

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 6385 of 2018 (O&M)
Reserved on: February 13, 2023
Pronounced on: March 23, 2023

Jasbir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Johan Kumar, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Ravi Sharma, Advocate,
for respondent No.2.

Mr. Sourabh Goel, Advocate,
for respondents No. 3 and 4.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Mandamus directing the respondents to grant pay scale of the post of Mechanic to the petitioner w.e.f. 16.07.2009, along with arrears till date, in view of the judgment and decree dated 29.10.2015 (Anneuxre P-7) along with interest @ 18% per annum from the due date till payment; with a further prayer to direct the respondents to release illegal recovery of ₹4,45,019/-, which was deducted from the salary of the petitioner and further grant him the benefit of 6th Pay Commission along with due arrears.

2. In brief, the facts are that the petitioner was appointed to the post of Helper with respondent No.3—Corporation on 2.11.1979 and his services were regularized on the said post on 16.06.1991. Thereafter, he was promoted to the post of Mechanic on 01.03.1993 and was posted at Palwal. He remained posted at various places of his posting. In 2001, due to shortage of Mandi Inspectors, the petitioner was given charge of Mandi Inspector without undertaking any training or any professional course of Mandi Inspector. On 21.06.2007, the petitioner was served with a charge sheet with the allegations that while he was posted as Mandi Inspector on special orders during Rabi Season 2002-2003 at Dhatir Mandi, District Palwal, there was weight loss in the above said storage of wheat and consequently, departmental inquiry was conducted. The Inquiry Officer, after going through the evidence so produced by the respective parties, exonerated the petitioner vide inquiry report dated 13.05.2008. But the Managing Director, recorded a dissenting note and ultimately passed the punishment order dated 15.07.2009, whereby a penalty of lowering the grade of the petitioner from ₹4000-100-4800-EB-100-6000 to grade of ₹2550-55-2660 EB-60-3200 for 5 years besides ordering recovery of ₹30,87,915/- with interest as per rules. Aggrieved against the punishment, the petitioner challenged the same by way of filing a civil suit which was decreed, vide judgment and decree dated 29.10.2015. Respondent No.3—Corporation had also filed a suit for recovery of ₹37,15,218/- against the petitioner, which was dismissed vide judgment and decree dated 15.11.2014. It is submitted that despite the penalty order dated 15.07.2009

having been set aside by the competent court, the petitioner has not been granted the financial benefits, including the pay scale of Mechanic and arrears w.e.f. 16.07.2009 till date. Hence the instant writ petition.

3. Learned counsel for the petitioner would submit that the action of the respondents in not granting the pay scale to the petitioner that of Mechanic, despite the fact that the order of penalty dated 15.07.2009 so imposed upon the petitioner stood quashed by the judgment and decree of the civil court dated 29.10.2015, is absolutely arbitrary and illegal. It is further submitted that even the suit filed by the respondent—Corporation for recovery of ₹37,15,218/- stood dismissed, as the respondent—Corporation was not able to establish that the petitioner misappropriated the funds.

4. Per contra, learned counsel for the respondents would submit that the petitioner has concealed the material facts from this Court. It is submitted that the petitioner was served with as many as three charge sheets firstly, on 24.4.1986 (Annexure R-3/1), in which he was warned to be careful in future; secondly on 11.1.2015 (Annexure R-3/3), vide which the Corporation suffered loss of ₹95,000/- and therefore, he was awarded punishment of 'Censure' (Annexure R-3/4); and thirdly on 25.02.2005 (Annexure R-3/5), vide which he remained absent from duty on 20.11.2004 and consequently he was awarded punishment of stoppage of one annual grade increment without cumulative effect. It is further submitted that the suit for recovery filed by the respondent—Corporation was dismissed by the trial court on 15.11.2014, however, on appeal the finding of the trial court

were reversed and the trial court was directed to decide the case on merits by giving findings on all the issues. The trial court again dismissed the suit vide judgment and decree dated 21.5.2018. Therefore, at the time of filing of the present writ petition, the said civil suit was pending and this fact was well within the knowledge of the petitioner, but the petitioner intentionally concealed this fact from this court and therefore, he does not deserve any indulgence.

5. I have heard learned counsel for the parties and have gone through the record.

6. The petitioner herein, who was appointed to the post of Helper and on regularization, was promoted to the post of Mechanic, was given charge of Mandi Inspector, even though he was not qualified or had the necessary training to undertake the said job. A departmental inquiry was conducted on account of wheat shortage but the Inquiry Officer, after going through the evidence, exonerated the petitioner, vide inquiry report dated 13.05.2008. However, the Managing Director of the respondent—Corporation recorded a dissenting note and passed an order of penalty lowering the grade of the petitioner. The dissenting note of the Managing Director is cryptic in nature as the said note does not take into account the fact that the wheat, which was purchased during 2002-2003 remained stacked upto 2006-2207 i.e. for almost 5 years. The Inquiry Officer had also taken note of the fact that the bottom layers of the wheat stacked had been badly affected by the rainy water as the same was lying on the open plinth. The Inquiry Officer had also taken note of the fact that there was a

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letter of the Financial Commissioner and Secretary to the Government of Haryana, Food and Supplies Department noting that if wheat is stacked in the open, it can remain in good condition only for a period of six months. The dissenting note only came to hold the petitioner guilty as he was the custodian of the wheat stock and it was his responsibility to maintain the health of the same. The Managing Director did not go into the issue that the weather conditions played a havoc with the wheat, which was lying in the open. Even if the petitioner was the custodian of the stock, he could not have been made liable for any damage that occurred on account of weather conditions, over which he had no control. The punishment, as inflicted, was challenged before the Civil Court and the same has been set aside vide judgment and decree dated 29.10.2015, which has attained finality as the respondent—Corporation did not challenge the same in appeal thereto. The order of punishment had directed that the loss of ₹30,87,915/- be recovered from the petitioner for which civil suit for recovery had been filed and the same stood dismissed on the ground that the suit was not maintainable. In appeal filed, the matter was remanded back with a direction to the trial court to give findings on all the issues framed. The trial court re-affirmed its decision and dismissed the suit for recovery, which has again attained finality. The petitioner herein despite being successful in the civil suit challenging the order of punishment, whereby his grade pay had been lowered and recovery proceedings against him having been dismissed and attained finality, is still seeking relief from the respondent Corporation in so far refund of recovery of ₹4,45,019/- that was deducted from his pay and the

consequential reliefs. In the opinion of the Court, there is no basis for the respondents to retain the amount of ₹4,45,019/-, deducted from the salary of the petitioner, considering the fact that the order of punishment stood set aside by the competent court and the suit for recovery brought against him also stood dismissed. Moreover, civil court in the suit filed for declaration for permanent injunction, has directed restoration of existing grade pay of the petitioner which order has attained finality. An objection raised by the respondents that the petitioner did not mention the factum of the appeal having been pending before the lower first appellate court, in this petition is untenable at this stage, as the fact remains that the civil suit filed by the petitioner against the order of punishment stood allowed and the civil suit for recovery filed by the respondents stood dismissed. Both the judgments and decrees have attained finality.

9. For the reasons afore-stated, the writ petition is allowed. The petitioner would be entitled to the pay scale of the post of Mechanic, in view of the judgment and decree dated 29.10.2015 (Annexure P/7) and refund of the amount that has been deducted from his salary along with interest at the rate of 7% per annum from the date due, till payment. He would also be entitled to the benefit of 6th Pay Commission, if not already paid and the benefits of ACP as per the Assured Career Progression Rules, 2008.

March 23, 2023

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No