

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12616 of 1997 (O&M)

Date of Decision: 11.04.2016

Manoj Kumar Malhotra

... Petitioner

Versus

The State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ranjit Singh Kalra, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This is an old case of 1997 shown in the regular cause list to be taken up for final disposal being amongst the longest pending cases on my board of the present roster which is sufficient notice of appearance for the respective parties to attend to the case. Since no one appears for respondents this Court is not compelled to await appearance of each and every counsel engaged who would have deemed notice of the proceeding inasmuch as the matter would be heard on merits and no frivolous adjournment would be granted. Hence the respondents are ordered to be proceeded against ex parte. Heard the learned counsel present and who is prepared with his case and ready with the arguments.

2. With the change of the Managing Director of the Corporation, the enquiry was ordered by the successor Managing Director and an Enquiry

Officer was appointed to conduct the departmental proceedings against the petitioner. The charge of misconduct was based on a complaint of a colleague working in the Corporation. Remarkably, the Managing Director appointed the complainant to be the Presenting Officer against the petitioner. Besides, the Enquiry Officer was lower in rank than the petitioner and therefore in a challenge brought to the enquiry proceedings in the present writ petition, this Court while issuing notice of motion issued notice regarding stay as well on August 28, 1997. The Managing Director Mr. K.S. Hothi who had by then retired was named as respondent No.6 and allegations of malafides were levelled against him. The allegations were not denied by the respondent No.6 since he did not file written statement as recorded in one of the interim orders. Fresh notice was issued to him on October 01, 1997 and it was ordered that in the meantime, respondent Nos.2 & 3 i.e. The Punjab State Federation of Consumer's Cooperative Wholesale Stores Limited and the Managing Director of the Federation would be at liberty to consider the desirability of appointing a new Enquiry Officer. Till the next date the proceedings before the Enquiry Officer were stayed.

3. Respondent No.6 has filed a reply. The respondent-Federation did not change the Enquiry Officer and the position continued till the matter was admitted and the stay order has continued to operate till today i.e. for a period of 19 years.

4. The petitioner was born in the year 1948 and would have retired by now. The charges against the petitioner can be summarized as follows:- He was a work shirker who used to harass customers and would not take interest in work. He used 'cheap language' with officers. He would

disobey orders and apply political pressure. He misbehaved with Inspector (R&D) and used abusive language. The fifth charge was that he used 'cheap language' with officers/employees including the Assistant Registrar, Deputy Registrar Cooperative Societies and the Inspectors of the Department. He used to fight with Peons and drink during office hours. He would use loose language and was undisciplined. He used to cause loss to the interest of Constofed by 'missing with parties as Manager (M)'. He indulged in correspondence using abusive language. The tenth and last charge was that he caused loss to the institution by plummeting its sales to zero. I think it is too much for one man in an organization in the position held by the petitioner to be destructive of the sales in toto and be held responsible for it single handedly. This is like baying at the dark side of the full moon. It would be giving too much credit to one person unless he was the Managing Director.

5. It is thus quite apparent that in pith and substance the charges are mostly one and the same thing which have been proliferated into ten rather vague charges with no material particulars supporting them.

6. Learned counsel for the petitioner submits that essentially one charge has been multiplied by ten. Even if the Enquiry Officer is to be appointed afresh and enquiry proceedings permitted to be conducted against the petitioner in all probability the evidence in support of the charges would be lost. The persons against whom the petitioner may have misbehaved may no longer be available to record their testimonies and depositions in the trial, if allowed to be held after a long lapse of nearly two decades. The very fact that this Court stayed the enquiry proceedings and the Federation did

not take any steps to appoint another Enquiry Officer in terms of the liberty granted is plainly indicative of the fact that the Federation itself was not serious enough to go into the charges and bring home the charges and rather it had left the matter to be decided by Court.

7. In view of the foregoing position obtaining on file, I do not find any substance in the vague charges laid against the petitioner or to think rationally that they could ever be capable of being realistically enquired into at this distance of time and I would, leaving aside the nitty-gritty commend the view that this writ petition deserves to be allowed by making the interim order of stay absolute. As a result the petition is accepted. The petitioner would be entitled to all consequential benefits flowing from this order which will be treated as though the charge-sheet stands quashed by disuse and non-seriousness in the mind of the Federation. Thus, the allegations of mala fides are not gone into and no opinion is expressed thereon.

(RAJIV NARAIN RAINA)
JUDGE

11.04.2016
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