

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

CWP No.2820 of 2012(O&M)
Date of decision: July 03, 2015

The Chhiniwal Cooperative Agricultural
Multipurpose Society Limited Chhiniwal

----Petitioner

Versus

State of Punjab and ors.

----Respondents

CORAM: HON'BLE MR.JUSTICE HARNDER SINGH SIDHU

Present:- Mr. Preetwinder Singh Dhaliwal, Advocate
for the petitioner.

Mr. Ajaib Singh, Addl. A.G., Punjab.

Mr.Ashwani Parashar, Advocate
for respondents No.2 to 5.

HARINDER SINGH SIDHU, J.

The petitioner - The Chinniwal Cooperative Agricultural Multipurpose Society Ltd. has filed this petition praying for directions to quash the order dated 3.5.2010 (Annexure P-4) passed by respondent No.3, whereby, the petition filed by respondent No.5 for setting aside the order dated 11.4.2007, by which he had been placed under suspension, which suspension had continued for more than six months without the approval of the Assistant Registrar and during which period he had not been paid any subsistence allowance, was allowed and he had been ordered to be reinstated in service. Also challenged is the order dated 12.7.2011 (Annexure P-

5) passed by respondent No.2, whereby, the appeal filed by the petitioner against the above order was dismissed.

The relevant facts, in brief, as stated in the petition are that respondent No.5 was appointed as a salesman in the petitioner Society in the year 1986. In the year 1989, he was promoted as the Secretary of the Society. In the year 2007, an FIR No.10 under Sections 326, 325, 148, 149 IPC was registered against him. He was arrested on 29.3.2007 and remained confined in jail till 12.4.2007, when he was granted bail.

On account of his arrest and detention in custody, the petitioner society passed a resolution dated 11.4.2007, whereby he was placed under suspension. It was also decided to issue a separate charge sheet to him on the same allegations. Certain other complaints were also received against him on behalf of the members of the society and the petitioner Society appointed one Sh.Harbans Singh as Inquiry Officer, who after conducting a detailed inquiry submitted his inquiry report dated 14.5.2008 giving a finding that respondent No.5 had embezzled an amount of Rs.8,95,153/-. Though, respondent No.5 was repeatedly asked to participate in the inquiry, but he did not. Based on the findings in the inquiry report, the services of respondent No.5 were terminated vide order/ resolution dated 2.6.2008 (Annexure P-3).

On 18.8.2009, respondent No.5 filed a petition under Rule 13 of the Punjab State Cooperative Agricultural Societies Service Rules, 1997 (hereinafter referred to as "1997 Rules") challenging the

continuance of his suspension beyond a period of six months without approval of the Assistant Registrar and non-payment of subsistence allowance as being in contravention of Rule 13 of the 1997 Rules. Respondent No.3 vide his order dated 3.5.2010 ordered that respondent No.5 be reinstated in service and his salary due after 11.4.2007 be disbursed to him. It was also held that the suspension order had not been passed in conformity with the service rules. The petitioner society filed revision petition against the above order. The revision was dismissed by respondent No.2 vide order dated 12.7.2011. However, the order dated 3.5.2010 was modified to the extent that the resolution of the society dated 11.4.2007 was set aside for the reason that respondent No.5 had not been paid his subsistence allowance after his suspension.

It is the aforesaid two orders that have been challenged in the present writ petition.

In the written statement filed on behalf of respondents No.1 to 4 (the official respondents) the impugned orders have been defended by stating that as the petitioner society did not pay the subsistence allowance to respondent No.5 and did not get the permission of the competent authority to keep respondent No.5 under suspension beyond six months, hence the impugned orders were rightly passed. But quite pertinently, it has also been pointed out that the services of the respondent No.5 were terminated on 2.6.2008, whereas, the petition challenging the suspension order dated 11.4.2007 was filed on 18.8.2009 and in the said petition, the

order of termination has not been challenged. Therefore, it has been asserted that respondent No.5 is not eligible to join his duty taking the benefit of the orders dated 3.5.2010 and 12.7.2011 and for claiming that benefit, respondent No.5 should have filed an appeal before the competent authority against the dismissal order/ resolution.

Respondent No.5 in his written statement has raised preliminary objections, stating that the petitioner has concealed certain facts in the petition and consequently the petition is liable to be dismissed. He has also stated that the present petition is incompetent as there is no resolution of the society authorizing the petitioner to file the petition.

Much emphasis has been laid in the written statement to contest the averment in the petition that the services of respondent No.5 had been terminated vide resolution dated 2.6.2008. It has been stated that the resolution dated 2.6.2008 is not an order of termination. Instead, through it, Sh.Jarnail Singh, a member of the Managing Committee of the Society was authorized to issue a show cause notice and send the enquiry report to respondent No.5. Pursuant thereto, an undated notice was sent to respondent No.5, wherein, he was asked to appear before the Managing Committee on 23.06.2008 in the office of the Society at 10.00 A.M. It is further averred that there was a tussle amongst the members of the Committee of the petitioner Society and two members namely Sh.Jang Singh and Amar Singh had filed a petition before the

Additional Registrar Cooperative Societies (C) in which notice was issued to the Society and vide order dated 19.6.2008 status quo regarding the services of the answering respondent was directed to be maintained.

Further, a Civil Suit for declaration to the effect that the resolution dated 2.6.2008 and the inquiry report dated 14.5.2008 as also the subsequent proceedings are illegal, was filed, in which vide order dated 23.6.2008 passed by the Civil Judge (Sr. Division), Barnala, the petitioner Society was restrained from proceeding in view of resolution dated 2.6.2008 and on the basis of the inquiry report dated 14.5.2008 except as per rules.

The findings of the inquiry report have also been contested and it has been averred that the impugned inquiry is illegal. The impugned orders have been defended by referring to the 1997 rules.

The petitioner society through C.M. No.15452 of 2014 has placed on record two documents, one, Annexure P-7 is copy of the resolution of the Society dated 22.11.2011, authorizing Sh.Gurjit Singh, the President of the Society to file a writ petition to challenge the orders impugned herein. The second, Annexure P-6, is a copy of the Proceeding Book of the Administrative Committee dated 23.06.2008, whereby, the services of respondent No.5 were ordered to be terminated. In this resolution, it has been recorded that pursuant to the resolution dated 2.6.2008, the inquiry report and the resolution had been communicated to respondent No.5 by Sh. Jarnail

Singh and he was asked to submit his reply within 15 days. But neither did he come present nor did he submit any reply. Hence, taking, that he had nothing to say, the Committee accepted the recommendations in the resolution dated 2.6.2008 and terminated the services of respondent No. 5.

I have heard Ld. Counsel for the parties and perused the record.

Ld. Counsel for respondent No.5 has disputed the passing of resolution dated 23.6.2008. He has also contested the findings of the inquiry report dated 14.5.2008. He has argued that the whole proceedings against his client are the result of mala fide. Ld. Counsel for the petitioner disputes and states that respondent No.5 was rightly placed under suspension and his services were later rightly terminated.

Though, the Ld. Counsel for the parties through their pleadings and arguments have raised a number of points, but the prayer in the present petition is limited one, namely to quash the orders Annexures P-4 and P-5 for being illegal. Thus, what is required to be examined is whether these orders are legal and valid. Hence, I will limit myself to adjudicating this point only.

Whether the inquiry report Annexure P-3 is good or bad, whether respondent No.5 stands terminated or not, the implications of the interim order of the civil court or the order of the Additional Registrar Cooperative Societies (C) dated 19.6.2008, all these issues are beyond the scope of this petition and accordingly are not being

considered and discussed. It is further clarified that the observations made herein would have no bearing on the above issues which the parties are free to agitate or not, as per law, if so advised.

It is undisputed that after the registration of the FIR No.10 dated 9.3.2007 under Sections 326, 325, 148, 149 IPC against the petitioner, he was arrested on 29.3.2007. It is recorded in the report of the Inquiry officer dated 14.5.2008 (Annexure P-2) that respondent No.5 remained in jail from 29.3.2007 to 12.4.2007.

On 11.4.2007, resolution (Annexure P-1) was passed whereby respondent No. 5 was placed under suspension and it was also decided to serve a charge sheet upon him. On 18.8.2009, respondent No. 5 filed the petition under Rule 13 of the 1997 Rules for setting aside the suspension order. The petition was allowed vide order dated 3.5.2010, the suspension order was quashed and it was directed that respondent No.5 be reinstated immediately and his salary due after 11.4.2007 be disbursed to him. It was held that the suspension was ordered by the Administrative Committee of the Society in violation of the service rules. The revision petition filed by the petitioner was dismissed by respondent No.2 vide order dated 12.7.2011. The order dated 3.5.2010 of respondent No.3 was however modified and it was held that due to non-payment of subsistence allowance after suspending respondent No.5, the resolution dated 11.4.2007 vide which he had been suspended is set aside.

As the issue centres around suspension and non-

payment of suspension allowance, before adverting to the relevant rule, it would be proper to refer to a judgment of the Hon'ble Supreme Court which admirably sums up the two concepts. In **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679**, at page 692 :

26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Governments. [See: for example, Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules.] Even under the General Clauses Act, 1897, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss.

27. The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than his salary. (See: State of M.P. v. State of Maharashtra)

28. Service rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53.) This constitutes the "subsistence allowance". If there is no provision in the rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension.

29. Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances,

however, are not rare where officers have been found to be afflicted by a “suspension syndrome” and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee’s trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of “subsistence allowance”, so that the employee may sustain himself. This Court, in *O.P. Gupta v. Union of India* made the following observations with regard to subsistence allowance: (SCC p. 340, para 15)

“An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand v. Union of India* is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression ‘subsistence allowance’ has an undeniable penal significance. The dictionary meaning of the word ‘subsist’ as given in *Shorter Oxford English Dictionary*, Vol. II at p. 2171 is ‘to remain alive as on food; to continue to exist’. ‘Subsistence’ means — means of supporting life, especially a minimum livelihood.”

30. If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The

act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

*31. On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra v. Chandrabhan Tale* struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in*

Fakirbhai Fulabhai Solanki v. Presiding Officer and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Das Shrivastava v. State of M.P”

Thus while acknowledging the undoubted right of the employer to place under suspension an employee it has been held that he is required to be paid suspension employee as per the rules. The non payment thereof has been likened to slow poisoning and violation of the right to life of the employee.

Now, the relevant Rule 13 of the 1997 Rules which has been relied upon is reproduced: -

“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 six months.

(iii) The Committee of a Society may, in exceptional circumstances extend the suspension period with the prior approval of the Assistant Registrar.

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

From the above provision, it is clear that the Managing Committee of the Society is empowered to place under suspension

an employee against whom disciplinary proceedings are contemplated. No permission or approval of any other authority is contemplated at the initial stage of placing such an employee under suspension. However, as per clause (ii) of Rule 13 in no case an employee shall be kept under suspension for more than six months. However as per clause (iii) in exceptional circumstances the suspension may be extended by the Committee beyond six months, but for such an extension, the prior approval of the Assistant Registrar is required. Thus as per this Rule any suspension beyond six months without the prior approval of the Assistant Registrar would not be valid.

The resolution dated 11.4.2007 to place respondent No.5 under suspension was passed in view of his detention in custody in connection with FIR registered against him and the decision of the Managing Committee to issue a charge sheet to him. Hence, there is no infirmity in the said resolution and order. But the infirmity creeps in later. Neither before Respondent No.3 or 2 nor in the present petition has it been stated by the petitioner Society that the suspension was extended beyond six months after obtaining the prior approval of the Assistant Registrar. Further, it has also not been denied that the respondent No.5 has not been paid subsistence allowance during the period of suspension. Thus, in these circumstances, the continuation of the suspension of respondent No.5 beyond six months is illegal. Further the action of the petitioner in not paying the suspension allowance as per Rule 13(iv) is also

illegal.

In the impugned order dated 12.7.2011 (Annexure P-5), by modifying the order dated 3.5.2010 (Annexure P-4), it has been held that resolution dated 11.4.2007 is set aside due to non-payment of the subsistence allowance to respondent No.5 after his suspension.

I have already held that the initial suspension order/ resolution dated 11.4.2007 is legal and valid. It is only its continuation beyond six months without obtaining the prior approval of the Assistant Registrar that is illegal being in contravention of Rule 13(ii) and (iii). Also the non- payment of subsistence allowance is illegal. But the suspension order cannot be quashed merely because subsistence allowance was not paid. Provision for payment of subsistence allowance is in Rule (iv). There is no provision in the Rules as per which non-payment of suspension allowance will invalidate the suspension. If suspension allowance is not paid, directions can be issued that it be paid.

Accordingly, this petition is partly allowed. The order Annexure P-5 is modified to the extent that it is held that the continuation of the suspension of respondent No.5 after the expiry of six months from 11.4.2007 is illegal and is to be treated as revoked.

Respondent No. 5 is held entitled to be paid 50% of his salary as suspension allowance for the first six months of his suspension from 11.4.2007. For the period thereafter, he is entitled to full salary.

It is reiterated at the cost of repetition that except for the limited issue of challenge to Annexures P-4 and P-5, for quashing of which the petition has been filed, the other issues touched upon in the pleadings and the implications thereof have not been examined. Nothing stated or observed while disposing of this petition will have any bearing on those issues.

The petition is disposed of in the above terms.

July 03, 2015

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**(HARINDER SINGH SIDHU)
JUDGE**