

116

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

**CWP-7832-2023 (O&M)
Date of decision: 01.08.2024**

Pardeep Kumar

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Petitioner in person with
Mr. Gurpreet Singh Jaiya, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Ms. Sangeeta Dhanda, Advocate for respondents No. 2 & 3.

Mr. Narender Singh Kamboj, Advocate for
Ms. Rinki K. Singhania, Advocate for respondent No. 4.

MAHABIR SINGH SINDHU, J.

Present petition under Articles 226/227 of Constitution has been filed for issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 15.03.2023 (P-9) passed by respondent No. 2, whereby petitioner has been awarded minor punishment i.e. stoppage of one increment without cumulative effect.

(2) Brief facts of the present case are that petitioner was posted in Filing Branch of Sub Divisional Court at Kalka and was having additional charge of Legal Aid Clerk in Sub Divisional Legal Services Committee, Kalka w.e.f. 01.04.2022. He used to deposit the amount of costs with State Bank of India, Branch Rambagh Road, Kalka, District Panchkula. However, due to pressure of work, petitioner started sending Om Parkash, Sweeper-respondent



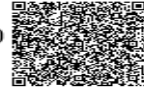
No.4 used to hand over the Bank receipts to the petitioner. On 03.11.2022, petitioner gave an amount of Rs.1,500/- to respondent No.4 for deposit with the bank; but he gave receipt of Rs.1,000/- only. Upon checking of records, it revealed that respondent No.4 furnished fake Bank receipts from July, 2022 to November, 2022. On 04.11.2022, the account statement of Sub Divisional Legal Services Committee, Kalka, was verified from the bank and it came to notice that out of Rs.1,12,300/-, only Rs.77,500/- were deposited by respondent No.4 and had been embezzled Rs.34,800/-.

(3) Immediately, the petitioner gave an intimation to learned Additional Civil Judge (Sr. Divn.), Kalka, on 04.11.2022 and which is reproduced as under:-

“Respected Madam,

It is submitted that as per record total cost of Rs.1,12,300/- has been received in Sub Divisional Legal Services Committee, Kalka, vide Receipt Nos.051746 to 051914 w.e.f. 01.04.2022 to 03.11.2022. But today, I see the Bank Statement w.e.f. 01.04.2022 to 03.11.2022 only Rs.77,500/- rupees has been deposited. The different amount of Rs.34800/- has not been deposited.

It is submitted that I gave the Cost payment to Sh. Om Parkash, Sweeper (contract basis) on good faith as he is working in this office last ten years. Yesterday, i.e. 03.11.2022, I caught him when he gave me tempering date on Bank Slip. When I saw all Bank Deposit Vouchers and come my notice that Bank Voucher from Aug 2022, its show that mostly slips date are tempered and deposit the costs amount on different days and mostly slips has not received till date which total amount of Rs. 34,800/-. I asked to Om Parkash why he not deposited the Cost time to time and cheat with me. He said that my salary is not paid from long time and I have urgently required money for take care of my family and my other expenses. He said that he give the all different payment amount soon. This is the part of my negligence. The Cost payment from the month of August



to November is totally deteriorate. Kindly give me pardon please. I will deposit the all rest payment i.e. Rs. 34,800/- today. The Cost payment detail w.e.f. 01.04.2022 to 03.11.2022, is as under:-

*Total Cost - Rs. 1,12,300/-
Deposit Cost - Rs. 77,500/-
Not Deposit Cost - Rs. 34,800/-
Submitted please.*

*Sd/-
(Pardeep Kumar)
Legal Aid Clerk"*

(4) Respondent No.4 admitted his guilt and gave written apology (P-3/T) on 10.11.2022 that he had returned an amount of Rs.24,000/- to the petitioner and the remaining amount shall be refunded very soon.

(5) The learned District and Sessions Judge, Panchkula (for short, "D&SJ") called an explanation of petitioner, vide letter dated 11.11.2022 (P-4), for embezzlement of funds to the tune of Rs.34,800/-. On the same day, petitioner deposited an amount of Rs. 34,800/-, which is duly reflected in the account statement (P-5) of Sub Divisional Legal Services Committee, Kalka.

(6) Thereafter, Show Cause Notice dated 20.12.2022 (P-7) was issued to the petitioner by learned D&SJ, as to why minor punishment contained in Rule 8 of the Haryana Civil Services (Punishment & Appeal), Rules, 1987, be not imposed upon him.

(7) Also noteworthy that on the same very day i.e. 20.12.2022, on the complaint of petitioner, FIR No.0266 dated 20.12.2022, under Sections 406 & 420 of the Indian Penal Code, 1860 (for short, "IPC") at Police Station Kalka, was registered against respondent No.4 for an embezzlement of Rs. 34,800/- (P-6/T).

(8) Pursuant to the Show Cause Notice dated 20.12.2022, petitioner filed reply on 03.01.2023 (P-8), explaining his position and further submitted



that he will not repeat such mistake in future and prayed to forgive him for the lapse.

(9) After considering the reply of petitioner, learned D&SJ passed impugned order dated 15.03.2023 (P-9) and operative part of the same reads as under:-

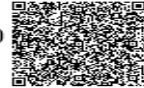
“After going through the facts of the matter, the undersigned is of the view that even though the amount has been deposited in the Bank, still, the delinquent official was negligent while performing his duty. Accordingly, the delinquent official is awarded one of the minor punishment i.e. stoppage of one increment without cumulative effect.

Dated-15.03.2023

*Sd/-
District & Sessions Judge,
Panchkula.”*

(10) Learned counsel for the petitioner contended that there was no deliberate attempt on the part of petitioner; rather, it happened due to faith reposed in respondent No.4, whereby he was asked to deposit the costs amount with Bank. But unfortunately, respondent No.4 (who was working as Sweeper) did not deposit the entire amount with Bank and embezzled Rs.34,800/-. He also referred to about the writing dated 04.11.2022 (P-2), thereby requesting for condonation of the same and assured for payment of the alleged amount. Lastly, contended that petitioner is having clean service record for the last 16 years; hence, prayed for quashing of the impugned order dated 15.03.2023 (P-9).

(11) *Per contra*, learned counsel for respondent Nos.2 & 3 submits that there is gross dereliction of duty on the part of petitioner as he was bound to deposit the costs with the Bank on daily basis; but he failed to do so. Thus, he remained negligent and handed over the amount to third person i.e. respondent No. 4, who was not even a regular employee. Lastly submitted that petitioner



himself has admitted his lapse for non-deposit of amount of Rs. 34,800/-; but, there is no denial of his 16 years clean service record.

(11.1) Learned State counsel submits that respondent No. 1 is not a necessary party in this case.

(11.2) Learned counsel for respondent No. 4 pleads no instructions and submits that he has already left the job of sweeper.

(12) Heard parties and perused the paper-book.

(13) There is sufficient material on record to the effect that petitioner failed to deposit the costs amount of Rs. 34,800/- with the Bank; but later on, he deposited the same on 11.11.2022.

(14) In view of the above, no ground is made out to interfere with the impugned order, thereby holding the petitioner guilty of being negligent while performing his duty.

(15) At the same time, there are certain mitigating circumstances to reduce the quantum of punishment and which would be as under:-

- (i) Petitioner is having clean service record for the last 16 years and there is no other complaint pending against him.
- (ii) There is no material to prove any *mala fide* or dishonest intention of the petitioner while not depositing the amount of costs with the bank.
- (iii) FIR No. 0266 dated 20.12.2022 under Sections 406 & 420 IPC at Police Station Kalka was registered on the complaint of petitioner against respondent No.4 for embezzlement of Rs.34,800/-.

(iv) Even respondent No. 4 admitted his fault and refunded Rs.24,000/- to the petitioner with a promise to pay the remaining amount.

(16) Consequently, after taking into consideration the circumstances noticed here in above, present petition is allowed partly; and taking a lenient view, the punishment for stoppage of one annual increment without cumulative effect is reduced to “censure”. However, the petitioner is directed to remain careful in future.

(17) The petition stands disposed off accordingly.
Pending application(s), if any, shall also stand disposed off.

01.08.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No