

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.13770 of 2000
Date of Decision: January 27, 2015

Ajit Singh

...Petitioner

Versus

Registrar, Cooperative Societies, Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Ms. Jagdeep Bains, Advocate
for the petitioner.

Mr. R.K. Sharma, Advocate
for respondent No.4.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing the resolution dated 20.01.1996, whereby, the services of the petitioner were terminated and also for quashing the order dated 09.05.1997 passed by the Joint Registrar, Cooperative Societies, Ferozepur Division, Ferozepur and orders dated 12.01.2000 and 16.08.2000 passed by the Registrar, Cooperative Societies, whereby, the aforesaid order was upheld.

The petitioner was appointed as a salesman in the Baghe-Ke-Hithar cooperative Agricultural Service Society Limited,

Baghe-Ke-Hithar - respondent No.4, which is a Cooperative Society registered under the provisions of Punjab Cooperative Societies Act, 1961. It is stated that the date of birth of the petitioner is 05.06.1956 and hence, his due date of retirement would be 30.06.2016.

The petitioner was placed under suspension on 15.11.1995. Three days thereafter i.e. on 18.11.1995, a charge-sheet containing 8 charges (Annexure P-1) was issued to him and he was asked to submit his reply to the charges to the Sub Committee constituted to look into the charges by 02.12.1995. It was stated that if any other charge is found against the petitioner after receipt of the record, a supplementary charge-sheet would be issued to him. On 27.11.1995, the petitioner submitted his reply (Annexure P-2) to the charge-sheet denying the allegations and stating that no charge against him was substantiated. Though he had submitted his reply on 27.11.1995 as indicated above, another resolution 04.12.1995 was passed calling upon him to submit his reply to the charge-sheet before the Sub-Committee by 13.12.1995. The petitioner replied stating that he had already submitted the reply to the charge-sheet on 02.12.1995 to Shri Ashok Kumar, Inspector one of the members of the Sub Committee and reiterated that the charges be dropped and the charge-sheet be filed.

On 03.01.1996, another notice (Annexure P-5) was

served on the petitioner by the Sub Committee constituted for enquiry against him, whereby, further charges were listed against the petitioner based on some enquiry into a complaint made against him by the public. It was stated in the notice that the enquiry into all these charges and the charge-sheet issued to the petitioner earlier on 18.11.1995 would be held on 18.01.1996. He was required to attend the office of the society and present his defence on 18.01.1996. It was further stated that in case he did not attend or present his defence it will be presumed that the charges levelled against him are correct and further action to dispense with his service would be taken.

The petitioner submitted his reply to the supplementary charge-sheet dated 03.01.1996 on 15.01.1996. Thereafter, the petitioner received a registered letter dated 29.01.1996, intimating him that his services had been terminated. It was stated that a Sub Committee has been constituted to enquire into the charge-sheets dated 18.11.1995 and 03.01.1996. As per the report of the Committee all the allegations had been proved. The Managing Committee of the Society had unanimously accepted the recommendation of the Sub Committee in its meeting held on 20.01.1996 and the service of the petitioner as Salesman (EC) had been terminated w.e.f. 15.11.1995.

The petitioner filed an appeal against the aforesaid

order before the Deputy Registrar, Cooperative Society, Ferozepur, under Rule 15 (i) of the Punjab State Cooperative Agricultural Service Societies, Service Rules 1986 (for short 'the 1986 Rules') contending, *inter alia*, that before terminating the services of the petitioner, no enquiry was held nor he was associated with any such enquiry. He was not furnished a copy of the enquiry report or given any opportunity to represent against the proposed punishment. The Deputy Registrar, Cooperative Societies, Ferozepur accepted the appeal filed by the petitioner and vide his order dated 04.12.1996 (Annexure P-8), set aside the resolution dated 20.01.1996.

Against the order of the Deputy Registrar, respondent-Society filed a revision petition before the Joint Registrar, Cooperative Societies, Ferozepur. This revision was accepted, the decision of the Deputy Registrar was set aside and the resolution of the society dated 20.01.1996 was upheld.

The petitioner assailed the order of Joint Registrar by filing a petition before the Registrar Cooperative Societies, Chandigarh. The respondent-society contended that the said petition filed under Section 3 (4) of the Cooperative Societies Act was not maintainable. The Registrar vide his order dated 16.09.1998 (Annexure P-10) disposed of the petition on merits without specifically adverting to the issue of maintainability.

The petitioner filed CWP No.17722 of 1998, contending that the merits of the matter had not been argued before the Registrar and yet a decision on merits had been rendered. This petition was disposed of vide order dated 08.07.1999 and the case was remitted to the Registrar for fresh decision. Consequently, the Registrar re-heard the matter and dismissed the petition vide order dated 09.02.2000 holding that not only the petition was not maintainable but also there was no apparent irregularity in the revisional order dated 09.05.1997 passed by the Joint Registrar. Thereafter, the present petition has been filed with the prayer as aforementioned.

Ms. Jagdeep Bains, learned counsel for the petitioner has assailed the order of termination on the ground that after submission of reply to the charge-sheets by the petitioner, no enquiry was held into the charges. At least the petitioner was not associated with any such enquiry. No list of documents to be relied upon against the petitioner or the list of witnesses in support of the allegations was ever supplied to the petitioner nor did the petitioner have any opportunity to cross-examine the witnesses or adduce the evidence in his favour. Furthermore, no copy of the enquiry report was given to the petitioner before imposing the punishment. Thus, there was total breach of the principles of natural justice and the statutory procedure before terminating the services of the

petitioner. Hence, the impugned orders are void and liable to be quashed.

Further, advertng to the sequence of events on the basis of material on record, she states that the second/supplementary charge-sheet was sent to the petitioner vide registered notice dated 03.01.1996 informing him that the enquiry into the charges contained in the supplementary charge-sheet as also into the charges contained in the earlier charge-sheet would be held on 18.01.1996, for which the petitioner was required to present himself on 18.01.1996. The petitioner submitted his reply to the aforesaid charge-sheet on 15.01.1996. As per the termination order, after receiving the report of the Sub Committee holding that all the allegations contained in the charge-sheets dated 18.11.1995 and 03.01.1996 had been proved, the Managing Committee accepted the recommendation of the Sub Committee in its meeting held 20.01.1996.

It is argued that the Sub Committee could not have reasonably arrived at a conclusion with regard to proof of the allegations contained in the charge-sheet without examining evidence and witnesses on the very day i.e. 18.01.1996, which was given to the petitioner to appear and present his defence. It is further argued that the report of the Enquiry Officer, which finds mention in the second charge-sheet (Annexure P-5) and on the

basis of which, the supplementary charge-sheet had been issued to the petitioner being an internal report of the society, could not be taken to be a report of disciplinary authority on the basis of which disciplinary action could have been taken. It has been further argued that even in the present writ petition, the report of the Sub Committee, which is alleged to be the foundation of the termination order has not been placed on record. It is, thus, argued that the termination order is without basis. Learned counsel has further argued that if the Sub Committee submitted its report on 18.01.1996, the Managing Committee could not have taken a decision thereon on 20.01.1996, because as per Rule 80 of the Punjab Cooperative Societies Rules, 1963 at least 15 days' clear notice specifying date, place, time and agenda is required for a meeting of a general body/ committee. Questioning the order dated 9.2.2000 (Annexure P-12) passed by the Registrar, whereby it has been held that a revision petition challenging the revisional order dated 09.05.1997 passed by the Joint Registrar was not maintainable, learned counsel has relied on the judgment of a Full Bench of this Court reported as ***Jasbir Singh and others v. Commissioner (Appeals), Jalandhar Division 2004 (4) RCR (Civil) 1*** to contend that such revision against an appellate or revisional order passed by an authority in proceedings arising out of the Cooperative Societies Act, 1961 or the Rules framed thereunder

lies.

To the contrary, learned counsel for respondent No.4 has argued that necessary procedure has been followed and the petitioner was given adequate opportunity to defend himself. The society had constituted a Sub Committee to enquire into the allegations against the petitioner. The allegations levelled against the petitioner are of serious nature, especially of embezzlement of essential commodity and non-production of the record before the concerned officer. The petitioner has availed the remedies of appeal and revision and the revisional authority has found no infirmity in the impugned order of termination.

I have heard learned counsel for the parties and perused the record.

At the outset, it is necessary to reproduce the relevant statutory provisions. The conditions of service of the employees of the Cooperative Agricultural Service Societies in the State of Punjab are governed by the 1986 Rules. These rules were framed under Rule 28 of the Punjab Cooperative Societies Rules, 1963. Rules 13 and 14 read as under:

"13. Suspension

- i) The committee may place under suspension an employee against whom disciplinary proceedings under these rules are anticipated.*
- ii) No employee in any case shall be kept under suspension for more than two months.*

Iii) The Committee of a society may, in exceptional circumstances, extend the suspension period with the prior approval of the Deputy Registrar.

iv) An employee under suspension shall be paid a subsistence allowance equal to 50% of his salary.

14. Penalties

1) The following penalties may for good and sufficient reasons, be imposed on an employee by the committee for the misconduct established on his part:

- i) Censure.*
- ii) Reduction in emoluments.*
- iii) Removal or dismissal from service.*

In addition to any one of the aforementioned penalties, the committee may order recovery from his pay of the whole or part of any pecuniary loss caused by him to the society by negligence or by any wilful act of omission or commission.

i) No order imposing any of the penalties specified in sub- rule (i) shall be passed except after.

ii) Informing the employee, in writing, of the charge or charges levelled against him; and.

iii) Giving the employee an opportunity to represent his case within 15 days from the receipt of notice.

The Rule 80 of the Punjab Cooperative Societies Rules, 1963 reads as under:

"80. Special rule:- (1) *Notwithstanding any thing contained in these rules, the procedure laid down in this rule shall apply to a society in which either shares have been subscribed by Government or liability by way of guarantee for borrowing exceeding fifty percent of the working capital of the society has been undertaken by the Government:*

Provided that it shall not be incumbent upon such a society to follow the procedure laid down in clauses (i) and (ii) of its working capital does not exceed Rs.1,00,000 or it does not have another cooperative society as its member:-

(i) *At least fifteen days clear notice specifying the date, place, time and agenda for a meeting of any smaller body set up by either of them, whether convened by the Registrar, the President or otherwise, shall be given to all the members of the general body/ committee or smaller body, as the case may be:*

Provided that a shorter notice may be given to all the members of the general body/ committee or smaller body, as the case may be, with the permission of the Registrar or under his direction.

(i-a) *The Registrar, may, of his own motion or on a reference made to him, declare the proceedings*

of the meeting referred to in clause (i) as invalid, if he is satisfied that the meeting was held without proper notice or without all the members having received the notice for the meeting or if the meeting was not conducted at the appropriate place and time: and

(ii) No matter shall except with the permission or directions of the Registrar, be considered either in a meeting of a general body/ committee or in a meeting of any smaller body, set up by either of them, unless that matter is specifically included in the agenda which is circulated to all members at least fifteen clear days or seven days in advance respectively."

A perusal of Rule 14 aforementioned makes it clear that the penalties specified thereunder including removal or dismissal from service can be imposed for good and sufficient reason for misconduct established on the part of the employee. It is further provided that the penalties of censure, reduction in emoluments or removal or dismissal from service shall not be imposed except after the employee has been informed in writing of the charges levelled against him and given an opportunity to represent his case within 15 days from receipt of notice. It is by now well-settled that such an opportunity to be meaningful and in consonance with the principles of natural justice would include furnishing clear and specific charges along with the statement of allegations on which

the charges are based. Further, all the documents on the basis of which such charges are proposed to be substantiated along with the list of the witnesses, if any, in proof of the charges have to be furnished to the employee, who is also to be given full and proper opportunity to defend himself by cross-examining the witnesses and giving his defence.

Further, in cases where enquiry into the charges is conducted by an authority other than the disciplinary authority, a copy of the enquiry report is required to be furnished to the delinquent employee before any action based thereon is taken by the disciplinary authority.

A perusal of the documents on record does not reveal that such a procedure has been followed. The petitioner was served with two charge-sheets, the first one dated 18.11.1995 and second/ supplementary charge-sheet dated 03.01.1996. The petitioner furnished the reply to the first charge-sheet on 27.11.1995 and re-affirmed the same in response to the notice dated 04.12.1995. He submitted his reply to the second charge-sheet on 15.01.1996. In both his replies, he denied the allegations contained in the charge-sheet and stated that the same are false and be dropped. In the notice, whereby, the second charge-sheet was served, it was specifically indicated that he should attend the office of the society on 18.01.1996 at 10.00 am to present his

defence. No doubt, it was indicated that if the petitioner did not attend or present his defence, it will be presumed that all the charges levelled against him are correct and further action to dispense with his services would be taken. It has been stated in the written statement that the petitioner did not present himself before the Sub committee on 18.01.1996. Assuming it to be so, it is not denied that the petitioner had not submitted his replies to both the charge-sheets, specifically denying the charges and pleading that they be dropped. In the face of this situation, the role of the Sub Committee as that of an enquiry officer appointed to conduct a disciplinary enquiry, would be that of an independent adjudicator requiring proof and evidence in support of the charges of misconduct alleged against the delinquent employee. In the absence of admission of guilt on the part of the delinquent employee, it could not, without necessary proof and evidence and without giving the employee proper opportunity to defend himself, return a finding of guilt. The Hon'ble Supreme Court in ***State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772, at page 782*** observed as under:-

"28. *An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government.*

His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

The petitioner having been called to produce his defence on 18.01.1996, the aforesaid exercise could not possibly have been conducted in one day itself and the report submitted to the Managing committee to take action thereupon on the day thereafter i.e. 20.01.1996. Moreover, no report of the Sub Committee has been annexed even with this writ petition. Thus, I am left with no option but to conclude that the petitioner had not been given a reasonable opportunity to defend himself and that the impugned order has been passed in violation the requirements of Rule 14 of the 1986 Rules.

If one goes through the written statement filed on behalf of respondent No.4, in paragraph 2 of the preliminary objections it has been stated that the services of the petitioner had been terminated after following the procedure laid down under the

Service Rules based on the enquiry report submitted by the Inspector (R.D.), Jallalabad, to the effect that the petitioner while working as Salesman (Essential Commodities) had misappropriated/ embezzled the funds of the society. Arbitration case was prepared against him for misappropriation of stocks of essential commodities and award has been passed by the Arbitrator against the petitioner. The appeal and revision filed by the petitioner against the award were dismissed by the authorities under the Act. A copy of the order passed by revisional authority on 12.08.1997 has been annexed as Annexure R-4/1. This stand does not in any way further the case of the respondents. A perusal of Annexure R-4/1 reveals that the arbitration award is dated 23.02.1996. The appellate order passed by the ARCS, Fazilka dismissing the appeal of the petitioner against the award is dated 12.06.1996. The revisional order Annexure R-4/1 is dated 12.08.1997. All these are subsequent to the passing of the impugned order dated 20.01.1996 and could not possibly form the basis for the same. As per Annexure P-7, a Sub Committee had been constituted to enquire into the charge-sheets against the petitioner and according to the report of the Committee all the allegations had been proved. The Managing Committee of the society unanimously accepted the recommendation of the Sub Committee in its meeting held on 20.01.1996 and terminated the services of the petitioner. This

order does not advert to any enquiry report submitted by the Inspector (R.D. Jallalabad) as forming the basis of the order of termination. Nor is there anything on record to show that an enquiry into the charges had been entrusted to Inspector, Jallalabad by the Managing Committee. Thus, on neither count can the impugned order be sustained.

The order dated 09.05.1997 of the Joint Registrar, Cooperative Society and also the orders dated 09.02.2000 and 16.08.2000 passed by the Registrar Cooperative Society have recorded that the enquiry against the petitioner has been held by the Sub Committee and he has been given full opportunity to defend himself.

I fail to understand as to on what basis the aforesaid authorities have concluded that the petitioner was given full opportunity by the Sub Committee to defend himself. If the mere fact that the petitioner did not present himself before the Sub Committee on 18.01.1996 is taken as determinative of the opportunity provided and not availed of, then, I cannot persuade myself to agree with the same. Except perhaps in cases where the delinquent employee admits his guilt, the enquiring authority is to give its finding on the basis of evidence adduced before it after giving due opportunity to the delinquent employee to give his defence and to cross-examine the witnesses produced on behalf of

the department. There is nothing on record to indicate that this was done. The report of the Sub Committee is not on record, which would help to understand the procedure and the basis of conclusion arrived at by the Sub Committee. Because of this, I am unable to uphold the orders of the Joint Registrar, Cooperative Society and the Registrar, Cooperative Society holding that adequate opportunity was given to the petitioner by the Sub Committee.

Consequently, the writ petition is allowed. The resolution dated 20.1.1996 terminating the services of the petitioner communicated to him vide order dated 29.1.1996 is quashed. The order dated 9.5.1997 passed by the Joint Registrar Cooperative Societies, Ferozepur and the orders dated 12.1.2000 and 16.8.2000 passed by the Registrar Cooperative Societies, Punjab are also quashed.

However it shall be open to the respondents to proceed with the enquiry against the petitioner from the stage of replies to the charge-sheets filed by the petitioner.

January 27, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE