Sr. No.209

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19525-2012
Date of decision: 04.05.2022

Bharat Bhushan ...Petitioner

Vs.

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Naveen Daryal, Advocate,
For the petitioner.

Mr. Pankaj Middha, Additional A.G., Haryana.

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ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari to quash the impugned order dated 27.08.2010 (Annexure P-2) passed by the punishing authority stopping two increments of the petitioner and the appellate order dated 27.06.2011 (Annexure P-4) by which though the penalty of stoppage of two annual increments with cumulative effect was set aside but order for recovery of Rs.66,180/- has been upheld.

2. Learned counsel for the petitioner submits that petitioner was working as Clerk in the office of District Social Welfare Officer, Kaithal. On 10.06.2004, the department issued a charge-sheet with regard to the embezzlement of amount. Petitioner submitted a detailed reply to the show-cause-notice. Vide order dated 27.08.2010 (Annexure P-2), the department imposed a punishment for stoppage of two annual increments with cumulative effect and censure besides recovery of Rs.66,180/-. Petitioner filed an appeal against the punishment order and the same was decided by respondent No.1 vide order dated 27.06.2011 (Annexure P-4) and the appeal was partially accepted. Penalty of stoppage of two annual increments with cumulative effect was set aside and recovery amount of Rs.66,180/- was upheld. The amount was ordered to be recovered from him with interest @9% per

annum from the date of short entry in cash till entire amount is recovered. Thereafter, petitioner filed a review petition against the order dated27.06.2011 vide which the punishment of recovery of an amount of Rs.66,180/- was upheld. He submits that similarly situated employees were exonerated from the same very charges and their punishment order was set aside but the petitioner has been discriminated by the same very authority. Hence, the instant petition.

3. I have heard the rival contentions and I am of the opinion that petition merits acceptance to the extent of punishment order dated 27.08.2010 (Annexure P-2) impugned herein. Said order appears to have been passed without compliance of Rule 7 (6) of Haryana Civil Services (Punishment and Appeal) Rules, 1987. For ready reference the same is reproduced hereinbelow:-

> *"(6) After the enquiry against a Government employee has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to the imposed, the Government employee shall, if the penalty to be imposed is major penalty be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within reasonable time, not ordinarily exceeding one month against the particular penalty purposed to be inflicted upon him. Any representation submitted by him in this behalf shall be taken into consideration before final orders are passed.*
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> *Provided that if the punishing authority disagrees with any part or whole of the findings, or the enquiring authority, the point or points of such disagreement, together with a brief statement of the ground thereof, shall also be supplied to the Government employee."*

4. Impugned punishment order is in violation of the Rule, ibid, inasmuch as no prior notice was issued to the petitioner inviting his comments qua the inquiry report dated 24.05.2007 (Annexure P-1) which was found not acceptable to the punishing authority. There are other reasons too, as enumerated hereinafter.

5. Perusal of the above leaves no manner of doubt that punishing authority was at liberty to disagree with the inquiry report provided the delinquent is given an opportunity to respond to the proposed reasons of disagreement by way of issuance of show cause notice. Nothing has been produced on record to show

that a notice was issued prior to recording of disagreement and has been noted in the impugned order for the first time while according the punishment.

6. Even otherwise, perusal of the impugned punishment order shows that it is premised on certain presumption that it was the prime duty of the delinquent-petitioner, who was serving as a Clerk at the relevant time that he must get receipts of the amount if had deposited the same with accountant/cashier. Having failed to produce the said receipts, he was presumed to be delinquent and the punishing authority recorded the contention of such serious nature that the petitioner could not be redeemed for his responsibilities. Punishing authority came to the conclusion on the basis of presumption that difference in the amount as per the accounts is to be presumed as embezzlement committed on the part of the petitioner and he was held liable to deposit the said difference of amounts. It was in this background, my learned brother Amol Rattan Singh, J. (as he was then seized of the matter) dated 03.10.2017 passed the following order:

> *"Specific orders having been passed by this Court on 18.09.2017, directing that the relevant rules/instructions pertaining to financial transactions between two offices be placed on record, showing the procedure that is to be followed when an employee of one office deposits any cash amount with an employee of another office in the course of normal transactions, an affidavit of Ms.Alka Yadav, Joint Director, Social Justice and Empowerment Department, Haryana, has been filed in Court today by Mr.Doon, in which it is stated that as per State Treasury Rule 10, read with Rules 2.3 to 2.5 (presumably of the same Rule), the procedure to be adopted by Government servants in receiving moneys on behalf of the State, and granting receipts for such moneys, and paying them into the Consolidated Fund or the Public Account of the State, shall be such as may be prescribed by the Finance Minister after consultation with the Accountant General.*
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> *Firstly, of course, the aforesaid rule pertains to depositing of money by a Government servant either into the consolidated fund or the public account of the State and issuance of receipts by the treasury and the bank receiving such money, and does not refer to the procedure to be adopted when one government servant from one office deposits money in another office. Secondly, the procedure, as per the aforesaid rules, is to be prescribed by the Finance Minister after consultation with the Accountant General. The criteria for*

> *prescribing such procedure has also been given in the Rule; but the procedure itself, as laid down by way of any instructionsby the Finance Minister / Finance Department, has not been placed on record.*
>
> *Adjourned to 29.11.2017.*
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> *The instructions / rules pertaining to the procedure for depositing money by one government servant in the another government office be positively placed on record by the next date of hearing.*
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> *If there is no such procedure prescribed in any rules / instructions, it shall be stated so by the Director, Social Justice & Empowerment, Haryana, on his/her personal affidavit, after consulting the Finance Department, which would obviously be expected to be familiar with any such rules and instructions. If the affidavit showing such consultation with the Finance Department and the result thereof is not filed, giving details therein as have been asked for by this Court, the Director shall remain personally present in Court on the next date of hearing itself.*
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> *A copy of this order be given to the learned State Counsel under signatures of the Bench Secretary of this Court."*

7. *Apropos* above order, an affidavit dated 23.11.2017 has been deposed by Mr. Sanjeev Verma, Director, Social Justice & Empowerment Department, Haryana. Perusal of the said affidavit reflects that the observations made by my learned brother have been given a complete short shrift. For ready reference, relevant of the affidavit is reproduced hereinbelow:

> *"3 That it is submitted on behalf of respondent and Finance Department that there are no such specific rules regarding cash handling between two departments. However, as per basic principle undisbursed amount against the advance amount which was handed over to the pension disbursing officer of Revenue Department was to be refunded back to the concerned department under proper receipt. It may further be relevant to reproduce Rule 14 of Old Age Pension Scheme, 1991 that "all the undisbursed amount shall be received by the District Welfare Officer concerned, a proper record of such amounts shall be kept in a separate register. The undisbursed amount received back shall be taken in the cash book and the entire amount thus received shall be refundable by short drawl from subsequent allowance bill." Therefore, it may be summed up that even though there are no specific rules pertaining to procedure for depositing money by one Government servant in another Govt. office, however, as per basic principle undisbursed amount against the pension amount which was handed over to the pension disbursing officer of Revenue Department was to be refunded back to the concerned department under proper receipt."*

8. What emerges thus in view of the stand taken in the affidavit is that there seems to be no such rules and/or procedure which seems to have been followed by the petitioner as noted in the punishment order and yet he was held guilty and qua the same, legal presumption was drawn in respect of the embezzlement committed by him.

9. In the aforesaid context, it would be relevant to have reference to an appellate order passed by the then Administrative Secretary of Social Justice and Empowerment department, relevant of which is reproduced hereinbelow:

> *I have gone through the relevant record of the case, inquiry report and submission made by Shri Bharat Bhushan, Clerk at the time of personal hearing. In view of the facts mentioned above, it is difficult to come to a certain conclusion that Shri Bharat Bhushan, Clerk is guilty of embezzlement of Rs. 66,180/- in this case. However, he should have taken a proper receipt of cash amount handed over by him to Shri Raj Kumar. Accountant or should have made sure that the retained amount was entered in the cash book. He also did not bring it to the notice of the then DSWO. Even if it is to be believed that he handed over the total amount of cash received i.e. Rs 1,55,480/-. the Govt. has suffered a loss of Rs.66,180/-. Since Shri Raj Kumar is no more in this world, therefore, the statement of the appellant cannot be contested/rebutted by any one. However, taking a lenient view, I uphold the recovery of the amount of Rs.66,180/- to make good the financial loss suffered by the Department but set aside the penalty of stoppage of two annual increments with cumulative effect. The amount be recovered from him with an interest of 9% per annum (simple interest) from the date of short entry in cash till the entire amount is recovered. Please issue orders accordingly."*

10. Perusal of the reasoning adopted by the appellate authority also reflects that on one hand, the contentions of petitioner, who had appeared in person at the time of hearing of appeal, were indeed convincing the appellate authority himself, as is noted in the order itself that he agreed that in the office of Director, Social Justice & Empowerment for official cash transaction "***generally, no receipt is given or taken. Receipt is given or taken only for payment made to an individual."*** and clear finding in the conclusion part has been given that it is difficult to come to a conclusion that Sh. Bharat Bhushan 'Clerk is guilty of embezzlement' and yet while accepting the appeal, only the part punishment qua

stoppage of two annual increments was set aside but the impugned recoveries qua which he had given a finding that he was not guilty of embezzlement were still upheld. The approach adopted by the appellate authority amounts to approbation and reprobation and cannot be sustained in law.

In the aforesaid premise, the appellate order as well as punishment orders are set aside with consequences.

Disposed of accordingly.

(ARUN MONGA)
JUDGE

May 4, 2022
vandana

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