

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

Letters Patent Appeal No.158 of 2014
Date of Decision: February 09, 2015

Haryana State Federation of Consumer Co-operative Wholesale Stores Ltd.

...Appellant

Versus

Ashok Kumar Verma and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Amit Jaswal, Advocate
for the appellant.

Mr. J.S. Maanipur, Advocate
for respondent No.1.

AUGUSTINE GEORGE MASIH, J.

This appeal has been preferred by the Haryana State Federation of Consumer Cooperative Wholesale Stores Ltd. (hereinafter referred to as Consumer Cooperative) challenging the judgment dated 18.09.2013 passed by the learned Single Judge, allowing the writ petition filed by Shri Ashok Kumar Verma (respondent No.1 herein) by which order of his termination from the post of Store Keeper dated 16.08.1990 passed by the appointing authority i.e. Managing Director and order in appeal dated 26.02.1992 passed by the Registrar, Cooperative Societies, Haryana, have been set aside, directing his reinstatement in service with all consequential benefits.

2. It is the contention of the counsel for the appellant that respondent No.1 was terminated from service on the basis of a departmental inquiry held against him, wherein he was found guilty of the charge of dishonesty and black-marketing of edible oil. The proceedings were held in

accordance with the Rules applicable and no fault has been attributed with regard to violation of any statutory rules while passing the orders of termination. The Court has proceeded to set aside the order of punishment by holding that the inquiry held against respondent No.1 was not in accordance with law as the findings recorded by the Inquiry Officer were based on conjectures and surmises without there being any evidence on record involving the respondent No.1 in black-marketing of edible oil. It has also been held that the Inquiry Officer has not examined any of the material witnesses and has not taken into consideration the statement of one Shri Zahoor Khan, Salesman. He submits that the Court cannot sit in appeal over the findings recorded by the Inquiry Officer when there is no assertion that the inquiry has not been held as per the statutory rules and that too in exercise of writ jurisdiction. He accordingly submits that the impugned judgment be set aside.

3. On the other hand, counsel for respondent No.1 submits that the findings recorded by the learned Single Judge are based upon the records and it is not disputed that in the inquiry report, the Inquiry Officer has given a finding that the black-marketing was done by all the three officials namely Shri Usman Khan, Area Manager, Shri Ashok Kumar, Store Keeper and Shri Zahoor Khan, Salesman. No action has been taken against Usman Khan and Zahoor Khan. He contends that the relevant witnesses as per the allegations and the findings recorded by the Inquiry Officer were Usman Khan, Zahoor Khan and the depot holders with assistance of whom as per the allegations, respondents No.1 had prepared the fictitious record regarding sale of 67 tins of Palmolein Oil. Usman Khan has not been examined as a witness nor have any of the depot holders been examined.

Statement made by Zahoor Khan has not been taken into consideration by

the Inquiry Officer where he had clearly stated that he was pressurized by Shri Usman Khan, Area Manager to make his statement during the preliminary inquiry, wherein he had stated that Shri Ashok Kumar was the person, who was responsible for sale of Palmolein Oil, whereas the fact was that the Area Manager Shri Usman Khan had advised them to sell the goods by 31.03.1988 positively otherwise the Managing Director of the appellant-Consumer Cooperative would suspend him. The Area Manager further told them that the cash book will be kept open upto 03.04.1988 in the office so that in the vouchers the sale can be shown upto 31.03.1988 and on 03.04.1988 the cash amount of Rs.37,438.75 were deposited and further that the records prepared were genuine. He accordingly contends that there being no evidence against respondent No.1, findings recorded by the Inquiry Officer being based upon assumptions and presumptions could not be sustained and the learned Single Judge has rightly set aside the inquiry report and quashed the order of the punishing authority and the Appellate Authority. Prayer has thus been made for dismissal of the appeal.

4. Counsel for the appellant has stated that Shri Usman Khan, Area Manager was retrenched on 31.12.1989. The report of the Inquiry Officer is dated 22.03.1990, where it was held that all the three officials were responsible for black-marketing of the edible oil, which is subsequent to the date of retrenchment of Shri Usman Khan, Area Manager and therefore, no action could be taken against him. Departmental action was initiated against Shri Zahoor Khan, Salesman. Charge sheet was issued to him on 12.08.1990. Inquiry report was submitted on 12.12.1990 and on consideration of the same, vide order dated 17.05.1991 he was warned to be careful in future while performing his duties. He thus contends that

appropriate action has been taken against the officials involved as per the findings of the Inquiry Officer.

5. He has produced the copies of the charge sheet, inquiry report and the order of punishment of Zahoor Khan in the departmental proceedings held against him. He has also produced the three different statements given by Shri Zahoor Khan i.e. statement dated 31.05.1988 given before Shri O.P. Sharma, the then R.S.O., Rohtak, who held the preliminary inquiry against respondent No.1, statement dated 17.03.1990 before Shri Ram Lal in the regular departmental inquiry held against respondent No.1 and the statement dated 16.10.1990 in the inquiry held against him.

6. A perusal of the above statements would show that in the first statement given during the preliminary inquiry, he had stated that respondent No.1 was responsible for the sale of Palmolein Oil and had asked him to prepare some of the records and the remaining records were got prepared by Rakesh Kumar and Suresh Kumar depot holders. In the regular inquiry, he had clearly stated that the Area Manager Shri Usman Khan had ordered to sell the stock of Palmolein Oil by 31.03.1988 failing which he would be suspended. He further admitted that on 31.03.1988, Shri Usman Khan ordered that the sale be continued till 03.04.1988 and the cash book in the office will be left open. The sale was accordingly conducted till 03.04.1988 and thereafter the amount was deposited on 03.04.1988. In his statement on 16.10.1990, he again admitted these facts and further stated that he was pressurized and forced to give his statement against respondent No.1 during the preliminary inquiry. Therefore, it is apparent that Shri Usman Khan was the person responsible for the sale of Palmolein edible oil and not respondent No.1. The findings thus recorded by the learned Single Judge that there is no evidence which would show that respondent No.1 was

involved in black-marketing of the edible oil and that the report of the Inquiry Officer is based upon no evidence is unjustified. The findings that the Inquiry Officer has not examined any material witness i.e. Usman Khan and the depot holders and has also not taken into consideration the statement of Salesman Zahoor Khan during the regular inquiry proceedings held against respondent No.1 vitiating the findings recorded by the Inquiry Officer and the recommendations made for removal of the petitioner from service for black-marketing edible oil without their having been proved is fully justified and based on the record. It is clear that the inquiry conducted against respondent No.1 has rightly been held to be vitiated and being based on conjectures and surmises being without any positive evidence on record. We find ourselves in agreement with the findings and conclusions reached at by the learned Single Judge.

7. The Court has rightly relied upon the judgment of the Supreme Court in **Indian Oil Corporation Limited Vs. Ashok Kumar Arora AIR 1997 (SC) 1030**, where the Supreme Court has referred to various earlier judgments of that Court and held that the Court while exercising its writ jurisdiction would not interfere with the findings recorded during the departmental inquiry sitting over the said findings as an Appellate Authority or it can be said that the jurisdiction is limited. Exceptions have been, however, carved out, which includes power of interference where the domestic inquiry is vitiated because of findings being based on no evidence as in the present case. There is thus, no jurisdictional error committed by the learned Single Judge, which would call for interference by us in the present appeal.

8. A submission has been made by the counsel for the appellant that during the pendency of the present appeal, respondent No.1 has attained

the age of superannuation and that it is hard to believe that he would not have worked anywhere since the date of his termination till date and, therefore, grant of full consequential benefits to respondent No.1 would not be justified.

9. Counsel for respondent No.1 has received instructions from him, who is present in Court and stated that he had been working in a shop on a meagre salary, with which he and his family have barely survived.

10. The parties pray that the matter regarding the entitlement and release of benefit, if any, be decided in these proceedings as the matter is old.

11. Keeping in view the above facts and circumstances, we are not inclined to interfere with the findings, as has been recorded by the learned Single Judge with regard to the order of termination of respondent No.1 but would restrict the salary to respondent No.1 from the date of termination till superannuation to 60%. The same be released to him within one month from today. The consequential benefits, if any, be released to respondent No.1 within a period of three months from today.

12. The present appeal is disposed of by upholding the judgment of the learned Single Judge by modifying the relief granted to respondent No.1 as above.

(S.J. VAZIRDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

February 09, 2015
Puneet