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IN THE HIGH COURT OF ODISHA, CUTTACK

W.P.(C) No.4141 of 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Satyanarayan Sahu .... Petitioner

-Versus-

State of Odisha & others .... Opp. Parties

For Petitioner : Mr. R.N. Parija, Advocate

For Opp. Party No.1 : Mr. G. Rout, A.S.C.

For Opp. Party Nos.2 to 4: None

CORAM: JUSTICE SANJAY KUMAR MISHRA

JUDGMENT
15.12.2022

S.K. MISHRA,J.

1. The Petitioner, who is a retired employee of the Odisha State Warehousing Corporation (in short 'OSWC') (Opposite Party No.2), has approached this Court being aggrieved by the communication made to him vide letter dated

10.04.2014 of the Secretary, OSWC, vide which, his after retiral dues to the tune of Rs.14,59,116/- with regard to un-utilized earned leave salary, gratuity and CPF amount were withheld. That apart, the Petitioner was asked to deposit the differential amount of Rs.2,22,187/- in the Corporation's Account towards alleged high percentage of storage loss shown by him during his incumbency.

2. The case of the Petitioner in short is that, while he was serving as Deputy Superintendent & In-charge, State Warehousing Corporation, (in short 'SWC'), Durgapali was transferred and posted to the SWC, Jharsuguda vide Office Order dated 13.06.2011. In pursuance of such transfer Order, the Petitioner handed over the charge of Durgapali SWC to his counterpart, Sri Barun Kumar Majhi. As per the procedure followed by the Opposite Party-Corporation, the Petitioner was directed to furnish a declaration at the time of handing over charge, in case the storage loss exceeds the permissible limit, he will be solely responsible for the same. Accordingly, upon direction of the Opposite Parties, the Petitioner along with his successor documented the hand over and take over of charge and gave a joint declaration. Thereafter, the Petitioner joined at SWC, Jharsuguda as Deputy Superintendent and while working

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as such, he was retired from service with effect from 31.07.2012 on attaining the age of superannuation.

3. After retirement, though the Petitioner time and again approached the Authorities concerned for release of his after retiral dues but, the Authority concerned did not heed to his approach. Finally, vide Order dated 10.04.2014 the Petitioner was intimated that his retiral dues have been withheld and that apart, he is liable to pay an amount of Rs.2,22,187/- to the Corporation towards the balance amount owing to high percentage of storage loss shown by him during his incumbency. Even thereafter, the Petitioner submitted representations before the Authorities concerned to release his retiral dues indicating therein that he is no way concerned with the storage loss. But, till date no Order has been passed on such representations given by the Petitioner. It has further been stated that such action of the Opposite Party-Corporation is bad as it has withheld the after retiral dues of the Petitioner without determining the responsibility and holding a joint enquiry and proper assessment of the storage loss, which is not only illegal but also unsustainable in the eye of law.

4. On being noticed, the Opposite Party Corporation has filed its Counter Affidavit indicating therein that the D.M.,

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OSCSC Ltd., Sambalpur has withheld and recovered an amount of Rs.16,81,303/- from the storage charge bills of the OSWC, Durgapali towards value of storage loss beyond the permissible limit of 0.5% occurred during the tenure of the Petitioner as Warehouse In-charge, OSWC, Durgapali i.e. for the period from 01.09.2007 to 08.04.2012. It has further been stated in the Counter Affidavit that since OSWC cannot bear such recovery by the depositor from the storage charge bills of the Corporation, an amount of Rs.14,59,116/- was withheld by the Corporation from the retiral dues of the Petitioner and he was asked to deposit the balance amount of Rs.2,22,187/- in the Corporation's Account. To demonstrate that the action of the Corporation in withholding the after retiral dues of the Petitioner to be legal and justified, the Opposite Party-Corporation has relied on the communication made by the Managing Director of the Corporation dated 09.06.2010 addressed to the General Manager, Odisha State Warehousing Corporation, Bhubaneswar, so also the circular dated 21.10.1992 of the Corporation regarding fixation of responsibility for realization of Corporation's dues by Superintendent/In-charge of a particular Warehouse.

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5. Though the learned Counsel for the Petitioner is present, none appears for the Opposite Party-Corporation on repeated calls. This is a matter of year 2016 and a submission is made by the learned Counsel for the Petitioner that the Petitioner, who has been superannuated since 31.07.2012, is languishing a miserable life because of non-payment of his after retiral dues. Hence, this Court is inclined to hear and decide the matter on merit in absence of the Counsel for the Corporation.

6. Learned Counsel for the Petitioner submits that withholding the entire retiral dues of the Petitioner seriously affected his livelihood and the same should not have been done by the Opposite Party-Corporation without following the principles of natural justice and without initiating any disciplinary proceeding before passing the impugned Order dated 10.04.2014 vide which the entire after retiral dues of the Petitioner amounting to Rs.14,59,116/- was recovered/adjusted against the alleged storage loss shown by him during his incumbency and the Petitioner at no point of time was intimated nor noticed by the Corporation regarding the Petitioner's responsibility towards the alleged storage loss at SWC, Durgapali beyond permissible limit.

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7. He further submits that there being an administrative circular to conduct joint verification to ascertain as to whether the storage loss is on account of laches or situation beyond the control of the person in-charge, the impugned Order dated 10.04.2014 being issued by the Authority concerned without following the guidelines prescribed under the said circular dated 15th/16th March, 2005, is illegal and liable to be quashed. He further submits that in view of the Memo of handing over of charge dated 02.04.2012, vide which the Petitioner as well as his successor, Mr. Barun Kumar Majhi undertook that the storage loss that may exceed 0.5% while issuing out stocks by his successor after taking due care and proper precautionary measures will be the sole responsibility and his successor, Mr. Majhi should take all possible steps to minimize the storage loss by issuing out spillage grains along with the mother stocks, withholding the retiral dues of the Petitioner for substantial period without holding proper enquiry is bad in law and amounts to arbitrary exercise of power vested with the Authority concerned.

8. He further submits that the action taken by the Authority concerned was without following the procedure as prescribed in terms of the Circular dated 12.12.2012 as at

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Annexure-3, issued by the General Manager (Stocks), Food Corporation of India and hence, liable to be set aside.

9. To substantiate his argument, learned Counsel for the Petitioner relies on Paragraphs-2 & 3 of the Circular dated 15th/16th March, 2005 which are extracted below.

> *"**2.** In this regard your kind attention is invited to Headquarters circular No.S&S/21(4)/RL/SL/99 dated 24.12.1999 read along with circular No.3 dated 119.2000 & subsequent corrigendum referred therein in the aforesaid d.o. letter regarding regularization of storage losses in food grains during storage in FCI/other warehouses.* ***Accordingly, each and every case of transit or storage loss of food grains has to be investigated to ascertain the reason and the remedy thereof in order to reduce the losses. However, the losses up to 0.5% can be regularized by competent authority i.e. District Manager in case he considers that the losses are justifiable and not attributable to the negligence or otherwise of any official and do not warrant investigations considering the circumstances and facts of such cases. The loses beyond 0.5% are necessarily have to be investigated as per the prescribed procedure for the reasons accountability and remedy. The set procedure has to be followed for all cases of***

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storage losses whether in FCI own depots, hired depots or CWC/SWC operated depots.

3. *In case of CWC/SWC depots, a procedure of joint meeting has been prescribed for regularization/write off of the losses considering the investigation report the cases are to be scrutinized/settled based on merit of each case. The cases where no agreement is reached at Regional level be sent to Zonal Office within one week of such decision. Cases which are not settled even at Zonal level be referred to ED(Hqrs), Headquarters with detailed reasons thereof. It is for the CWC/SWC to fix responsibility on their employees for the losses which are attributable them and FCI would write off accordingly. No deductions are to be made from the storage charges or the supervision charges or the service charges payable to CWC/SWC unless the prescribed procedures to settle the claims with the specified time are not adhered to and adequate notice given to them for the failure to settle the claims. CWC/SWC are also required to submit a monthly statement of transit/storage losses occurred in their depots along with the monthly claim on storage charges. In case such statement are not submitted by them, it could be presumed by the FCI that there are no incidences of transit/storage loss during that month in these CWC/SWC depots and the delayed claims are likely to be disallowed unless there are* *genuine reasons to it which are to be considered by the competent write-off authority."*

(emphasis supplied)

Similarly, Paragraph-6 of the circular dated 12.12.2012 reads as follows:

"6. It would be observed that full allowance for weight loss for driage of moisture between 15% and 14% has been provided in the Storage Loss Norms for rice. For subsequent driage i.e. from 14% moisture level to below, the allowance @ 0.7% for every 1% driage has been allowed. ***It may be noted that these norms are to be applied only after conducting a thorough investigation/analysis of the storage loss occurrence****."*

(emphasis supplied)

10. In the case of ***State of Kerala & others Vs. Padmanabhan Nair***[1]**,** the apex Court has observed as follows:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

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1 *AIR 1985 SC 356*

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11. In the case of **H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltdd,**[2] the apex Court has observed as follows:

> *"A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in **State of Kerala & Ors. vs. M.Padmanabhan Nayyar,** 1985 (50) Fac LR 145: Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which came into force with effect from 1st October, 1987. In the case of **Charan Singh vs. M/s. Birla Textiles and Another** [1988 (57) Fac LR 543 SC], this aspect was noticed in the following words:*
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> *"There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in*

[2] *AIR 2003 SC 1526*

the law that Act 22 of 1987 brought about the incorporation of sub-section 3(A) in Section 7. That provision has prospective application.""

12. In the Counter affidavit filed by the Opposite Party Nos.2 to 4 nowhere it has been indicated as to conducting a thorough investigation/analysis with regard to storage loss occurrence. Rather, the Opposite Party-Corporation has relied on a circular dated 21.10.1992 issued by the Chairman-Cum-Managing Director which speaks about fixation of responsibility for realization of Corporation's dues. It is well revealed from the said circular that the same is pertinent to realization of Corporation's dues by a particular Warehouse Superintendent/In-charge during his period of stay in a particular Warehouse location, wherein it has been indicated that the primary function of the Warehouse In-charge is not only to handle the stocks sincerely by managing the Warehouse but also to ensure collection of the bills raised against various depositors within orbit of a properly regulated and time bound programme. It is further stipulated in the said circular that a Superintendent, during the period of his stay in a Warehouse, must ensure that the bills raised by him are fully collected before he is transferred to other centre and at the time of

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handing over and taking over of the charge of the Warehouse, a separate charge list should be prepared indicating the number of bills remained uncollected depositor-wise during his period with reasons and leave it with his successor with a copy to Head Office along with charge list of other stores and he will be personally responsible for ensuring collection of uncollected bills handed over to his successor even after his transfer and he will be contacting the depositors and pursuing with the successor for realization and he would be personally liable for the consequential loss incurred by the Corporation due to non-realization of bills during his period.

13. The documents appended to the Counter Affidavit nowhere demonstrate that without holding a thorough investigation/analysis with regard to storage loss occurrence, the said loss can be recovered from the employee of the office concerned without affording him an opportunity to have his say and without following the principle of natural justice.

14. In view of the submissions made by the learned Counsel for the Petitioner, so also the averments made in the Writ Petition vis-à-vis the Counter Affidavit, so also the documents appended thereto and the position of law as detailed above, this Court is of the view that the impugned

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communication dated 10.04.2014, as at Annexure-1, is illegal and unjustified and liable to be set aside. Accordingly, the same is hereby set aside. The Opposite Party Nos.2 to 4 are directed to release the after retiral dues of the Petitioner as detailed vide impugned communication dated 10.04.2014 within a period of four weeks from the date of communication of the certified copy of this Judgment along with 10% interest thereon from the date it became due till the date of actual payment.

15. Accordingly, the Writ Petition is allowed and disposed of. No Order as to costs.

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S.K. MISHRA, J.

Odisha High Court, Cuttack
The 15th December, 2022 /Prasant