

Before K. Kannan, J.

GURCHARAN SINGH,—Petitioner

versus

**PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION LIMITED (MARKFED)
AND ANOTHER,—Respondents**

C.W.P. No. 2733 of 2009

19th January, ~~2009~~ 2010

Constitution of India, 1950—Art. 226—Charges against petitioner for loss to Markfed—Enquiry Officer exonerating petitioner—Disciplinary authority not differing with view of Enquiry Officer while holding that there had been a lapse on part of petitioner—Disciplinary authority punishing petitioner by bringing him lower in scale of pay by two stages for calculating retiral dues—Disciplinary authority failing to record any reason to differ with report of Enquiry Officer—Recovery directed against petitioner not tenable—Petition allowed, proceedings quashed and petitioner held entitled to be paid retiral benefits.

Held, that a charge sheet had been levied against the petitioner and enquiry was constituted. The Enquiry Officer gave a report on 6th August, 2004 exonerating the petitioner of the charge that he was guilty of causing loss relating to paddy crops 1997-1998 in connivance with some mill traders. The disciplinary authority, who examined the enquiry report, did not take any particular decision differing with the view but still held that there had been a lapse on the part of the petitioner that he would be punished by bringing him lower in scale of pay by two stages for calculating his retiral dues. He also found that if the loss was not recovered from mill through arbitration or legal proceedings, 50% of such loss shall be recovered from the petitioner along with interest and on such basis, the terminal benefits had not been given.

(Para 2)

Further held, that the Enquiry Officer had actually exonerated the petitioner. We are considering the case of denying a person who has retired, the retiral benefits and the proceedings for recovery. Unless the petitioner is found guilty of negligence, the mere fact that the loss had been occasioned or a contingency that if MARKFED could not recover the whole money from the miller/trader, then 50% of the same should be recovered from the petitioner. So long as the Managing Director had recorded no reasons to differ with the report of the Enquiry Officer, then any form of recovery directed against the petitioner, will be untenable. The impugned proceedings are quashed and the petitioner shall be entitled to be paid retiral benefits.

(Para 3)

Rajesh Kumar Girdhar, Advocate, *for the petitioner.*

Navkesh Singh, Advocate, *for the respondents.*

K. KANNAN, J. (ORAL)

(1) The petitioner, who was a Field Officer in MARKFED, had obtained voluntary retirement on 30th November, 2000. In an audit enquiry held in 2001-2002, it appears, some shortages were noticed and it was decided to proceed against the persons, who were responsible for the loss. The loss found was sought to be recovered from the petitioner and the terminal benefits were not issued to him at that stage. The petitioner had approached this Court for relief which directed by its order dated 30th October, 2003 that a legal notice complaining of non-payment of retiral benefits shall be considered and appropriate decision be taken. The Managing Director had taken a decision in response to the notice issued as per the directions of this Court, on 13th March, 2004 that disciplinary proceedings would be initiated against the petitioner and the issue regarding any recovery would be finalized within a period of 6 months.

(2) It appears that a charge-sheet had been levied against the petitioner and an enquiry was constituted. The Enquiry Officer gave a report on 6th August, 2004 exonerating the petitioner of the charge that he was guilty of causing loss relating to paddy crops 1997-98 in connivance with some mill traders. The disciplinary authority, who examined the enquiry

report, did not take any particular decision differing with the view but still held that there has been a lapse on the part of the petitioner that he would be punished by bringing him lower in scale of pay by two stages for calculating his retiral dues. He also found that if the loss was not recovered from the mill through arbitration or legal proceedings, 50% of such loss shall be recovered from the petitioner along with interest and on such basis, the terminal benefits had not been given.

(3) The impugned order defies logic and it goes against his own earlier decision on 10th March, 2004 about when recovery would be made, if the petitioner was found guilty in the enquiry proceedings. I have already observed that ultimately when the impugned order was passed, it did not find the enquiry report was wrong or that he had reasons to take a different view. The learned counsel appearing for the respondents would support the order by pointing out that the petitioner held a joint custody along with the mill traders and if there was a loss or shortage, it should be borne by both of them. I do not think, such a contention should merit acceptance only because some loss had been occasioned but no negligence has been attributed to the petitioner. The Enquiry Officer had actually exonerated him. We are now considering the case of denying a person who has retired, the retiral benefits and the proceedings for recovery. Unless the petitioner is found guilty of negligence, the mere fact that the loss had been occasioned on a contingency that if MARKED could not recover the whole money from the miller/trader, then 50% of the same should be recovered from the petitioner. So long as the Managing Director had recorded no reasons to differ with the report of the Enquiry Officer, then any form of recovery directed against the petitioner will be untenable. The impugned proceedings are quashed and the petitioner shall be entitled to be paid retiral benefits and such payment shall be done with simple interest at 6% within a period of 4 weeks from the date of receipt of copy of the order. The writ petition is allowed on the above terms. No costs.

R.N.R.