HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-6331-2019
Reserved on 22.08.2023
Pronounced on 05.12.2023

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Nihal Singh ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

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COCP-2216-2019

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Nihal Singh ... Petitioner

VS.

J.Ganesan, Chief Administrator ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Madan Pal and Mr. Bhim Singh, Advocates for petitioner

Mr. Gaurav Jindal, Addl. AG Haryana

Mr. Hitesh Pandit, Advocate for respondent No.2

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Sandeep Moudgil, J.

(1). This order shall be dispose of the above-mentioned two petitions involving common question of law and facts. Lead order is being passed in CWP-6331-2019.

(2). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of the charge-sheet dated 08.08.2012 (Annexure P3); enquiry report dated 21.10.2013 (Annexure P4); order dated 08.02.2019 (Annexure P5) along with affidavit dated 07.06.2012 (Annexure P7), vide which the petitioner has been compulsorily retired from service.

(3). The brief facts of the case are that the a complaint dated 26.07.2012 was received from the then Secretary, Market Committee, Faridabad against the petitioner – Nihal Singh, Auction Recorder in the respondent-Board, stating that as per the audit report of Market Committee, Faridabad for the period from 01.04.2010 to 31.03.2012, it was found that there is a shortage of Rs.29,20,921/- in Haryana Rural Development Fund (HRDF) and the petitioner being Auction Recorder, was on duty to collect and deposit the said amount in the bank, but he failed to deposit the said amount in HRDF account. The petitioner was called in the Headquarter and he furnished his affidavit dated 07.06.2012 (Annexure P7), whereby he admitted his mistake and assured to deposit the amount, but failed to do so. FIR No.249 dated 26.07.2012 under Section 409 IPC, was registered at Police Station Saran, Faridabad. The petitioner was issued charge-sheet dated 08.08.2012 under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (Annexure P3) and the respondent No.2 vide impugned order dated 08.02.2019 (Annexure P5) whereby the petitioner was compulsorily retired from service.

(4). It is argued by Mr. Madan Pal, Advocate for the petitioner that along with the charge-sheet, he has not been provided the complete copy of documents and statement which the department relied upon and the enquiry officer conducted the enquiry without adopting the proper procedure of law and in violation of principle of natural justice. He further contended that the petitioner has not been given any show cause notice prior to passing of the impugned order dated 08.02.2019 (Annexure P5) compulsorily retiring the petitioner.

(5). It is further pointed out that the petitioner was pressurized to submit an affidavit on the pretext that no action will be taken against him and as such, he, under the compelling circumstances, was made to agree to deposit the entire amount with the false assurance that he will be exonerated. It is further submitted that no departmental proceedings have been initiated against the actual offender the Secretary and Fee Collector, while he has been held guilty despite the fact that he had no role whatsoever in collecting the fee.

(6). Learned counsel for the petitioner pleaded that the trial court has acquitted the petitioner vide judgment dated 16.08.2018 (Annexure P2) holding that the prosecution has failed to prove that at the relevant time, the petitioner was fee collector and had issued the concerned receipt. He averred that pursuant to judgment of acquittal by the trial court, the petitioner has been reinstated in service and in the said judgment, it has been categorically mentioned that it was the duty of the Officer-cum-Secretary to take steps for recovery of market fee and it is the Fee Collector, who is to receive the market fee.

(7). Notice of motion was issued on 08.03.2019 and pursuant thereto, the respondents have filed their replies.

(8). Mr. Hitesh Pandit, Advocate for contesting respondent No.2 – Haryana State Agricultural Marketing Board, Panchkula averred that in the enquiry proceedings, the appeared before the enquiry officer but chose not to cross examine the departmental witnesses and the evidence led by the department remained un-rebutted and it has come on record that the petitioner was deputed by the concerned Secretary-cum-Executive- Officer, Market Committee, Faridabad, the Dabua Mandi, to collect the Haryana Rural Development Fund (HRDF). He further pointed out that as per records, during the period from 1.4.2010 to 31.3.2011, the total receipt by way of collection under the Rural Development Funds was Rs. 2,27,09,742/- whereas, only a sum of Rs. 2,16,81,846/- was deposited in the bank account of the department which clearly shows that Rs.10,28,256/ was found to be deficit amount deposited in the bank account. He further submitted that for the period from 1.4.2011 to 31.3.2012, total receipt by way of collection of Haryana Rural Development Fund was Rs. 2,24,67,771/- whereas a sum of Rs.2,05,75,106/- was found to be deposited in the account which further clearly shows that there is deficit amount of Rs.18,92,665/- in depositing the actual amount along with some other amount.

(9). Learned counsel for respondent No.2 further pointed out that the petitioner was deputed on duty for collecting the Haryana Rural Development Fund by an order passed by the then Secretary-cum-Executive-Officer Market Committee, Faridabad but the petitioner has failed to perform his duty and has misappropriated a sum of Rs.29,20,921/- and has caused financial losses. It is highlighted that the petitioner himself made a statement before the Enquiry Officer by admitting his guilt that he would deposit a sum of Rs. 15 lacs up till 25.06.2012 in the account of HRDF and he had also sworn an affidavit attested by the Notary Public before the Enquiry Officer. He further submitted that not only the petitioner but the Secretary-cum-Executive Officers who remained posted during the period of 1.4.2010 to 17.7.2012 were duly charge sheeted along with the petitioner.

(10). Vide order dated 15.03.2019, this Court stayed the operation of the impugned order dated 08.02.2019 (Annexure P5) and pursuant thereto, CM-9949-CWP-2019 was filed by the petitioner seeking an *ad interim* direction to the respondents to give joining and release the salary to the petitioner from the month of February, 2019 onwards along with interest. In the said application, notice was issued by this Court on 16.07.2019. The petitioner even filed contempt petition i.e. COCP No.2216 of 2019 against the respondent No.2 for willfully disobeying the order dated 15.03.2019 passed in the present writ petition, referred to above.

(11). Thereafter, CM-13664-CWP-2021 has also been moved by respondent No.2 for vacation of stay order dated 15.03.2019 on the ground that the Additional Sessions Judge, Faridabad vide judgment dated 11.02.2021 (Annexure R/A) has accepted the appeal filed by the State against the judgment dated 16.08.2018 passed by the trial court vide which the petitioner was acquitted by the trial court. The appellate Court has held that petitioner guilty for the charges framed against him and the petitioner has been convicted under Section 409 IPC and sentenced to undergo RI for a period of 3 years on the ground that the petitioner has caused loss to the department to which, the appellate court has also granted compensation of Rs.29,20,921/- towards loss and Rs.10,000/- towards cost of proceedings.

(12). Heard learned counsel for the parties and gone through the record.

(13). Before proceedings on merits of the case, it is appropriate to analyze the legal aspect involved in so far as the impugned order is concerned.

(14). The impugned order dated 08.02.2019 (Annexure P5) has been passed by Chief Administrator of the respondent No.2 but under which provision of law, the said authority has been empowered to pass such an order has not been specified therein.

(15). Section 43(1)(2) of the Haryana Agricultural Produce Markets Act, 1961 (in short, the Act of 1961) empowers that the State Government may by notification make rules for carrying out the purposes of this Act. Its Clause (xxviii) under sub-Section (2) provides for framing of service rules, recruitment rules, provident fund rules, pension rules and such other rules as may be required for the employment of the Staff of the Board and Committees. Clause (xxix) of Section 43 of the Act of 1961 further empowers the State Government to frame rules in relation to penalties to be imposed upon the employees of the Board and Committees, including the manner of imposing such penalties and the right of appeal against such penalties.

(16). It is in exercise of powers under Section 43(2)(xxviii) and (xxix), the Haryana State Agricultural Marketing Board Service Rules, 1974 (in short the Rules of 1974) have been framed which shall apply to all the employees in the Service of the Board except those governed by specific agreements.

(17). Rule 15 of the Rules of 1974 *ibid*, provides for discipline, penalties and appeals which reads as under:-

> ***15. Discipline, penalties and appeals**. (1) In matters relating to discipline, punishments and appeals, the members of the Service shall be governed by the Punjab Civil Service (Punishment and Appeal) Rules, 1952, as applicable in the State of Haryana from time to time:*
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> *Provided that the nature of penalties which may be imposed, the authority empowered to impose such penalties, the appellate authority shall, subject to the provisions of any law or rules made under sub-section (2) of section 43 of the Punjab*

Agricultural Produce Markets Act, 1961, be as specified in Appendix C to these rule.

(2) The authority competent to pass an order under clauses (c) and (d) of sub-rule (1) of rule 10 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952 and the appellate authority, shall also be as specified in Appendix C to these rules.

(18). A perusal of the above provision of Rule 15, shows that employees of the respondent No.2 shall be governed by the Punjab Civil Service (Punishment and Appeal) Rules, 1952, as applicable in the State of Haryana from time to time, as amended, namely, Haryana Civil Services (Punishment & Appeal) Rules, 2016 and the authority empowered to impose penalty and pass an order under clauses (c) and (d) of sub-Rule (1) of Rule 10 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952, the appellate authority has been specified in Appendix C to the Rules framed under sub-Section (2) of Section 43 of the Act of 1961.

(19). Appendix C appended with Rules of 1974, provides for the nature of penalty and the authority empowered to impose such penalty as also the description of appellate authority of various categories of posts under respondent No.2. The post occupied by the petitioner is of Auction Recorder which has been mentioned at Sr.No.72 of Appendix C according to which, the authority empowered to impose penalty of Auction Recorder shall be the Market Committee, whereas in case, appeal is preferred against the decision of Market Committee, the appellate authority shall be the Chief Administrator.

(20). In the present case, the order dated 08.02.2019 (Annexure P5) awarding compulsory retirement upon the petitioner has been passed by the

Chief Administrator. Evidently, on a comparative reading of the above provision of laws, the Chief Administrator, in the case of the petitioner, could have been the Appellate Authority. Meaning thereby that the Chief Administrator has usurped the powers of disciplinary authority taking away one forum of legal remedy as provided in the Statute. It has been specifically provided in Appendix C that the Market Committee was the authority empowered to impose penalty on the petitioner being Auction Recorder with the respondent No.2 against whose order an appeal would lie before the Chief Administrator, HSAMB.

(21). The well ingrained principle of law is that it is the disciplinary authority and not the appellate authority, who has to hear the appeal. The disciplinary authority and the appellate authority are separate entities. The disciplinary authority is responsible for conducting investigations and taking disciplinary action against employees, while the appellate authority is responsible for reviewing appeals of disciplinary decisions and determining whether they should be upheld or overturned. The appellate authorities must give reasons and there should be some discussion of the evidence on record. An appellate authority has a legal duty to deliberate about merit and adjudge it before confirming, enhancing, reducing or setting aside the penalty ordered by the disciplinary authority.

(22). There is thus no gainsaying for this Court to hold that the Chief Administrator acted contrary to the provisions of Rule 15(1) of the Rules of 1974 and as such, the order dated 08.02.2019 (Annexure P5) is not in sync with the provisions contained in Appendix C of these Rules.

(23). Further, what is convncing for this Court is that the respondents acted arbitrarily inasmuch as it is an admitted position that in relation to the misconduct for which the petitioner has been penalized, four other Secretaries-cum-Executive Officers of the Market Committee, Faridabad, who remained posted during the period from 01.04.2010 to 17.07.2012, were also charge-sheeted. These four persons have either been censured or have been left scot-free by imposing stoppage of two increments without cumulative effect whereas the petitioner has been compulsorily retired from service. Further, the respondent No.2 is harping upon the statements given by the above-mentioned four Secretaries-cum-Executive Officers to the effect that it is the petitioner who was responsible and assigned with the duty to collect the HRDF and the embezzlement of Board amount is not at their end. What led the respondent No.2 to believe the statements of those persons who were themselves arraigned as accused/delinquent in the embezzlement is also not coming forth in the order dated 08.02.2019 (Annexure P5).

(24). For the reasons mentioned in the foregoing paras, this writ petition is allowed and the order dated 08.02.2019 (Annexure P5) is hereby quashed having not been passed in terms of the law/Rules. Liberty is granted to the respondents to proceed afresh in accordance with law/Rules and till such time, the petitioner shall be allowed to continue in service along with all necessary service benefits with arrears.

(25). Ordered accordingly.

05.12.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No