

**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

CWP No.6354 of 1998

Date of Decision:27.01.2015

Jagat Ram Saini

...Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. D.V. Sharma, Sr. Advocate with
Mr. Sukhbir Singh, Advocate for the petitioner.

None for respondent No.1.

Mr. Puneet Kansal, Advocate
for respondents No.3 and 4.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest.

SATISH KUMAR MITTAL, J. (ORAL)

The petitioner in this petition was appointed as a Chief Executive in the Barnala Cooperative Spinning Mills Ltd-respondent No.3 in the year 1985. With effect from 6.5.1989, The Punjab Cooperative Spinning Mills Federation Service (Common Cadre) Rules, 1989 (for short "Common Cadre Rules") were made applicable to the employees of the Spinning Mills in the State of Punjab including the Barnala Cooperative Spinning Mills Ltd. In the year 1992 after holding a regular inquiry, the petitioner was dismissed vide order dated 7.4.1992 by the Managing Director of Punjab Cooperative Cotton Marketing and Spinning Mills Federation Ltd. as under Common Cadre Rules, the petitioner became an employee of the Spinning Mills Federation. The petitioner challenged the said order by filing appeal before the Board of Directors of the Spinning Federation. The said appeal was dismissed on 22.9.1992. The petitioner

challenged the said order by filing CWP No.6069 of 1993. One of the issues on which the petitioner challenged the said order was that without his consent, his employer could not be changed from the Barnala Cooperative Spinning Mills Ltd. to Punjab Cooperative Cotton Marketing and Spinning Mills Federation Ltd. The said contention of the petitioner was accepted by the learned Single Judge and the said writ petition was allowed vide order dated 29.3.1995 by setting aside the order of dismissal from service as well as the order passed by the appellate authority while observing as under:

“Thus, it is held that the petitioner continued to retain his status as an employee of the Barnala Cooperative Spinning Mills Ltd. As a logical corollary it will have to be further held that the officers of the respondent-Federation did not have the jurisdiction to pass order of punishment against the petitioner. Consequently, the order (Annexure P-18) passed by the Managing Director of the Federation is declared as void. The appellate authority (Annexure P-2) did nothing more than to affirm the order passed by the Managing Director of the respondent-Federation and, therefore, the order passed by the appellate authority is also liable to be nullified on the same very grounds on which the order Annexure P-18 has been found to be illegal.

In the result, the writ petition is allowed. Orders (Annexures P-18 and P-20) are hereby declared illegal and are quashed. It is, however, made clear that this decision shall not in any manner affect the right of the Barnala Mills to take appropriate action against the petitioner. It shall also be open to the Barnala Cooperative Spinning Mills to dispense with the services of the petitioner in case the post held by him is no more available with the respondent-Mills. This will be in tune with the observations made by the Supreme Court in para 8 of its judgment in Jawaharlal Nehru University v. K.S. Jawalkar (supra).

Parties are left to bear their own costs.”

The Spinning Federation challenged the aforesaid order by filing LPA No.541 of 1995 and the said LPA was allowed by this Court

vide order dated 9.5.2006 while observing as under:

“We are of the opinion that in the light of the fact that respondent-Jagat Ram Saini had filed two civil suits against the orders of suspension that were made against him and had secured some interim orders by orders dated 5.5.1989 and 6.5.1989 respectively and that the aforesaid orders were set aside by the Appellate Court, against which he had filed Civil Revision No.3535 of 1989, which had been got dismissed as withdrawn by him on the plea that he wished to pursue his departmental remedy, it would not be open for the said respondent to the issue of jurisdiction in the writ petition as well as in the present Letters Patent Appeal as this is the primary issue on which the learned counsel for the appellant has addressed his arguments. The learned counsel for the respondent has argued that several other issues which ought to have been decided by the learned Single Judge, have not been touched upon in view of the above finding.

Accordingly, we set aside the impugned judgment and remand the case to a learned Single Judge making it clear that it shall be open to the parties to raise all pleas before him except the plea of jurisdiction.

This Letters Patent Appeal stands disposed of in the above terms.”

In the meanwhile, when the aforesaid LPA was pending, the Barnala Cooperative Spinning Mills Ltd as per the liberty granted by the Single Judge passed the order of dispensing with the services of the petitioner on the ground of non availability of the post vide order dated 15.2.1996. Against the said order, an appeal was filed. The same was also dismissed on 23.7.1997. The petitioner challenged those orders as also Common Cadre Rules by filing the instant writ petition.

It is an admitted fact that the petitioner had not challenged the order dated 9.5.2006 passed by the Division Bench of this Court. In view of the said decision, subsequent orders passed by the Barnala Cooperative

Spinning Mills Ltd has become redundant and inoperative as the ground on which the aforesaid order was set aside by the learned Single Judge was reversed by the Division Bench of this Court. The Division Bench had remanded the matter to the learned Single Judge to be decided on merits i.e. whether the dismissal of the petitioner in the facts and circumstances was justified or not. Therefore, in our opinion, the above issue needs to be decided in that petition i.e. CWP No.6069 of 1993 and thus, the present writ petition has become infructuous and the same is dismissed as such.

However, in the facts and circumstances of the case, if the petitioner wants to challenge the Common Cadre Rules, liberty is granted to him to challenge the same in the writ petition pending before the learned Single Judge i.e. CWP No.6069 of 1993, with a right to the respondents to oppose any such application made, in accordance with law.

**(SATISH KUMAR MITTAL)
JUDGE**

**(DEEPAK SIBAL)
JUDGE**

27.01.2015
rajeev