

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

RSA No.2342 of 2010 (O&M)

Date of decision : 23.07.2015

Jarnail Singh

...Appellant

versus

Shiromani Gurdwara Parbhandhak Committee & another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Vanita Sapra Kataria, Advocate for the appellant.

Mr. P.S.Thiara, Advocate for the respondents.

RITU BAHRI, J

The appellant/plaintiff has come up in regular second appeal against the judgment of the trial Court dated 07.01.2005 and the lower appellate Court dated 07.01.2010, whereby his suit for declaration i.e. order dated 07.03.1988 dismissing him from service is illegal, null and void, has been dismissed.

The appellant/plaintiff was appointed as a General Attorney on 11.10.1981 by way of resolution No.922 in the meeting of defendants Shrimoni Gurudwara Prabhandhak Committee, Amritsar. He was suspended on 25.08.1997. Thereafter he was served with a charge sheet dated 25.12.1997. The plaintiff gave his reply to the charges levelled in the charge sheet dated 07.01.1998. Thereafter, vide order dated 07.03.1998, he was dismissed from service. Hence the present suit.

The defendants on notice, took objections that the suit was time barred. On merits, the fact of appointment, suspension and dismissal from the service was admitted. It was stated that a case titled as “Jaswant Singh Vs. SGPC” was entrusted to the plaintiff Jarnail Singh to represent the respondents/defendants in the said case in the Court as General Attorney of the defendants. The said case related to the land at Farm Gurdas Nangal, Village Japuwal and was pending in the Civil Court at Gurdaspur. This land had been gifted to Sri Darbar Sahib, Amritsar, vide gift deed dated 31.05.1950. The entries in the revenue record including the jamabandi and the khasra girdawari were also in the name of Sri Darbar Sahib, Amritsar as owner of the suit land. Sh.Jaswant Singh claimed in the said suit that he was an adopted son of Sh.Isher Singh. As the plaintiff was defending the said case it was his duty to mention all the required facts regarding the gift of the property in favour of Sri Darbar Sahib, Amritsar by Isher Singh. He filed the written statement signed and verified by him without mentioning the requisite facts in the written statement. The plaintiff did not produce the relevant record of the case including the gift deed dated 31.05.1950 in the Court. Thereafter, for his negligence in performing his duty as a General Attorney he was suspended and thereafter the Executive Committee, SGPC vide resolution No.155 dated 15.01.1998 constituted a sub-committee to make enquiries with regard to the charges against the plaintiff. The sub committee held the enquiry and submitted its report dated 18.01.1998 and after

considering the enquiry report, the Executive Committee, vide resolution No.242 dated 06.03.1998 dismissed the services of the plaintiff and the said decision of the committee was conveyed to the plaintiff vide office order No.2367 dated 07.03.1998. The trial Court framed the following issues:-

- “1) *Whether the plaintiff is entitled to declaration as prayed for in the plaint? OPP.*
- 2) *Whether the plaintiff is entitled to mandatory injunction as prayed for in the plaint? OPP.*
- 3) *Whether the suit is within time? OPP.*
- 4) *Whether the suit is not maintainable as alleged in preliminary objection No.2? OPD.*
- 5) *Whether the suit is liable to be dismissed as alleged in preliminary objection No.3? OPD.*
- 6) *Whether the plaintiff has suppressed the material facts from the court, if so, its effect? OPD.*
- 7) *Whether the plaintiff has no cause of action to file the present suit? OPD.*
- 8) *Whether the suit is bad for mis-joinder of necessary parties as alleged? OPD.*
- 9) *Relief.”*

The trial Court held that the plaintiff was suspended vide Ex.P2 and thereafter a charge sheet was served upon him vide memo No.5192/Staff dated 24.12.1997 Ex.P3. The plaintiff gave his reply dated 07.01.1998 Ex.P4. The Executive Committee consisting of S.Sukhdev Singh Bhaur, Acting President and S.Kewal Singh, Junior Vice President of SGPC was constituted, vide letter No.6093 dated 10.02.1998 Ex.D4. The plaintiff Jarnail Singh was directed to appear before the committee on 18.02.1998 at 9:00 AM. The plaintiff

received the letter as is evident from the receipt dated 15.02.1998 Ex.D5. The enquiry committee gave its report dated 18.02.1998 Ex.D3. The trial Court perused the said report Ex.D3 and came to the conclusion that Jarnail Singh had appeared before the Executive Committee and oral enquiries were made from him. Vide resolution No.242 dated 06.03.1998, Ex.D8 passed by the Executive Committee, the report of the enquiry committee was approved and termination of the plaintiff was ordered, which was supplied to the him vide Ex.P5 dated 07.03.1998. The plaintiff had appeared before the Executive Committee and only oral enquiry was conducted. No witness was examined. So, question of opportunity for cross-examining the witnesses does not arise. He was granted full opportunity when he appeared before the enquiry committee and made his contentions. The argument of the plaintiff was rejected that as per SGPC Rule 4 (b) (i), once the matter was referred to the Executive Committee, they were required to conduct regular enquiry before dismissing him from the services. As per the report of the Committee Ex.D3, explanation given by the plaintiff had been rejected as the same was not satisfactory. The trial Court answered the issues No.1 and 2 in favour of the defendants and held that the termination order did not suffer from any infirmity as the plaintiff had been given sufficient opportunity as per SGPC Rules. On issue No.3, the finding was given that the suit was within limitation. The issues No.4 and 5 were decided in favour of the defendants that the suit for declaration and mandatory injunction was

not maintainable as the prayer made by the plaintiff was for reinstatement and back wages which can only be granted under the Industrial Disputes Act. Issues No.6 and 7 were decided against the defendants and on issue No.8 a finding was given that the suit was not maintainable against defendant No.2 as Sri Darbar Sahib had no link with the administrative working of Shiromani Gurudwara Prabhandhak Committee-defendant No.1. The suit of the plaintiff was dismissed. The lower appellate Court on appeal, dismissed the appeal and affirmed the findings of the trial Court.

Counsel for the appellant has vehemently argued that the necessary procedure before dismissing the plaintiff was not followed as contemplated in SGPC Rules. It is stated that according to Rule 4 (b) (i) once after serving the charge sheet and accepting the reply of the plaintiff the matter had been referred to the Executive Committee. It was mandatory for them to have conducted regular inquiry after giving due notice to the plaintiff without doing so the order of termination was bad in the eyes of law and was liable to be set aside. Reliance was placed on the judgments passed in the cases of Ajaib Singh Vs. The Shiromani Gurudwara Prabandhak Committee, Amritsar, CWP No.7236 of 1996, decided on 03.10.1996 and Mewa Singh & ors. Vs. Shiromani Gurudwara Prabandhak Committee, JT 1998 (8) SC 503.

In the case of Ajaib Singh (supra), the facts were that Ajaib Singh was terminated from the service without issuing any charge sheet and without seeking any reply from him. Ajaib Singh was

a regular employee of SGPC and allegation against him was that as per the report of the Manager, Shri Darbar Sahib, Amritsar, the petitioner was found accused in the case of non-tracing of Bibi Hardish Kaur. Apart from this, keeping in view of his past conduct, his services were terminated. The SGPC admitted that there was neither any charge sheet nor any show cause notice was given before passing the termination order dated 02.05.1996. The writ petition was allowed and the order terminating him on the ground that it has been based without observing the principles of natural justice. The facts of the case in Ajaib Singh's case (supra) is not applicable to the present case as in the present case a charge sheet had been issued to the plaintiff and he had filed his reply. The Executive Committee gave him notice to appear before them and pursuant to this notice he appeared before the Committee and oral enquiries were made from him and after giving him an opportunity of hearing, the order of termination was passed. The judgment in the case of Ajaib Singh (supra) has not considered the interpretation of SGPC Rule 4 (b) (i) that once the matter has been referred to the Executive Committee, it was mandatory for the Committee to hold a regular enquiry.

The Hon'ble Supreme Court in the case of Mewa Singh (supra), approved the judgment passed in the case of Ajaib Singh. In paragraph 7 of the judgment of the Hon'ble Supreme Court, it was held that SGPC is a creation of the statute and Service Rules framed by it in exercise of its statutory power have force of law and the jurisdiction

under Article 226 was with the High Court when an employee had been dismissed in violation of the service rules and further under Section 142 there was no provision for alternative remedy. The Hon'ble Supreme Court in Mewa Singh's case (supra) had examined the scope of Section 142 of the Act where there was no provision for any alternative remedy to an employee of SGPC who had been dismissed or whose services had been terminated. The employee had a remedy to approach the High Court under Article 226/227 of the Constitution. The Hon'ble High Court had not examined the Rule 4 (b) (i) when it was mandatory for the Executive Committee for holding an enquiry. The Section 4 (b) (i) is reproduced below for ready reference:-

“ Any employee of the Shiromani Committee can be dismissed or degraded for his band character, drinking or becoming a 'Patit' but before he dismissed or degraded, the allegations in the form of written charge sheet shall be supplied to him along with the statement of allegations. On the basis of which the charges are levelled against him. Representation against these charges shall be received from the employee within reasonable time and in case he denies these charges and prays for holding an enquiry or the Executive Committee deems it fit, these charges shall be got inquired into in the presence of the employee and for each item of the charge sheet, which has not been admitted, evidence shall be recorded in his presence and the employees shall be entitled to cross-examine these witnesses. In case an employee wishes to produce his defence, the same shall be entertained but in case if the inquiry committee feels that certain witnesses are not necessary for evidence, it shall not be permitted to be produced for the reasons to be recorded in writing. Action shall be taken against the employees only when the charge is established.”

A careful perusal of the aforesaid rules clearly indicates that if an employee is to be dismissed, a charge sheet containing statement of allegation is to be supplied to him. After getting the charge-sheet, he can file reply to the charges within reasonable time. It further provides that **representation against these charges shall be received from the employee within reasonable time and in case he denies these charges and prays for holding an enquiry or the Executive Committee deems it fit, these charges shall be got inquired into in the presence of the employee.** Thereafter, the employee can produce evidence in defence. The clear language of the rule gives action to the employee to seek a regular enquiry and then the Executive Committee if it deems fit can enquire into the charges shall be in the presence of the employee and thereafter the evidence be recorded. In the facts of the present case, after giving charge sheet and giving reply, the matter was referred to the Executive Committee who gave notice to the plaintiff to appear before them. Once, the plaintiff appeared before the Executive Committee, Executive Committee did not deem fit to hold a regular enquiry and instead made oral enquiries from the plaintiff in view of his reply given to the charge sheet. The word used in the rule 4 (b) (i) is that the enquiry will be held only if the Executive Committee deems it to be fit. In the present case, there was no occasion for the plaintiff to examine the witnesses and lead his evidence. The reply filed by the plaintiff was considered and he was given a personal hearing and oral enquiries were made from him that

was sufficient in compliance of rule 4 (b) (i) of the SGPC Rules. There was no violation of the SGPC Rules in terminating the services of the plaintiff. The judgments of both the Court below do not suffer from any illegal infirmity or perverse reading of evidence. No substantial question of law

Dismissed.

23.07.2015
Vinay

(RITU BAHRI)
JUDGE