

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

**R.S. A. No.2906 of 2010 (O&M)
Date of Decision: August 19, 2015**

Khushjit Singh

.... Appellant

vs.

**Registrar Cooperative Society of
Punjab, Chandigarh and others**

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Babbar Bhan, Advocate for
Mr. Naveen S. Bhardwaj, Advocate for the appellant.

None for respondent No.1.

Mr. Salil Sabhlok, Advocate for respondent Nos.2 to 4.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 06.03.2010 passed by learned Addl. District Judge, Ludhiana, vide which two cross appeals were decided. The appeal filed by the plaintiff-appellant was dismissed with costs and the appeal filed by the defendant- The Punjab Co-operative Milk Producers Federation Limited was allowed with costs

and the judgment and decree of the lower court was set aside and the suit of the plaintiff was dismissed in *toto*. Learned Civil Judge (Jr. Divn.), Ludhiana, vide judgment and decree dated 21.07.2008 had partly decreed the suit of plaintiff and had ordered that punishment order dated 16.02.2002 is set aside and the defendants are directed to pass fresh order after conducting fresh inquiry against the plaintiff as per Rules. The defendants were further directed to complete the said inquiry within six months from the date of receipt of certified copy of the judgment and decree. The parties were left to bear their own costs.

Brief facts of the case are that the plaintiff was appointed as Deputy Manager (Chilling Centre) with the defendants on 21.07.1993. As per the appointment letter, the post of Deputy Manager (Production), the Deputy Manager (Quality Control) and Deputy Manager (Chilling Centre) are inter-changeable for the purpose of posts notwithstanding maintenance of separate seniority. It is stated that on 21.08.1993, the plaintiff had joined as Deputy Manager (Procurement) in the office of Patiala Milk Union. Thereafter, in the year 1996, he was transferred as Deputy Manager (Chilling), Milk Union, Ludhiana. Later on, w.e.f. 20.02.1997, the plaintiff was transferred as Deputy Manager (Production) at the Milk Plant, Ludhiana. On 02.07.1999, Shri S.P. Gupta, M.D., Milk Union, Ludhiana, ordered to transfer the plaintiff in place of Shri Gurbachan Singh. Gurbachan Singh did not relinquish the charge of Chilling

Centre, Khanna and accordingly, the plaintiff also did not relinquish the charge of Milk Plant at Ludhiana. It was further alleged that Shri G.S. Bhatia vide letter dated 05.07.1999 requested Shri S.P. Gupta that there is shortage of technical staff and the performance of the plaintiff was found to be good and, therefore, the transfer of the plaintiff at this stage would adversely affect the working of the production department. Therefore, it was proposed to transfer Shri Deepak Chauhan. Shri S.P. Gupta transferred Deepak Chauhan from the production department to procurement department on 17.07.1999 and therefore the transfer order date 02.07.1999 transferring the plaintiff in place of Gurbachan Singh stood automatically cancelled. It was alleged that Shri Deepak Chauhan did not receive the letter dated 17.07.1999 and remained absent from his place of posting and Shri Gurbachan Singh did not join at Milk Union, Ropar. Deepak Chauhan managed to get his transfer order cancelled vide order dated 26.07.1999. Shri S.P. Gupta called the plaintiff on 19.08.1999 at 9.30 a.m. and the plaintiff reached at his office at 10.00 a.m. and demanded illegal gratification of ₹20,000/- from the plaintiff and on his refusal, said Shri S.P. Gupta abused the plaintiff in the name of his sister and mother. A complaint was made by the plaintiff to the S.H.O. Sarabha Nagar on the same day. Shri Gurbachan Singh passed the illegal order relieving the plaintiff w.e.f. 19.08.1999. The plaintiff was also not allowed to enter the gate of milk plant, Ludhiana for joining his duties on the verbal orders of Shri S.P. Gupta.

The plaintiff filed a writ petition before this Hon'ble Court but the same was withdrawn with a direction to pursue remedy before the civil courts. The charge sheet dated 22.09.1999 was served upon the plaintiff without any preliminary inquiry. Shri Ajit Singh, Accounts Manager was appointed as inquiry officer but later on in his place Shri Suraj Parkash, who was retired from the post of Deputy Manager, was appointed as Inquiry Officer. The plaintiff claimed that the plaintiff is also working on the same post of Deputy Manager so Suraj Parkash could not conduct the inquiry as per Common Cadre, Rules, 1980.

It was further alleged that a tainted inquiry was conducted and the services of the plaintiff were terminated vide order dated 16.02.2002.

In the written statement, the defendants stated that the plaintiff did not comply with the transfer order on 19.08.1999. He entered the office of Shri S.P.Gupta in a furious manner and misbehaved with him and indulged in the major misconduct. The inquiry was conducted and termination order was correctly passed.

Learned Civil Judge (Jr. Divn.), Ludhiana while referring to Milkfed Common Cadre Rules 2.12 (Ex.P-12) Annexure II and Rule 2.12 (b), came to the conclusion that the inquiry was held to be by superior officer. The inquiry was held by Suraj Parkash, who was retired as Deputy Manager having equal post to that of the plaintiff. Therefore, the impugned judgment and decreed was passed.

Learned Addl. District Judge, Ludhiana took the view that the inquiry cannot be called unfair. The inquiry officer was sufficiently senior to the delinquent official and consequently, the suit of the plaintiff was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Before this Court, the only contention raised by learned counsel for the appellant-plaintiff is that Shri Suraj Parkash, Inquiry Officer was earlier working as Deputy Manager and he had retired from the said post. The plaintiff was also working as Deputy Manager. Therefore, there is violation of the rules 1.2 Annexue-II, Milkfed Common Cadre Rules, 1980.

Undisputedly, the inquiry officer was retired and his length of service is much more than the service of the plaintiff. It is also not disputed before this Court that Shri Suraj Parkash after his retirement is working as Labour Law Advisor when he conducted the inquiry. Annexure-II of the Common Cadre Rules, 1980 are applicable to the plaintiff. The copy of which is Ex.P29, Rule 1.2 Annexure P-II provides as under:

“1.2 No penalty shall be imposed on any employee unless the or charges on which it is porposed to take disciplinary action against him have communicated to him in writing and he has been given a reasonable opportunity to show casuse against the action proposed to be taken against him. The authority competent to impose the penalty may in

circumstances permit, hold an enquiry to be held by an officer superior to the person against whom the action is proposed to be taken for the purpose of ascertaining the truth or otherwise or the charge or charges. If it is decided to hold an enquiry, the employee concerned shall be permitted to produce or cite witnesses on his behalf and examine the relevant documents, but shall not be permitted to engage a lawyer at the enquiry.”

It goes to show that the competent authority to impose the penalty may in the circumstances permit, hold an inquiry to be held by 'an officer superior to the officer' against whom the action is proposed to be taken for the purpose of ascertaining the truth or otherwise or the charge or charges.

The words “*to be held by an officer superior to the person (read delinquent official)*” goes to show that the officer must be superior to the delinquent official. It does not mean that he must be senior to the delinquent official. There is difference between the superiority and the seniority. There cannot be any seniority between the serving employees and the retired employees.

In this case, Shri Suraj Parkash, inquiry officer, who retired from the post of Deputy Manager, had more length of service than the present appellant-plaintiff. Shri Suraj Parkash was working as a Labour Law Advisor after his retirement. Therefore, he was rightly held to be superior to the plaintiff.

Therefore, I do not find any force in the contention of learned counsel for the appellant that the inquiry against the appellant-plaintiff was not held by an officer senior to the plaintiff. As observed above, there is no seniority between the serving employees and the retired employees. There is nothing on the file to show that there is any violation of the procedure or that any principle of natural justice was violated.

It being so, I am of the view that no substantial question of law arises in the present appeal. Accordingly, the appeal stands dismissed.

August 19, 2015
sarita

(KULDIP SINGH)
JUDGE