

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16152-2021 (O&M)
DECIDED ON: 19.09.2023

MUKESH SHARMA

.....PETITIONER

VERSUS

HARYANA AGRO INDUSTRIES CORPORATION AND ANR
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Tahaf Bains, Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for respondents.

SANDEEP MOUDGIL, J (ORAL)

1. The petitioner has approached this Court under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned orders dated 14.07.2021 (Annexure P-20) & 29.07.2021 (Annexure P-21) passed by respondent No.2, vide which the statutory appeal provided to the petitioner has been dismissed.
2. It is a case, where punishment of recovery to the tune of Rs.11,03,435/- has been imposed qua the petitioner by the Inquiry Officer on the basis of report dated 06.09.2016 (Annexure P-6).
3. Learned counsel for the petitioner vehemently argues that the said punishment order is absolutely bad, inasmuch as the Inquiry Officer failed to consider the documentary evidence before it, from where it can be easily inferred that the petitioner is not responsible for any financial loss to the respondent-Corporation, but a lapse in the supervisory capacity. He also asserts that even the statutory appeal made available to him before the Board of Directors and the order

dated 29.07.2021 (Annexure P-21) subsequent thereto has been passed none other than by the Managing Director, who himself was the Officer to earlier post, the order of punishment qua the petitioner was passed, but not as an Appellate Authority on the basis of proceedings to which the petitioner has referred at Annexure P-20 dated 14.07.2021.

4. Mr. Padamkant Dwivedi, Advocate on the other hand asserts that there is finding of fact against the petitioner before holding him guilty and awarding punishment for recovery of more than Rs.11,00,000/- and a total of 1,28,00,000/- has been caused to the respondent-Corporation due to omission and commission of an offence by the petitioner alongwith other delinquent employees. Though, he controverted the fact that the order dated 29.07.2021 (Annexure P-21) is absolutely non-speaking and not passed by the Competent Authority apart from this aforesaid fact, this Court is also sanguine of the situation that order dated 14.07.2021 (Annexure P-20), which are the proceedings of the Board of Directors also did not record any reason whatsoever for not agreeing the appeal except recording that “an opportunity of being heard was afforded by the Board to the appellant, but he failed to provide any new facts or documents, which can be considered for not upholding the MD order”.

5. A perusal of the said proceeding leaves no doubt in the mind of this Court that the Board of Directors have failed to exercise the jurisdiction vested in its and is probably lacking knowledge of law and have recorded that the appellant failed to produce any new fact or document, which was not actually in the purview of appeal except if the petitioner-appellant seeking any review or recalling of the order on the basis of new facts or any evidence. It cannot be believed by any stretch of imagination that the Board of Directors exercising the Board of statutory appeal, which is consisting the officers of the rank of Indian Administrative Services have

with a pre-determined mind seems to have been declined the appeal. Further the order dated 29.07.2021 has been passed by an Officer, who is not competent having jurisdiction to pass and order on appeal on the proceedings of the Board of Directors, which otherwise should have been signed either by Chairperson or any other.

6. Faced with the situation, Mr. Padamkant Dwivedi, Advocate for respondents undertakes before this Court that the orders dated 14.07.2021 (Annexure P-20) and 29.07.2021 (Annexure P-21) will be withdrawn in the next meeting of the Board of Directors and thereafter, the petitioner will be provided opportunity of hearing in accordance with law and a fresh order will be passed, after completing the procedure, as is enumerated and expected in the jurisprudence for deciding an appeal under the statute.

7. Considering his statement, this Court dispose of instant writ petition with a direction that the respondent No.2 shall withdraw the orders in the next meeting of its Board of Directors and till the decision of appeal, no coercive steps whatsoever be initiated against the petitioner for effecting recovery, if any.

8. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

19.09.2023

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>