

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No.1002 of 2008**

% **Date of Decision: 04.11.2009**

Indian Council of Agricultural Research (ICAR) and Petitioners
Ors

Through Mr.S.S.Lingwal, Advocate.

Versus

Dr.Sukh Pal Singh Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioners Indian Council of Agricultural Research and Ors have impugned the order dated 25th September, 2007 passed in O.A No.192/2007, "Dr.Sukh Pal Singh v. Indian Council of Agricultural Research and Ors" setting aside the penalty imposed on the respondent as not sustainable in law and also holding that non consideration of the appeal of the respondent on merits was deprivation of reasonable opportunity to the respondent and was thus in violation of principles of natural justice.

The respondent being the head of the regional centre had engaged a driver Sh.Balwinder Singh on daily wages after it was approved by National Bureau of Soil Survey and Land Use Planning, petitioner No.2. After the engagement of the driver Sh.Balwinder Singh, his services were also extended from time to time. Since the driver Sh.Balwinder Singh completed 240 days of service he became entitled for temporary status. When his services were sought to be discontinued, he filed a petition being O.A No.1758/2000 before Central Administrative Tribunal Principal Bench in which an interim relief dated 8th September, 2000 was passed not to disengage him and, therefore, he was re-engaged with effect from 12th September, 2000.

Consequent to the re-engagement of Sh.Balwinder Singh pursuant to the order of the Central Administrative Tribunal, Indian Council of Agricultural Research, petitioner No.3 issued a memorandum dated 20th April, 2005 alleging irregularities in his appointment on daily basis and after considering the reply of the respondent proposed action under Rule 16 of CCS (CCA Rules), 1965 and initiated disciplinary proceedings pursuant to the advice tendered by the Central Vigilance Commission by memorandum dated 23rd March, 2006.

The order dated 13th July, 2006 was passed against the respondent and the appeal filed by the respondent on 24th August, 2006

against the order dated 13th July, 2006 was also dismissed by order dated 13th October, 2006.

The Tribunal has set aside the order imposing penalty upon the respondent holding that though the Tribunal does not have jurisdiction to reappraise the evidence or substitute its own view, however, applying the test of common reasonable prudent man it has to be assessed whether the findings recorded are perverse and whether a case of misconduct is made out or not. The Tribunal found that the allegation of non requisition from the employment exchange for employment of casual labour before employment of the driver Balwant Singh was not made out in the case of the respondent. It was also noticed that the casual driver was not appointed spontaneously by the respondent, rather the documents for employment of the casual worker/driver were verified by a committee which also conducted interview and had considered the case of the driver and, therefore, it was not the sole decision of the respondent to engage the said casual driver.

It has also been noticed by the Tribunal that the engagement of the driver was with the approval of the Director and, consequently, the respondent who is only the head of the regional centre, cannot be held responsible solely. The role of respondent not being significant in appointment of the casual driver, was a relevant factor noticed by the Tribunal to hold that no misconduct could be imputed to the

respondent, as the appointment was approved by the Director and the selection was done by a committee constituted for the purpose who had even interviewed the casual driver. The appointment of the casual driver was also extended with the consent and approval of the Director which was forwarded by the respondent and forwarding the papers for extension of a casual driver would not amount to misconduct. This also cannot be disputed that jurisdiction to discontinue the temporary driver was with the Director and not with the respondent and the respondent being a lower functionary could not be held responsible for the same. In the circumstances, the employment of a casual driver and his continuing in the service could not be imputed solely to the respondent and thus no misconduct could be imputed to the respondent on the basis of facts established before the enquiry officer and inference of any lapse on the basis of evidence before the enquiry office could not be arrived at by any reasonable person. The inferences against the respondent were found to be ex-facie arbitrary without any legal basis and consequently punishment awarded to the respondent was quashed.

This was also noticed by the Tribunal that the grant of temporary status of casual driver was pursuant to the order passed by the Tribunal in the proceedings initiated by the casual driver and not on account of any act solely imputable to the respondent and, therefore, no misconduct could be attributed to the respondent in the facts and

circumstances and consequently the Tribunal setting aside the order of punishment against the respondent cannot be faulted.

The tribunal also noticed that Sh.Balwinder Singh, temporary driver engaged by the petitioner was not related to the respondent or connected with the respondent nor it has been shown in any manner that respondent profited on account of employment of temporary driver Sh.Balwinder Singh. In the circumstances, there were no ulterior motives established in employment of driver for which the respondent could be punished.

This cannot be disputed that if an action is taken by any authority contrary to law, improperly, irrationally or otherwise unreasonably, a court of law can interfere with such an action by exercising power of judicial review. Consequently, the Tribunal could consider whether the decision to punish the respondent who did not have any sole role in appointment of the daily wage driver and who was re-engaged pursuant to the order passed by the Tribunal in the petition filed by the driver, was absurd or perverse or ex-facie arbitrary or so capricious that no reasonable person could have arrived at such conclusions. The Supreme Court in “High Court of Judicature at Bombay vs. Shashikant S.Patil”, (2000) 1 SCC 416 the stated the ground of Judicial Review which are enumerated as follows:

- (a). where there has been a violation of the principles of natural justice; or
- (b). the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or
- (c). the decision is vitiated by consideration extraneous to the evidence and merit of the case; or
- (d). if the conclusion made by the authority is ex-facie arbitrary or capricious that no reasonable person could have arrived at such conclusions; or
- (e). other very similar to the above grounds.

In the circumstances, the order of the Tribunal holding that the punishment imposed on the respondent was not sustainable in law and setting aside the order of penalty cannot be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petitioners have not been able to make out any ground for interference with the order of Tribunal in the facts and circumstances. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

November 04, 2009

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VIPIN SANGHI, J.