

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 204

Case No. : C. W. P. No. 13502 of 2012

Date of Decision : April 08, 2015

The Khun Khun Kalan Co-operative
Agricultural Society Ltd. Petitioner
Vs.
Harbhajan Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Harit Sharma, Advocate
for respondent no. 1.

* * *

DEEPAK SIBAL, J. :

Through the present writ petition, the petitioner seeks quashing of order dated 02.04.2012 (Annexure P-7), which, according to the petitioner, set aside a well reasoned order passed by the Deputy Registrar, Co-operative Societies, Hoshiarpur, upholding its action with regard to termination of the services of respondent no. 1 on account of his arrest in

pursuance to an FIR registered against him under Section 409 IPC.

While respondent no. 1 was serving the petitioner – the Khun Khun Kalan Co-operative Agricultural Society Ltd. (hereinafter referred to as – the Society) as a Secretary, an FIR dated 31.05.2009 was lodged against him under Section 409 IPC. In pursuance to the above said FIR, respondent no. 1 was arrested and resultantly, on 03.06.2009, he was placed under suspension. Thereafter, on 08.10.2009, respondent no. 1 was charge-sheeted on the following acts of omission and commission :-

- “1. That you committed embezzlement of stock fertilizer Rs. 34634/- and stock of necessary items amounting Rs. 52867/24 paisa of society and deceit of the funds of society by you.*
- 2. That by making fake entries in the day book on different dates, without the receipts you have reduced the funds of society.*
- 3. That on dated 20-5-2009, you received Rs.17,350/- from Sh. Satpal Singh s/o Jagat Singh Vill Khun Khun Kalan Account No. 1365 by giving a receipt on pass book but the actual loan was Rs.15,525 and*

interest was Rs.1,725 and total was Rs. 17,250 but by not entering in the record of society, you embazzeled the amount for the personal use.

4. *That on dated 31-05-2009, you were caught red handed by the village people at 3 PM doing black of the controlled wheat and FIR No. 91 was registered against you at police station Tanda and you remained in jail from dated 31-05-2009 till 25-07-2009.*
5. *That you did not give full charge of society, not gave the charge of furniture fixture and not handed over the charge of safe and keys.*
6. *That you did not give details of your stock and the stock arrears according to the stock.”*

The reply of respondent no. 1, to the charge-sheet, having been found to be unsatisfactory, he was subjected to a regular departmental inquiry, wherein he presented his defence. As per the inquiry report dated 22.12.2009 (Annexure P-4), respondent no. 1 was found guilty only qua

charge no. 4, which pertained to the subject matter of the pending criminal case against him under Section 409 IPC. The relevant findings of the inquiry report are reproduced below for ready reference :-

“Therefore, the record of the society was perused but the Secretary of the society could not clarify with regard to the charges No. 1 and 2 as it was stated that the audit of the society was conducted upto 31.03.2005 and in the society, embezzlement has been done by Former Secretary Sh. Raj Kumar in reply to charge No. 3, the Secretary told that the amount has been deposited. Regarding charge No. 5, the Secretary told that he had received the charge of the record of the Society as per charge No. 6, Harbhajan Singh has confessed that the old stock of the necessary items amounting Rs.52,867.24 ps is with him and this stock is in godown and he is ready to give the same whenever is called by the society.

So far with regard to charge No. 4, it has been stated that he was caught

doing black of the controlled wheat on 31.05.2009 at 3.00 P.M. and F.I.R. No. 91 is registered against him at Police Station, Tanda and he remained in jail from 31.05.2009 to 25.07.2009. In this regard, he confessed that it is correct and the case is pending hearing in the Civil Court and he is on bail and the matter is to be decided by the Court.

After going through all the facts, I have come to this conclusion that the work and conduct of Sh. Harbhajan Singh, Former Secretary (under suspension) does not seems to be good. Therefore, it will not be in the interest of the Society and its member to keep him in the Society.”

In view of the enquiry report, as reproduced above, vide order dated 13.01.2010 (Annexure P-5), the services of respondent No.1 were terminated. An appeal filed by him against the order of his termination was dismissed, which gave him a cause to further appeal against that order before the Joint Registrar, Co-operative Societies, Jalandhar Division, Jalandhar, who, vide order dated 02.04.2012 (Annexure

P-7), allowed his appeal and set aside the order of termination by holding as under :-

“After considering all contentions of the parties and perusing the record presented before me, I have come to the conclusion that all allegations of embezzlement against Sh. Raj Kumar, Ex. Secretary of Society, who connived with Ex Vice President have been proved and decisions of this amount has also been decided against them. In that Ex Secretary and Managing Committee has been found guilty equally and their lands has been attached on the name of the society.

The action taken by the Managing Committee of the Society against Sh. Harbhajan Singh seems to be the result of connivance because it can happen that Sh. Harbhajan Singh might have been entangled with the connivance of summon due to revenge. There is no doubt that F. I. R. has been registered against him but the decision of the court is pending.

There is no force in the contention of the respondents that action has been taken according to the service rules. Because in these orders, the foremost fault is that no prior approval has been taken from Joint Registrar, Co-operative Societies before taking any action by the Administrator, which is necessary. Further, there is no mention that any subsistence allowance was given to Harbhajan Singh for the period from suspension till dismissal, the payment of which is must. It is not correct to punish any employee merely on the basis of F.I.R. when the case is pending for hearing before the Court.

During the hearing, no proof was presented in the court which can verify that Sh. Harbhajan Singh committed any negligence while performing his duties.

Keeping in view the above, I, Randhir Singh Mann, PCS-I, Joint Registrar, Cooperative Societies, Jalandhar Division, Jalandhar while

accepting the appeal/petition sets aside the order dated 03.01.2010 of Deputy Registrar, Cooperative Society, Hoshiarpur and the resolution dated 13.01.10 of the Managing Committee of Society and directs the Managing Committee that it may take action against the employee in accordance with the service rules only after the decision of F.I.R. No. 91/Dated 31.05.2009 registered against Harbhajan Singh and on his found guilty. The decision which was kept reserved on dated 13.03.2012 that has been written on 2.4.2012. Concerned parties be informed and file be given to record keeper for record.”

Challenging the above reproduced order dated 02.04.2012 (Anneuxre P-7), the petitioner society has filed the present petition.

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

It is the admitted position between the parties that before passing of order of termination dated 13.01.2010, neither a copy of the inquiry report nor any show cause notice with regard to the proposed punishment was served upon respondent no. 1. This in action on the part of

the petitioner Society is not only in violation of the principles of natural justice but also contravenes Rule 14 of the Punjab State Co-operative Agricultural Service Society Service Rules, 1997 (hereinafter referred to as – the Rules). Rule 14 (3) (v) (vi) – is reproduced below for ready reference :-

“14. PENALTIES :

3 (v) The enquiry officer shall submit the report to the competent authority and competent authority after considering the report if reaches at a conclusion that some major penalty is required to be inflicted on the employee, shall give a notice to the concerned employee proposing there in the penalty to be inflicted on the employee and to give him an opportunity to represent within a period of 15 days as to why this penalty should not be inflicted upon him.

(vi) After the expiry of 15 days and

after considering the reply of the employee, if received, the competent authority shall pass the orders of inflicting of major penalty on the employee.”

In the case in hand, neither a copy of the inquiry report was supplied to respondent no. 1, nor any show cause notice was issued to him proposing the penalty of termination of his service. Accordingly, the termination order dated 13.01.2010 (Annexure P-5) and the order in appeal dated 03.09.2010 (Annexure P-6) have rightly been set aside by the order impugned by the petitioner Society, but in the facts of the case, as mentioned above, I remit the matter back to the disciplinary Authority for proceeding further on the basis of the inquiry report in terms of Rule 14 (3) (v) (vi) of the Rules, as reproduced above.

The above view taken by me is supported by a judgment of this Court in **C. W. P. No. 12530 of 2011 – The Jaitu Multi-purpose Co-operative Society Ltd. vs. Jagjit Singh and others**, decided on 14.08.2012, wherein it has been held as under :-

“After hearing learned counsel for the parties and considering their contentions, in my opinion, there is weight in the arguments addressed by learned counsel

for respondent no. 1 that there were violation of rule 14 (3) (v) and (vi) of the Rules which requires supply of enquiry report along with the notice proposing the punishment, in case major penalty is to be imposed. Rule 14 (3) (v) and (vi) of the Rules is extracted below:-

14. PENALTIES :

3 (v) The enquiry officer shall submit the report to the competent authority and competent authority after considering the report if reaches at a conclusion that some major penalty is required to be inflicted on the employee, shall give a notice to the concerned employee proposing there in the penalty to be inflicted on the employee and to give him an opportunity to represent within a period of 15 days as to why this penalty should not be

inflicted upon him.

(vi) After the expiry of 15 days and after considering the reply of the employee, if received, the competent authority shall pass the orders of inflicting of major penalty on the employee.

In the present case, neither copy of the report was supplied before imposition of penalty to the respondent-workman nor any show cause notice was issued to him proposing major penalty.

Accordingly, the order passed by the society terminating the services of the petitioner is vitiated from that stage onwards. As a result thereof, the impugned resolution dated 26.3.2010 terminating the services of the petitioner and the order passed by the Appellate Authority as well as the Revisional Authority dated 13.12.2010 and 9.6.2011, respectively, are set aside. The matter is remitted back to the disciplinary authority for proceeding further on the basis

*of enquiry report in terms of the provisions
of the Rules.*

*The writ petition stands
disposed of.”*

The above reproduced judgment of this Court is fully applicable to the facts of the present case.

The stand taken on behalf of respondent no. 1 that he has been acquitted in the above said criminal case lodged against him need not be gone into by me at this stage as respondent no. 1 would be at liberty to raise all issues available to him in law at the time when the inquiry report and a show cause notice on the basis thereof, if any, is served upon him. I expect that all the issues that may be raised by respondent no. 1, in pursuance to such notice issued to him by the petitioner Society, if any, would be considered and decided by passing a speaking order.

The writ petition stands disposed of in the above terms.

**(DEEPAK SIBAL)
JUDGE**

April 08, 2015
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