of ₹ 2,30,000/-.

The aforesaid argument is duly rebutted by counsel for the respondents who argued that all the procedure required under 1988 Rules were followed before issuing show cause notice to the petitioner, which was duly replied and after considering the reply to show cause notice, a detailed order giving the details as well as calculations as to how much loss has been caused due to fault on the part of the petitioner to Market Committee, was assessed and then recovery order was passed and therefore, the assertion made by the petitioner that rules of natural justice were violated, is totally against the facts on record.

From perusal of the record, it is clear that action against the petitioner was taken under Rule 10 of 1988 Rules. Show cause notice was issued to the petitioner and petitioner has also filed his reply, therefore the contention which has been raised on behalf of the petitioner that order of recovery dated 07.08.2007 was passed without following the due procedure or in violation of rules of natural justice is completely belied. Once the petitioner has availed the full opportunity to defend himself, no grievance can be made by him in respect of the order passed by the respondents ordering the recovery.

The order of recovery clearly reveals the omission on the part of the petitioner and the loss suffered due to said omission by the Market Committee. Once, the said calculations have not been denied by the petitioner, no relief can be granted to him. This Court is not sitting in an appeal over the punishment imposed. The only grouse of the petitioner that no procedure was followed before imposing the punishment, has been found

to be incorrect. Under these circumstances, no fault can be found in the impugned order of punishment/recovery from the petitioner as well as in respect of order vide which his revision petition was dismissed.

In view of the above, present writ petition being without any substance is dismissed as such.

March 25, 2019
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(Harsimran Singh Sethi)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No