



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-18025-2011 (O&M)

Date of decision: 21.02.2025

Ram Niwas

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. V.D. Sharma, Advocate for the petitioner(s).

Mr. Praveen Chander Goyal, Addl. AG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the office order dated 27.01.2011 vide which penalty of stoppage of two increments with cumulative effect alongwith recovery of financial loss of Rs.3,78,446/- has been imposed upon the petitioner.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner had joined service on 09.08.1972 in the respondent-Department and retired as Accounts Clerk from the office of respondent No.4 on 31.08.2011. He submits that one, Smt. Darshana Devi wife of Sh. Tara Chand was working as a part-time Sweeper in the office of respondent No.4-Block Development and Panchayat Officer (**BDPO**), Safidon, District Jind since 1974. She filed a civil suit No.223 of 20.04.1998/21.05.1998 in the Court of learned Civil Judge (Jr. Divn.), Jind for regularization of her service. The said case was being looked after by one Sh. Rajmal, Steno. The said case was fixed before the Civil Court for 04.12.2001 for recording defence evidence. The petitioner was orally asked by the then BDPO,



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Safidon to attend the Court proceedings and produce the entire record. On such oral instructions of the BDPO, the petitioner went to the Civil Court at Jind alongwith the case file of Smt. Darshana Devi. There the petitioner came to know that the case was fixed for the evidence of the defendants and that the BDPO and Rajmal were supposed to attend the Court. On the asking of the Assistant District Attorney, the petitioner produced the record in the Court and appeared as DW-1 on behalf of the BDPO, Safidon. His statement was recorded. It is pertinent to mention that the petitioner had also been paid Travelling Allowance from Safidon to Jind and back after being approved by the BDPO, Safidon being the Drawing and Disbursing Officer. The said suit was eventually decreed by the Civil Court in favour of Smt. Darshana Devi on 22.02.2002.

3. The respondents, thereafter, served a charge-sheet to the petitioner on 15.02.2008 after more than six years, which is as under:-

“Sh. Ram Niwas accounts clerk while working during the period between 10.7.1993 to 27.12.2005 in the office of Block Development and Panchayat officer, Safidon has irregularities. committed following:

That Sh. Ram Niwas accounts clerk, Block Office Safidon had appeared at his own in the civil suit no. 223 of 20.11.1998/ 21.5.1998 titled as Smt. Darshna Devi Vs. Govt. of Haryana in the court of Civil Judge (SD) Jind and stated that Sh. Ramesh Kumar was also a part time 'Mali' and he was junior to Smt. Darshana Devi. Whereas, Ramesh Kumar was Mali-cum-



chowkidar and plaintiff Smt. Darshana Devi was working as Sweeper, nature of duty of sweeper was different. Sh. Ram Niwas accounts clerk has given illegal statement in favour of Smt. Darshana Devi just to help her against the Government. Due to this the Hon'ble Court has decided the case in favour of the plaintiff.

Thus, Sh. Ram Niwas accounts clerk has committed irregularities deposing against the Government just to favour the plaintiff, Hence, he is at fault.

The above said irregularities show the serious misconduct of Sh. Ram Niwas accounts clerk and he himself has invited for the disciplinary action.”

4. A departmental inquiry was conducted in the same and the charge was held to be proved against the petitioner. He submits that notwithstanding there being no charge of any financial loss having been caused by the petitioner, yet, a penalty of recovery of Rs.3,78,446/- towards recovery of the financial loss has been imposed upon the petitioner vide impugned order dated 27.01.2011 (Annexure P-10). He further submits that the respondent-department had issued a separate charge-sheet to the BDPO in relation to causing financial loss to the State exchequer. The charge was proved against the BDPO but a punishment of stoppage of two increments with cumulative effect was imposed upon him. The recovery of the loss was never effected or ordered from the person against whom the said charge was established. Learned counsel appearing on behalf of the petitioner argues



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that in the absence of any specific charge having been levelled against the petitioner for causing any financial loss, the order of recovery could not have been imposed.

5. He further contends that the said recovery has been ordered to be effected notwithstanding a specific decree having been passed by the Civil Court in favour of Smt. Darshana Devi. He also refers to the grounds of appeal preferred by the respondent-State and submits that a specific ground that Sh. Ramesh Kumar was working as a regular Mali while Darshana Devi was working as a part-time Sweeper was also raised and the same was taken into consideration by the Additional District Judge, Jind in Civil Appeal No.130 of 26.08.2003/27.03.2002 decided on 18.11.2003 preferred by the State of Haryana yet the State failed to establish its case to the detriment of Darshana Devi. The Civil Appeal was dismissed and the judgment & decree were upheld. The respondents thus cannot contend that the Department has suffered any loss on account of liability that was decreed against the department as the same would amount to executing the decree of the Civil Court against the petitioner.

6. Learned State counsel, however, contends that the petitioner was never authorized to make a statement in the Civil Court, yet, notwithstanding absence of instructions, he got his evidence recorded before the Civil Court. The petitioner deposed that Sh. Ramesh Kumar was junior to Smt. Darshana Devi and that he was also working as part-time even though Sh. Ramesh Kumar was working on regular basis at D.C. rates in the capacity of Mali-cum-Chowkidar while Smt. Darshana Devi was working as



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a part-time Sweeper, hence, they were working under different categories and were not identically placed. He submits that as a result of the aforesaid statement made by the petitioner before the Civil Court, the Civil Suit was decreed and the additional financial liability had to be borne by the respondent-Department.

7. No other argument has been raised nor any judgment cited.

8. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition with their able assistance.

9. The issue in hand has to be appreciated from two different perspectives i.e. firstly from the perspective of the petitioner having made a deposition before the Court of Law. The specific case of the petitioner herein is to the effect that he had been orally instructed by the BDPO to attend the proceedings and even cleared the T.A. Bills for the said purpose, however, in the departmental inquiry, the concerned BDPO did not step to support the case of the petitioner. Thus, the charge to the said extent stood proved. The inquiry report alongwith the show cause notice was duly served upon the petitioner whereupon the punishment of stoppage of two increments with cumulative effect and recovery was passed against the petitioner. In so far as the issue of recovery of the alleged loss is concerned, it is undisputed that neither any charge of any financial loss having been caused to the respondent-State was ever served upon the petitioner nor any inquiry was conducted into the same, hence, there can be no presumption of any quantified financial loss. In the absence of any charge of financial loss, the



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respondent could not impose punishment for recovery of the said amount.

10. Further, it is also evident from the grounds of appeal that was filed by the respondent-State that no ground was raised to the effect that the petitioner was not authorized or entitled to depose or to make any statement on behalf of the respondent-Department. They had also specifically taken a plea that Sh. Ramesh Kumar, was working as Mali on regular basis while Smt. Darshana Devi was a part-time Sweeper. The said contention of the respondents was rejected by the Appellate Court. Once the respondent did not impugn the decree on the ground of petitioner not being authorized to depose, it cannot now be accepted at a belated stage. Besides, the basis for recovery are the grounds on which the Civil Court passed the judgment and decree against the department. In said circumstances, the respondent-department cannot contend that notwithstanding specific decree having been passed against them by the Civil Court and having been affirmed by the Appellant Court, however, the financial liability can still be recovered from the petitioner. The same is clearly an attempt on the part of the respondent-Department in transferring its financial responsibility to pay salary to an employee from another employee. The respondents had all opportunities to move appropriate application before the Civil Court as well as to mention the same as a specific ground in the appellate proceedings or to lead additional evidence, however, the same having not been done, the inference has to be drawn against them. Further, contention of the petitioner that the respondent-Department had also initiated disciplinary proceedings for effecting recovery of the said loss from the concerned Block Development



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and Panchayat Officer in which the petitioner appeared as a witness has remained undisputed. In the said inquiry report, the charge was proved against Mr. Sunehra Singh, BDPO, and notwithstanding the said charge having been proved against him, the punishment of stoppage of two increments had been imposed upon the petitioner. In the said circumstances, once the specific charge for having caused financial loss was levelled against the BDPO and the said charge having already been proved against him, recovery of the said loss could not have been effected from the witness i.e. the petitioner herein. If the department deemed it fit and appropriate to levy a punishment of stoppage of two increments with cumulative effect from the person against whom the charge for causing financial loss of Rs.3,78,446/- had been established, the respondents cannot seek recovery of the said loss from any other officer who was never charge-sheeted for the said loss.

11. Hence, the present writ petition is partly allowed, while the order dated 27.01.2011 imposing the penalty of stoppage of two increments with cumulative effect is upheld, the punishment of recovery of financial loss of Rs.3,78,446/- upon the petitioner is set aside.

12. The retiral benefits of the petitioner that have been withheld, be released within a period of three months of receipt of a certified copy of this order, failing which the petitioner shall be entitled to interest @6% per annum for the delay from the date of filing of the writ petition.

(VINOD S. BHARDWAJ)
JUDGE

21.02.2025

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No