

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

CWP-26402-2022 (O&M)

Date of decision: November 18, 2022

Satbir Singh Kadian

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sunil Kumar Bhardwaj, Advocate for the petitioner.

Mr. Pankaj Middha, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of an appropriate writ in the nature of Certiorari for quashing impugned order dated 04.04.2022 (Annexure P-9), passed pursuant to the judgment/ order dated 23.03.2021 (Annexure P-6) rendered by learned District Judge, Rohtak, without considering the enquiry report submitted vide letter dated 04.02.2011 (Annexure P-13).

2. Pledged case is that petitioner was appointed in the year 2008-09 as Forester in the respondent-Department. Certain allegations were levelled against him on account of commission of shortcomings during plantation in Division Jhajjar. Charge-sheet dated 25.06.2009 was issued to the petitioner. He submitted reply and enquiry was conducted and report was submitted on 07.04.2011. Allegations were proved and petitioner was issued final show-cause notice dated 28.03.2012. Final enquiry report was submitted. Vide impugned order dated 30.11.2012 (Annexure P-2), petitioner was held liable

for causing loss to the extent of 37½ %, which comes to Rs.3,23,599/- and recovery orders were issued. Punishment of stoppage of one increment without cumulative effect was awarded and ACRs pertaining to the year 2008-09 were also ordered to be downgraded in view of instructions dated 17.05.1989. Recovery was effected from the petitioner and in the meantime, petitioner retired on 31.08.2015 and proceedings pertaining to recovery were kept pending. Being aggrieved, petitioner preferred appeal, which was dismissed vide an office order dated 24.06.2016 (Annexure P-4). Thereafter, petitioner preferred Civil Suit before the learned Trial Court. Vide judgment/decreed dated 16.05.2019 (Annexure P-5), aforesaid order dated 30.11.2012 (Annexure P-2) was set aside and directions were issued to the respondents to release his withheld retiral benefits.

2.1 Respondent-Department preferred appeal challenging aforesaid judgment/decreed. Appeal was allowed by learned District Judge, Rohtak and liberty was granted to the State to pass a fresh reasoned order. Pursuant thereto, the petitioner was issued notice of personal hearing before the Divisional Office for 17.06.2021. Respondent-Department passed order dated 04.04.2022 (Annexure P-9), whereby appeal of the petitioner was filed i.e., the same was not allowed. Case of one Satbir Singh Ahlawat is also identical to the petitioner's case and therein vide an office order (Annexure P-11), the recovered amount has been ordered to be refunded.

3. I have heard rival contentions of learned counsel for the parties and perused the record.

4. From what has been pleaded in the writ petition, it is borne out that the petitioner was conscious that *ex facie* disputed facts are involved, and

therefore, at the first instance, invoked the Civil Court jurisdiction by filing civil suit impugning recovery order dated 30.11.2012 (Annexure P-2) which was passed on the same alleged delinquency *qua* which now fresh impugned order dated 04.04.2022 (Annexure P-9) has been passed. Fresh order was necessitated as the trial Court had earlier decreed the suit of the petitioner in his favour and the State had filed first appeal assailing the same, which was accepted, but while setting aside the order and decree passed by the trial Court, State was given liberty to pass fresh order. Pursuant thereto, impugned order dated 04.04.2022 (Annexure P-9) has been passed which has been assailed in the present proceedings.

5. I see no reason as to why the petitioner should not be relegated to the Civil Court as the fresh order is passed on the same facts which are disputed in nature. In the premise, no grounds for interference are made out.
6. Disposed of with liberty to the petitioner to approach Civil Court.
7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

November 18, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No