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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-33167-2019(O&M)
Date of Decision: 05.03.2024

Anil Kumar Lekhi

....Petitioner(s)

Versus

Haryana Financial Corporation and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Pawan Kumar Mutneja, Senior Advocate with
Ms. Suverna Mutneja, Advocate, for the petitioner.

Mr. Jagbir Malik, Advocate, for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 03/12.04.2017 (Annexure P-6) to the extent of punishment ordered to the petitioner and order dated 12.03.2019 (Annexure P-9) with a further prayer to issue a writ in the nature of mandamus directing the respondents to give all consequential benefits including 100% back wages and other retiral dues to the petitioner alongwith interest with a further prayer to direct the respondents to give calculations to the petitioner as prayed for in the representations Annexure P-11 and P-12.

2. The brief facts of the present case are that the petitioner was issued a charge-sheet vide Annexure P-2 dated 14.02.1997. There were

number of allegations against the petitioner pertaining to a public issue which had come up with 57,87,500 equity shares of Rs. 10/- each at a cash premium of Rs. 25/- per share in May, 1995. A dispute arose with regard to the process followed in the issuance of the aforesaid equity shares and consequently, the aforesaid charge-sheet was issued to the petitioner. Apart from the present petitioner who was working as an Assistant General Manager, similar kind of allegations were also levelled against various other officers including that of the Managing Director of the Haryana Financial Corporation. It is not in dispute that the allegations which were levelled against the petitioner were similar to that of the allegations which were levelled against the Managing Director. The issuance of public issue was also a policy decision and the process which was followed was collective. Since the Managing Director was an IAS Officer, his Competent Authority was the Chief Secretary and therefore qua him separate proceedings were carried on and qua the present petitioner separate proceedings were carried on by the new Managing Director who had come in the place of the aforesaid Managing Director.

3. When the aforesaid Managing Director faced the disciplinary proceedings, then qua him an enquiry was conducted and vide Annexure P-1 the Chief Secretary to Government of Haryana on 10.01.2006 exonerated him. In the aforesaid order of the Chief Secretary it was so observed that there was not even notional loss to the Corporation on this account in view of the fact that the shares traded in the market had fallen below allotment price and no *mala fide* on the part of the Managing Director namely, Sh. Ajit M. Sharan, IAS was established and, therefore, the Competent Authority decided to drop the disciplinary proceedings against

the aforesaid Managing Director. The relevant portion of the order passed by the Chief Secretary to Government of Haryana as so incorporated in para No.13 and 14 are reproduced as under:-

> *13. In respect of the allegation that Sh. Ajit M. Sharan, IAS allowed acceptance of allotment money without interest after the last date given by the Corporation to the allottees to deposit the allotment money. Shri Ajit M. Sharan, IAS in his reply has contended that the public issue of HFC was over subscribed. The allotment money was required to be deposited by 11.9.95. Thereafter, interest was to be charged from the allottees. A total amount of Rs. 8.75 crores was due as allotment money, out of which Rs. 0.35 crores was adjusted from the excess application money received and for the rest an amount of Rs. 2.48 crores only (including interest) was received by the Corporation till 31.3.96. The share of the Corporation which had been issued at Rs. 35 per share was trading at Rs. 15 per share due to a down turn in the capital market. Due to pc or recovery it was decided to accept the allotment money received either with interest or without interest. There is not even-notional loss to the Corporation on this account in view of the fact that the shares traded in the market had fallen below allotment price even. Therefore, no malafide on the part of Sh. Ajit M. Sharan, IAS has been established.*
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> *14. NOW,THEREFORE, keeping in view the discussions made in the preceding paras it has been observed that the allegations leveled against Sh. Ajit M. Sharan, IAS vide State Government Memo referred to above have not been substantiated. The Competent Authority has, therefore, decided to drop the disciplinary proceedings against Sh. Ajit M. Sharan, IAS initiated vide State Government Memo referred to above."*

4. So far as the present petitioner is concerned, the Enquiry Officer continued with the enquiry and although the enquiry report has not been attached with the present petition but as per learned counsels for the parties, three charges were proved against the petitioner out of the total

allegations. Three charges which stood proved qua the petitioner are at serial No. (ii), (iii) and (xiv) which have been so reproduced in the punishment order passed by the punishing authority. The aforesaid three charges are reproduced as under:-

> *"(ii) It is observed from Shri Lekhi's office note dated 13.12.1996 that in his meeting with Executive Director and Managing Director, it was decided that the Corporation may not extend the date of depositing of the allotment money but will accept the same with or without interest. Further, it is observed that allotment money was received with interest and without interest. As a result of this decision, a situation of discrimination between the investors has come to light. There is every likelihood of some investors who paid the interest approaching SEBI for redressal of their grievance. He is found to be mainly responsible for creating such a situation for the Corporation, due to his lack of knowledge of SEBI guidelines and non-application of mind.*
>
> *(iii) The Board of Directors in their meeting held on 12.8.1996 has inter alia decided that the Corporation may continue charging of interest on allotment money which is due. As on 10.11.1996 allotment money of Rs.5.85 crores approx. (plus interest) was due*
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> *There are three types/categories which are as under-*
>
> > *a. Interest has been taken from some defaulting investors.*
> > *b. Interest has not been taken from some defaulting investors.*
> > *c. Interest has to be taken on Rs.5.85 crores upto 31.3.1997.*
>
> *In order to correct the situation so that uniform pattern of charging interest from investors(or not charging interest) is implemented, a possible solution is to ask for the interest from those investors who have not paid the same and obtained the fully paid up stickers. But, it is difficult to identify such investors, because Shri Lekhi had not developed a method of recording the data in a systematic manner. This charge is*

crucial in the sense that in case Corporation is not able to recover the interest from such defaulters, then only course open to refund the interest received from other defaulting investors, not to charge interest from present defaulters of Rs.5.85 crores, approx, and the financial loss in that event would be about Rs. 1.38 crores.

(xiv) The appointment of employees of their nominees as sub-brokers to their main broker M/s K.S. Et.& Co. (an allied concern of the Lead Manager of the issue of the Corporation ie M/s Allianz Capital and Management Services ltd., New Delhi does not carry the approval of the Board of Directors. Employees of the Corporation cannot be sub-broker in Public issue of the Corporation because acting as a sub-broker constitutes an office of profit and cannot be undertaken legally by the employees of public sector Corporation. However, on the contrary to this position:-

a) Shri Anil Lekhi has entered into official correspondence with Branch Offices to give the names of employees "who is lower in bracket of income so that brokerage in the form of incentive will be given in his name which will be distributed between the employees" - his actual instructions to a Branch Manager(vide letter dated 26.4.1995) on record duly signed by him which indicates a planned strategy to take illegal gratification for himself, his colleagues of Merchant Banking Divisions and Branch Offices.

b) An amount of Rs. 23,54,887.50 has been worked out being the brokerage of sub-brokers appointed as per instructions mentioned under point (a) above, which is to be distributed amongst all the Officers and employees of Branch Offices and that of Merchant Banking Division (e.g Typist Shi Trilok Singh's (sub broker code 5760) entitlement has been worked out at Rs 6,49,530 to be shared between the Officers and employees of Merchant Banking Division).

c) Though a letter dated 07.09.1995 has been written by Shri Lekhi to M/s Allianz Capital & Management Services Ltd. New Delhi, for sending the balance of the entire brokerage of Rs.23.55 lacs but the matter does not seem to have been pursued vigorously as an amount of Rs. 10.00 lacs(approx.) has been received and the test of the amount seems to have been received by Shri Lekhi himself and misappropriated, e.g. It is learnt that about Rs.5.50 lacs are lying in the Bank account of his "low bracket employee/ Shri Trilok Singh, Typist, whereas no written record of the same is available.

As per record, the brokerage amount to Rs. 1,06,000/- received by Shri Anil Lekhi in the same of

following 9 sub- brokers the employees and their representatives was released to them by him without prior approval of the Board of Directors:-

Name:	*Amount (Rs.)*
1. Smt. Shashi Bandhari, Karnal	*4,000.00*
2. Sh. Anil Arora, Gurgaon	*10,000.00*
3. Sh. R.K Chibber, Panchkula	*10,000.00*
4. Smt.Kamlesh Rani, Rohtak	*5,000.00*
5. Sh.Rajinder Kumar, Rewari	*6,000.00*
6. Smt. Shanti Chawla, Sonepat	*10,000.00*
7. Sh.Trilok Singh, M.B. Division	*50,000.00*
8. Sh. Kulwinder Singh, Ambala	*4,000.00*
9. Ms. Nidhi Gupta, Panipat	*8,000.00*
Total	*1,06,000.00*

5. Thereafter, a punishment of dismissal was inflicted upon the petitioner in the year 2000. The petitioner thereafter filed a civil suit for declaration against the aforesaid order of dismissal and the aforesaid civil suit was decreed by the Civil Court. Thereafter, the decree and judgment were assailed by the respondent-Corporation before the learned Appellate Court and the appeal was allowed. Thereafter, the petitioner filed RSA before this Court and the judgment of this Court in RSA is attached with the present petition as Annexure P-4. The main grouse of the petitioner in the aforesaid RSA was that the disciplinary/punishing authority did not give an opportunity of hearing and, therefore, there was violation of the principles of natural justice and in view of the aforesaid position, a Co-ordinate Bench of this Court while deciding the RSA restored the judgment of learned trial Court, set aside judgment of Appellate Court and remanded back the case to the punishing authority i.e. the Managing Director with a direction to pass a fresh order after granting due opportunity of hearing to the petitioner. The relevant portion of the aforesaid judgment passed by this

Court is reproduced as under:-

> *"Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that impugned judgment and decree dated 4.4.2012 passed by the learned additional District Judge cannot be sustained and the same is hereby set aside. The judgment passed by the learned trial Court is restored.*
>
> *Consequently, the case is remanded back to the punishing authority i.e. Managing Director, HFC, with a direction to pass afresh order after granting due opportunity of being heard to the plaintiff-appellant. Since the parties are litigating for quite some long time, punishing authority is directed to decide the matter afresh by passing an appropriate order, in accordance with law, at an early date but in any case within a period of three months from the date of receipt of certified copy of this order."*

6. Thereafter, the punishing authority again reiterated the order of punishment passed in fresh order of punishment. However, the aforesaid order was not in accordance with law and the Board of Directors thereafter set aside the order of punishment and again directed the Managing Director to pass a fresh order in compliance with the judgment passed by this Court in the aforesaid RSA. In this way now an opportunity of hearing was again given to the petitioner by the punishing authority and now the present impugned order of punishment Annexure P-6 has been passed by which although there is no order of dismissal but three different orders of punishment have been passed which are challenged in the present writ petition.

7. Mr. Pawan Kumar Mutneja, learned Senior Advocate with Ms. Suverna Mutneja, Advocate, for the petitioner submitted that it is a case where even considering the three charges which were stated to be proved

against the petitioner by the Enquiry Officer are concerned, the same could not have been said to be proved in view of the fact that the same charges were also against the Managing Director and the allegations were pertaining to a policy decision which was taken by the respondent-Corporation and a collective decision was taken at every step and it is not a case that the petitioner in isolation and as an independent officer had taken an independent decision. The entire process pertaining to issuance of a public issue was the responsibility of the Managing Director and the petitioner was only a part of the team and it is not a case that the charges against the petitioner are separate or separately worded with that of the aforesaid Managing Director and the charges against the petitioner especially aforesaid charge No.(ii), (iii) and (xiv) were identical with that of the charges which were levelled against the Managing Director as well. He further submitted that so far as the enquiry against the Managing Director on the same and identical allegations is concerned, the same was dealt with by the Chief Secretary to Government of Haryana because the Managing Director was an IAS Officer and his competent authority and punishing authority was the Chief Secretary and the Managing Director was fully exonerated especially on the ground that no charge was proved against the aforesaid Managing Director and as per order Annexure P-1 passed by the Chief Secretary it was also so recorded that there is not even a notional loss to the Corporation on account of the aforesaid charges. He submitted that in this way once the Chief Secretary has come to the conclusion while considering the charges against the aforesaid Managing Director that there was no loss to the Corporation and the allegations have not been substantiated and the Chief Secretary has decided to drop the disciplinary

proceedings against the Managing Director vide Annexure P-1, then the petitioner being similarly situated with the aforesaid Managing Director was also required to be exonerated by the punishing authority but while passing the impugned Annexure P-6 against the petitioner, three different punishments were inflicted upon the petitioner.

8. Learned Senior Counsel further while drawing attention of this Court to the aforesaid order Annexure P-6 submitted that the punishing authority considered charges No.(ii), (iii) and (xiv) only since in the enquiry proceedings only aforesaid charges No.(ii), (iii) and (xiv) were stated to be proved because the scope before the punishing authority was only limited to the aforesaid three charges. While referring to the observations made by the aforesaid punishing authority with regard to the charges pertaining to charges No. (ii) and (iii) are concerned, the punishing authority specifically and expressly so observed that these charges No.(ii) and (iii) have not been proved against the petitioner to the extent to hold the petitioner guilty of having caused loss to the Corporation. However, at the same breath it was also observed by the punishing authority that in view of somewhat negligent and lacked managerial capabilities to get the record/data maintained for ascertaining from which of the investors and how much money has been received, the petitioner could not be inflicted with the punishment of dismissal and calls for a lesser punishment commensurate with the nature of default. The aforesaid conclusion of the punishing authority pertaining to charges No(ii) and (iii) are reproduced as under :-

> *"Thus in my considered view the charges No.(ii) & (iii) have not been proved to the extent to hold Shri Anil Kumar Lekhi guilty of having caused loss to the Corporation. However in my view he has somewhat negligent and lacked managerial*

> *capabilities to get the record/data maintained for ascertaining from which of the investors money and how much has been received. This in my view does not warrant the punishment of dismissal and calls for a lesser punishment commensurate with the nature of default as will be discussed in the later part of this order".*

9. While again referring to the aforesaid observations made by the punishing authority, the learned Senior Counsel submitted that once the punishing authority has come to the conclusion that the petitioner was not held guilty and the charges have not been proved against the petitioner, then no such observations in the later part of the aforesaid paragraph could have been made because the observations are inherently inconsistent with each other. He also submitted that such kind of observation wherein it is so observed that the petitioner was 'somewhat' negligent, is unknown to service jurisprudence. He submitted that when an enquiry is conducted and the punishing authority is to apply its mind, then it cannot be based upon conjunctures and surmises by using the expression 'somewhat'. He submitted that it appears that the punishing authority wanted to inflict some kind of punishment, even after coming to the conclusion that charges No.(ii) and (iii) have not been proved against the petitioner and this kind of system is unknown to service jurisprudence. He submitted that so far as charges No.(ii) and (iii) are concerned, they did not find favour with the punishing authority and it was held that they were not proved against the petitioner.

10. Learned Senior Counsel also made submissions on the charges pertaining to charge No.(xiv) and referred to later part of the order passed by the punishing authority. He referred to the conclusion of the punishing authority in the light of the observations of the Board of Directors and it

was so noted by the punishing authority that the decision to engage employees as sub-brokers was a 'collective decision' taken during the meeting of Branch Managers of HFC which was ratified by the Managing Director and it was not the sole decision of the present petitioner. He submitted that so far as the aforesaid charge No.(xiv) is concerned, the same was also one of the charges against the Managing Director which has been dropped by Annexure P-1. While further referring to the aforesaid order under the heading of "However the following aspects cannot be overlooked", it has been so observed by the punishing authority that by suggesting to engage employees as sub brokers, there was blatant violation of the staff rules and regulations and such an important decision should have been approved by the BOD in advance whereas no such action was taken and therefore it was a negligence on the part of the petitioner but he does not see any *mala fide* in this act. Learned Senior Counsel further submitted that again the punishing authority at the same breath has so observed that there was no *mala fide* on the part of the petitioner and at the same time he has observed that it is clear negligence on the part of the petitioner. He submitted that even negligence also was not supported by any document and rather in the present case the process of issuance of IPO was a policy decision and every decision at every step was taken by the Managing Director and the petitioner was only a part of the team and so far as the Managing Director is concerned, he has already been exonerated and qua him the charges have been dropped by the Chief Secretary vide Annexure P-1 and, therefore, it did not lie in the mouth of the punishing authority to have come to such a vague conclusion that although there was no *mala fide* on the part of the petitioner but he was still negligent. He further referred to

the aforesaid order in which it was further observed that with respect to non-payment of sub brokerage also there is no loss to the HFC as the amount in any way had to be paid to the broker. However, at the same breath it was so observed by the punishing authority that the official i.e. the present petitioner certainly erred in engaging employees of the Corporation as sub brokers but there does not appear to be any *mala fide* in it, although it is reiterated that the method adopted is totally unjustifiable. The punishing authority thereafter also referred to the order by which the charges against the Managing Director were dropped and it was so specifically observed by the punishing authority that the then Managing Director of the HFC was also charged with similar allegations but was completely exonerated by the Government as the charges were found to be unsubstantiated. The punishing authority further observed that the subsequent actions of the petitioner also demonstrate the lack of any negative intent to defraud the respondent-Corporation. It was further observed that the total value of outstanding recoverable amount has been shown to be quite miniscule i.e. Rs. 2,000/- and, therefore, the order of punishment awarded to the petitioner was unreasonable when viewed from this angle. Learned Senior Counsel submitted that a perusal of the order of punishment would show that categorically and repeatedly the punishing authority has so observed that there was no *mala fide* on the part of the petitioner and he has not defrauded the respondent-Corporation and the charges have not been substantiated and even otherwise also, the recoverable amount is only miniscule i.e. Rs. 2,000/- and he also referred to the order by which the Chief Secretary has exonerated the Managing Director vide Annexure P-1 but it is not understandable as to why even after coming to the aforesaid conclusion,

three punishment have been inflicted upon the petitioner.

11. Learned Senior Counsel also thereafter referred to the concluding part of the punishment order in which the aforesaid three punishments have been inflicted upon the petitioner under Regulation No.41 (2) of Haryana Financial Corporation (Staff) Regulations, 1967. He submitted that the aforesaid Regulation No.41 has been reproduced in para No.12 of the writ petition. While referring to the aforesaid Regulation, he submitted that only the penalties which are mentioned in the Regulation are permissible and in the present case when the punishment order was passed in the concluding part of the order, following three different punishment have been inflicted upon the petitioner.

(i) Degradation to a lower post as on 27.07.2000;

(ii) Back wages of 50% from the date of his suspension to the date of superannuation alongwith retiral benefits of leave encashment and gratuity;

(iii) Deduction of an amount of Rs. 52.35 lacs which the petitioner had earned from June, 2005 to June, 2014 plus the suspension allowance paid to him from the dues payable to him.

12. Learned Senior Counsel submitted that a perusal of the aforesaid Regulations which have been reproduced in para No.12 of the petition clearly shows that so far as the aforesaid first punishment is concerned, the same finds mention in the aforesaid regulations but the remaining two do not find mention in the aforesaid regulations and therefore, the remaining two punishments inflicted upon the petitioner are

without the authority of law and without any provision of law. While dealing with the first order of punishment, he submitted that first punishment pertains to degradation to a lower post or grade or to a lower stage in his incremental scale. He submitted that the aforesaid order of punishment of degradation was not only a major punishment but also it was not commensurate with the allegations against the petitioner which otherwise stood dropped qua the Managing Director because the allegations were absolutely identical in nature. He also submitted that once the punishing authority has come to the conclusion that there was no *mala fide* or no loss caused to the Corporation etc., then the aforesaid punishment was only for the purpose of inflicting of any punishment without any justifiable reason. While referring to the aforesaid order, he submitted that once in the entire order it has been repeatedly so stated by the punishing authority that the petitioner has not done anything with *mala fide* intention and he has not caused any loss at all to the Corporation, then the aforesaid degradation to a lower post or grade to a lower stage was also bad in law. Apart from the above, he also submitted that since charge No.(ii) and (iii) were stated to be not proved against the petitioner even by the punishing authority as aforesaid, then the aforesaid order was not sustainable. In addition to the above, he also submitted that since the allegations pertaining to which the order of punishment has been passed against the petitioner were similar and identical to that of the Managing Director and who was heading the team who had issued and further processed the IPO and charges against him were dropped, then there was no occasion for the punishing authority to have discriminated the petitioner who being lower in rank has been inflicted the punishment and, therefore, so far as the first punishment is concerned, the

same is liable to be set aside.

13. Learned Senior Counsel further submitted that so far as the second punishment which pertains to only half of the back wages from the date of his dismissal i.e. from the year 2000 till the date of his retirement is concerned, the same is also liable to be set aside in view of the fact that it is a case where the petitioner was prevented from discharging his duties by the respondent-Corporation. The order Annexure P-1 qua the Managing Director was passed in the year 2006 and so far as the present petitioner is concerned, he was being dragged by the respondent-Corporation and three times the punishment orders have been passed and twice the punishment orders were set aside either by the Court or by the Board of Directors themselves. In this way, the petitioner has suffered a lot and the principle of no work no pay will not apply to the present petitioner because of the fact that once the first punishment as aforesaid is not sustainable, then the second punishment will also be not sustainable because the petitioner was prevented from discharging his duties by the respondent-Corporation to the post of Assistant General Manager because he was wrongly dismissed and particularly in view of the fact that when he filed a suit for declaration challenging the order of dismissal at the first instance, then the suit was also decreed. In the RSA, the decree was restored. He also submitted that the order of the Chief Secretary vide Annexure P-1 is of the year 2006 and it would have been wise for the respondent-Corporation to have considered the aforesaid as the threshold instead of dragging the petitioner to a multiple level litigation at different stages. He referred to a judgment of Division Bench of this Court in ***State of Haryana Vs. S.S.Shekhawat, Special Leave to Appeal (Civil) No.CC 7253 of 2013*** which has been also upheld by the Hon'ble Supreme

Court to contend that when an employee is prevented from discharging his duties without any lawful excuse, then the principle of no work no pay will not apply to the employee.

14. Learned Senior Counsel while referring to third order of punishment submitted that the aforesaid third order of punishment is absolutely without the authority of law since such kind of punishment is not even provided in the Regulations as reproduced in para No.12 of the petition. He submitted that by way of third punishment when the petitioner was out of service after his dismissal in order to sustain his livelihood and to make his both ends meet, he had to work and he worked from June, 2005 till June, 2014 and now by way of third punishment it has been so directed that the amount which he has earned during that period should be deducted from the total amount of 50% of back wages. He submitted that such kind of order is not only without jurisdiction and without the authority of law but it hits the basic fundamental service jurisprudence as such kind of adjustment cannot be ordered to be made especially when there is no such provision of law. He submitted that when the petitioner was wrongly dismissed from service, he had to work to sustain his livelihood and to support his family and such kind of adjustment cannot be made and is unknown to law. He further submitted that in view of the aforesaid facts and circumstances, the entire order of punishment which has been passed against the petitioner vide Annexure P-6 is liable to be set aside.

15. On the other hand, Mr. Jagbir Malik, learned counsel appearing on behalf of the respondents submitted that so far as the order passed by the punishing authority vide Annexure P-6 is concerned, although it has been so observed that there was no *mala fide* on the part of the petitioner but

there was certainly negligence on the part of the petitioner whereby the aforesaid process was not properly followed. He submitted that even for negligence, a punishment can be provided under Regulation No.41. So far as the second punishment with regard to 50% of the back wages is concerned, he submitted that once the petitioner has not worked on a particular post and he has not discharged his duties on a particular post, then on the principle of no work no pay, he is not entitled for any monetary benefit with regard to the arrears of salary. However, punishing authority still by taking a lenient view has given 50% of the back wages. He also submitted that the aforesaid grant of 50% back wages is not a measure of punishment but it is regularization of his suspension period. He submitted that the petitioner cannot be treated to be at par with that of the Managing Director because separate enquiry was held with regard to the Managing Director qua the role of the Managing Director and the same was seen by the Chief Secretary and he was exonerated and so far as the present petitioner is concerned, a different enquiry was held and the role of the petitioner qua his negligence was considered and, therefore, the aforesaid punishment has been inflicted upon the petitioner and, therefore, no fault can be found in the order of punishment. He also submitted that since the present petition has been filed seeking challenge to the order of punishment, this Court would not appreciate and re-appreciate the evidence and take a different view and also referred to the judgments of the Hon'ble Supreme Court in ***Union of India and others vs. Bodupalli Gopalaswami, 2011 (13) SCC 553, Union of India and others vs. Manab Kumar Guha, 2011(11) SCC 535 and State Bank of India and another vs. K.S. Vishwanath, 2022 (3) SCT 121.***

16. I have heard the learned counsel for the parties.

17. It is a case where the petitioner along with some officers and Managing Director of the Haryana Financial Corporation were proceeded against departmentally. The issue with regard to issuance of IPO and the procedure followed was in dispute. Further procedure was carried on against the Managing Director who was the head and who had taken the policy decision along with the petitioner and the other officers. Since the Managing Director was an IAS Officer, he was proceeded separately since his competent authority was the Chief Secretary and qua him a separate enquiry was conducted and vide Annexure P-1 it was found that no charge has been proved against the aforesaid Managing Director and the Chief Secretary had dropped the proceedings against the aforesaid Managing Director. The charges against the petitioner and that of the aforesaid Managing Director are similar in nature. The petitioner had to undergo rounds of limitation. In the enquiry report it was observed that three charges were proved against the petitioner at serial No. (ii), (iii) and (xiv) and a punishment order of dismissal was inflicted upon him by the punishing authority but he filed a civil suit which was decreed. However, on appeal the decree and judgment were set aside but in RSA the decree passed by learned trial Court was restored and the matter was remanded back by a Co-ordinate Bench of this Court on the ground that the punishing authority did not adhere to the principles of natural justice i.e. the rule of *audi alteram partem*. Therefore, the matter was remanded back to the punishing authority to take a fresh decision. It is very surprising that thereafter as per learned counsels for the parties the punishment order of dismissal was again passed but in violation of the principles of natural justice and, therefore, Board of

Directors again set aside the order of the Managing Director by which for the second time the punishment of dismissal was inflicted upon the petitioner and again the Board of Directors directed the Managing Director to pass a fresh order in accordance with law. Then it was for the third time the punishing authority had an occasion to consider the enquiry report against the petitioner and to consider as to whether any punishment order was to be passed against the petitioner or not.

18. When the Managing Director was proceeded against in separate departmental proceedings, then the Chief Secretary had dropped the proceedings against the Managing Director in the year 2006. Whereas now so far as the present impugned order of punishment is concerned, the same is of the year 2014 and it took 8 years for the respondent-Corporation to consider the allegations against the petitioner notwithstanding the fact that with regard to the same set of allegations the Managing Director was exonerated by the Chief Secretary. The petitioner had to undergo rounds of litigation with regard to the same.

19. A perusal of the punishment order which is a lengthy order would show that repeatedly the punishing authority has held that there was no *mala fide* on the part of the petitioner and there was no loss caused to the Corporation at all. However, it appears that it was only for the sake of inflicting a punishment upon the petitioner, every time an exception was created by stating that a lenient view is being taken instead of inflicting a punishment of dismissal that the degradation of the post was made. Once the punishing authority comes to the conclusion that especially the charges No.(ii) and (iii) are not proved, then there was no occasion for the punishing authority to have come to the conclusion in a contradictory

manner, although the charges are not proved but since the petitioner was negligent, some kind of punishment has to be inflicted upon him and therefore, it appears that the punishing authority was bent upon to inflict any kind of punishment even if the charges were not proved against the petitioner.

20. So far as charge No.(xiv) is concerned, a similar charge was against the Managing Director regarding which charge stood dropped by the Chief Secretary. A concluding part of the punishment order would show that the punishment was divided into three parts. So far as the first part is concerned, it was degradation to a lower post as on 27.07.2000. However, the aforesaid order of degradation of post is a major punishment. Considering the aforesaid dropping of the charges against the Managing Director and the order of punishment if taken into consideration in its totality, this Court is of the view that the first punishment as aforesaid is not sustainable since it is self-contradictory. So far as the second punishment for grant of 50% back wages is concerned, once this Court has come to the conclusion that the basic punishment which is at serial No.1 i.e. degrading is not sustainable, then it can be safely concluded that the petitioner was prevented by the respondent-Corporation from discharging his duties to the post of Assistant General Manager and the dismissal order was bad in law. Even otherwise also so far as the dismissal aspect is concerned, now the punishing authority itself has come to the conclusion that the dismissal was not commensurate with this charge against him. Once the disciplinary authority has come to the conclusion that the dismissal of the petitioner for Rs. 2,000/- was not correct and proper, then it can be easily concluded that the petitioner was wrongfully prevented from discharging his duties once the

punishing authority itself came to the conclusion to that extent. In addition to above, even the order of dismissal was set aside by Civil Court and upheld by this Court in RSA. Therefore, this Court is of the view that even for the purpose of second punishment inflicted upon the petitioner, the principle of no work no pay will not apply to the petitioner. The grant of 50% of the salary therefore is not permissible and the petitioner would be entitled for the entire salary for the period during which he was prevented from discharging his duties. So far as the third punishment is concerned, the same is *ex facie* without the authority of law and without any provision. The third punishment pertains to the adjustment and recovery of the amount which the petitioner earned during the time when he was out of service. The principles which are applicable to the Industrial Disputes Act with regard to the same would not apply in the present case. Once this Court has come to the conclusion that the petitioner is entitled for 100% salary, then no such amount can be deducted especially in view of the fact that the petitioner was dismissed from service in the year 2000 and in order to make his both ends meet and to sustain his livelihood, he had to do some work and also to support his family. The petitioner could not have been thrown away to starve and he had to do some work and the aforesaid amount which he has earned cannot be deducted from the aforesaid amount of grant of arrears.

21. The petitioner had preferred an appeal to the Board of Directors against the order of punishment. The Board of Directors vide Annexure P-9 dismissed the appeal. A perusal of the same would show that it is an unreasoned and cryptic order and not backed by any reason. Therefore the appellate order is also liable to be quashed on this score alone.

22. So far as argument raised by learned counsel for respondent that

this Court may not re-appreciate the findings of fact of punishing authority is concerned, the same is not sustainable because the findings are ex facie perverse and arbitrary and therefore call for interference. The second and third punishments are not provided under any law or regulation and therefore otherwise also could not have been inflicted.

23. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 3/12.04.2017 (Annexure P-6) and order dated 12.03.2019 (Annexure P-9) are hereby set aside and quashed.The respondents are directed to calculate the entire salary of the petitioner from the date of his dismissal which is the period during which he was prevented from discharging his duties to the post of Assistant General Manager and to pay the same to the petitioner with all consequential benefits alongwith interest @ 6% per annum (simple) within a period of three months from today.

24. At this stage, learned Senior Counsel for the petitioner has also stated that the petitioner has not been paid his full provident fund till date.

25. In view of the above, it is directed that the petitioner shall be at liberty to file a comprehensive representation to the respondent-Corporation by raising the aforesaid grievance within a period of two months from today. In case any such representation is filed to the Managing Director of the respondent-Corporation, then the Managing Director shall consider the same in accordance with law and in case the lawful dues of the petitioner pertaining to the provident fund are not released to the petitioner, then the same shall be released within next one month alongwith interest @ 6% per annum. In case it is found by the Managing Director that the petitioner is not entitled for the aforesaid, then the Managing Director shall after affording

an opportunity of hearing to the petitioner or his counsel will pass a speaking order in this regard and shall convey the same to the petitioner and thereafter, the petitioner shall be at liberty to challenge the same in accordance with law before an appropriate forum.

05.03.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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