

(2014) 08 P&H CK 0243

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 18566, 20459 and 20601 of 2010

Hoshiar Singh

APPELLANT

Vs

Haryana Warehousing Corpn.

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 08 P&H CK 0243

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : Sanjiv Gupta, Advocate for the Appellant; Sunil Panwar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Jaswant Singh, J.—By this common order I shall dispose of the aforementioned three Writ petitions as the issues involved therein are identical and interlinked. This Court vide order dated 28.11.2010 in CWP No. 20601 of 2010 and dated 21.09.2011 in CWP No. 20459 of 2010 ordered to be heard with CWP No. 18566 of 2010.

2. Petitioners Hoshiar Singh, Ram Phal & Ram Chander who were working as Godown Keeper-cum-Incharge, Godown-cum-Watchman and Dusting Operator respectively with the Haryana Warehousing Corporation/respondent in their respective writ petitions are seeking quashing of the common punishment order dated 11.08.2009 (P-6) whereby the punishment of dismissal from service upon each of them has been imposed for misappropriation of 487 bags of Basmati-Paddy and creating of false story of theft and recovery ordered for a sum of Rs. 6,47,475/- jointly/severally. Further challenge is to the common order dated 27.10.2009(P-7) whereby the direction of the Executive Committee dismissing their appeals has been conveyed.

3. The challenge to the aforesaid orders is primarily based on the allegations of

violation of principles of natural justice while conducting the enquiry as also punishment imposed being totally disproportionate and without regard to the length of service of the petitioners.

4. Upon notice respondent has filed a written statement wherein it is stated that the petitioner Hoshiar Singh while working as Godown Keeper/Incharge along with two other co-delinquent officials namely Ram Phal, Godown Attendant-cum-Watchman and Ram Chander Dusting Operator while posted at State Warehouse Call were found to have misappropriated 487 boxes of Paddy/Basmati involving an amount of Rs. 6,47,475/-. Besides an FIR of theft/misappropriation lodged, departmental proceedings were also initiated against all the three delinquent officials vide identical charge sheets dated 5.3.2009 for imposition of major penalty. An inquiry officer of the rank of HCS(Retd.) was appointed to conduct common enquiry. The said officer submitted its report dated 3.6.2009 (P-3). The findings of the inquiry officer were against all the three delinquent officials which was conducted after following principles of natural justice and due procedure and holding them guilty regarding misappropriation of funds and creation of false story of theft. Thereafter separate show cause notices dated 26.06.2009 (P-4) indicating the proposed penalty was issued to all the petitioners. The petitioners filed their replies dated 22.07.2009 (P-5). On consideration of the replies and the findings of the inquiry officer, the separate orders of punishment dated 11/12.08.2009 (P-6) were passed. The petitioners thereafter filed statutory appeals before the Executive Committee of the respondent-Corporation. The said Executive Committee in its meeting on 20.10.2009 afforded a hearing to the petitioners and dismissed their appeals by detailed discussion regarding their sole plea of "theft" by recording of reasons, which reads as under:-

" The E.C. Questioned Shri Hoshiar Singh, G.K./Incharge as to when the "theft" occurred to which the delinquent replied that the "theft" had occurred during his leave on 22/23-2-2009. The E.C. Observed that Shri Hoshiar Singh had knowledge of the date of "theft". Shri Hoshiar Singh was informed about the breaking of the kundas of Gate Nos. 1 & 3 of Godown No. 3 by Smt. Shimla Devi, GACW on 24.02.2009 at 10 AM. The lowering of the height of three paddy stacks from 16 layers to 12-13 layers (easily discernible to the naked eye) and the spillage of 25-30 kg of paddy near the paddy stacks were brought to his notice by Smt. Shimla Devi, GACW on 24.02.2009 at 10 AM. These were adequate signals that something was amiss and he would have conducted a physical count of the bags immediately had he been innocent in the matter. He finally informed the District Manager on 26.02.2009 at 3 PM about the occurrence of the "theft" without counting the stocks and without informing the local police. The FIR had to be lodged by the District Manager after counting the stocks. Both Shri Ram Chander and Shri Ram Phal were on watchman duty from 21.02.2009 at 5 PM to 24.02.2009 at 9 AM, during which the theft/misappropriation of 487 bags of basmati paddy valued at Rs. 6,47,475/- had occurred. The E.C. noted that it would have taken 5-6 hours to steal 487 bags of paddy from inside the godown through two boundary walls of more than 6 feet height each and involving a total

ground distance of 100 metres. It was physically impossible to undertake such an operation manually without motorized transport from the main gate by an outsider and without the involvement of the warehouse watchman on duty. Besides, there would have been a big noise of the forced opening of the steel gates of the godowns from the outside, which would have alerted the watchman on duty. The E.C. found the plea of the appellants that they learnt of the theft from the Chowkidar of HAFED on 26.02.2009 when he saw some spillage of paddy grains near the outside boundary wall, to be specious. The E.C. observed that the station leave of Shri Hoshiar Singh, G.K. On 22/23.02.2009 was without authorization of the D.M. and was deliberately planned as an alibi. The E.C. observed that the delay in reporting was deliberate to destroy all remaining evidence of misappropriation of paddy stocks. After stocks were actually misappropriated by the three appellants and it was not a case of "theft" by outsiders as per the fictitious story of the appellants. The E.C. upheld the order of the M.D. The appeals being devoid of merits were, therefore, dismissed."

5. This Court, it is conceded, issued notice of motion primarily on the aspect of disproportionateness of the penalty.

6. Having heard learned Counsel for both the parties, it is apparent that an inquiry was conducted after following the due procedure of law and following the principles of natural justice. The punishment order as well as the Appellate Order also contains due reasons for passing punishment order and upholding the same. As regards the disproportionateness of the penalty, the learned Counsel for the respondent-Corporation has cited judgment reported as U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, wherein the Hon"ble Supreme Court has held that where the charge of misappropriation is proved, the workman is not entitled to any sympathy on the ground of past record or length of service or the misappropriated amount is small. It proceeds to hold that punishment of dismissal from service in such like cases is the only appropriate punishment. In the present case, all the three petitioners (in the aforesaid three Civil Writ Petitions) have been held guilty of misappropriation of a very huge amount for a sum of Rs. 6,47,475/-, therefore, in the light of the aforesaid ratio of law, their individual length of service and past record loses its significance. More so, they being custodian of the stock of Basmati-Paddy, having indulged in the misconduct of misappropriation and tried to set up a false plea of theft, do not deserve any punishment less than dismissal from service. In such circumstances, this Court finds no ground warranting interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution.

7. Dismissed.