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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-8178-CWP-2018 in/and
CWP-4667-2016
Date of decision: 06.02.2019

Devat Ram

...Petitioner

Versus

Managing Director, The Haryana State Federation
of Consumer's Cooperative Wholesale Stores Ltd.
and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jai Vir Yadav, Advocate for the petitioner.

Mr. Padamkant Dwivedi, Advocate for the respondents.

Ritu Bahri, J. (Oral).

CM-8178-CWP-2018

Application is allowed. Annexures R-3 to R-5 are taken on record.

CWP-4667-2016

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 accoutnable for mainintaing 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.

06.02.2019
Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No