IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 12630 of 1998 (O&M)
Date of Decision: 14.1.2015

Ram Sarup Beniwal

....Petitioner

Versus

The Hissar District, Central Cooperative Bank Limited, Hissar through its Managing Director.

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.S. Dalal, Advocate
for the petitioner.

Mr. C.R.Dahiya, Advocate
for the respondent.

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1.Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J. (Oral)

Present writ petition is directed against the punishment order dated 26.5.1997 (Annexure P-5), order dated 23.10.1997 (Annexure P-7) and also order dated 13.12.1997 (Annexure P-9), whereby the punishment of stoppage of one increment with cumulative effect awarded to the petitioner by the Managing Director of the respondent Bank, was upheld by the appellate authority.

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of the respondent.

Learned counsel for the petitioner submits that in view of the Rule 28 (d) of the Haryana State Central Cooperative Bank Staff

Service (Common Cadre) Rules, 1975 (' Service Rules' for short), it was only the board of directors, who was competent to pass the impugned punishment order against the petitioner. However, in the present case, the impugned punishment order was passed by the Managing Director, who was not at all competent to pass the same. He further submits that appellate authority also misdirected itself, while dismissing the appeal of the petitioner by passing a totally non speaking and cryptic order. He concluded by submitting that the application for re-consideration of the appellate order was also rejected without considering the merits thereof. He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for the respondent submits that in the circumstances of the present case, the Managing Director of the respondent-bank was very much competent to pass the impugned order. A charge sheet was issued to the petitioner by the Managing Director, vide Annexure P-1. Petitioner submitted his reply to the charge sheet vide Annexure P-2. Thereafter, a show cause notice was issued vide Annexure P-3, which was also replied by the petitioner vide Annexure P-4, thereby submitting to the jurisdiction of the Managing Director, without raising any issue about his authority. In such a situation, the Managing Director has rightly passed the impugned order, which deserves to be upheld. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this

Court is of the considered opinion that in the given fact situation of the present case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

The controversy involved in the present case revolves around the statutory provisions of the law contained in Rule 28 (d) of the Service Rules and the same reads as under:-

> *" 28. Procedure to be adopted for punishment:-*
>
> *(a) to (c) xx xx xx*
>
> *(d) The Managing Director shall be competent to issue charge sheet, obtain explanation, appoint an enquiry officer, serve a notice for showing cause against the action proposed to be taken against an employee. The final punishment shall, however, be imposed by the appointing authority."*

It is a matter of record and not in dispute that Managing Director was not the appointing authority of the petitioner. In fact, only the appointing authority, i.e. board of directors, was competent to pass the punishment order, as it is clear from the mandatory provisions of law contained in Section 28 (d) of the Service Rules, referred to hereinabove. Having said that, this Court feels no hesitation to conclude that the impugned order was an order without jurisdiction and the same cannot be sustained.

Feeling genuinely aggrieved, petitioner filed his statutory appeal against the punishment order, which was a major punishment. However, the appellate authority also failed to appreciate the factual as well as legal aspect of the matter, while passing a totally non speaking and cryptic order Annexure P-7. No reason, much less cogent reasons, was assigned by the appellate authority, while passing the impugned appellate order, because of which it cannot be sustained.

Further, the basic defect in the impugned punishment order Annexure P-5 was that of jurisdiction and the same has neither been discussed nor considered or appreciated by the appellate authority. In this view of the matter, it can be safely concluded that the impugned punishment order Annexure P-5, impugned appellate order Annexure P-7 as well as impugned order Annexure P-9 were patently illegal and the same cannot be sustained, for this reason as well.

A bare perusal of the Rule 28 (d) of the Service Rules, reproduced hereinabove, would show that the Managing Director was competent only to issue a charge sheet, to obtain explanation, to appoint an enquiry officer and to serve a notice for showing cause against the action proposed to be taken. However, he had no jurisdiction to pass the final punishment order, which could have been passed only by the appointing authority, i.e. board of directors in the present case. Since the Managing Director has exceeded his jurisdiction, while passing the impugned punishment order Annexure P-5, the same cannot be sustained for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders were arbitrary on the face of it, the same are hereby set aside. Natural consequences will follow.

Consequently, the respondent is directed to do the needful within a period of two months from the date of receipt of a certified copy of this order. If the needful is not done within the stipulated time, the petitioner shall be entitled for arrears on account of enhanced salary alongwith interest @ 9% per annum from the date when the amount became due till the date of actual payment.

Resultantly, instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

14.1.2015
AK Sharma