

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

RSA No. 472 of 1991

Date of Decision: August 10, 2016

The Punjab State Cooperative Supply and Marketing Federation Ltd.
and another

.....Appellant

Versus

L.C.Gandhi and another

..... Respondent

CORAM : HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present : Mr. A.P.S.Mann, Advocate
for the appellants.

Mr. Sandeep Khunger, Advocate
for respondent No.1.

P.B.BAJANTHRI, J. (ORAL)

The appellant has questioned the validity of the trial Court order dated 6.3.1987 as well as the lower appellate Court order dated 12.12.1990.

The respondent was appointed as Field Assistant in the Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh. While he was working as such, there were allegations against him that he had sold fertilizers against cash payment after the enhancement of the rates and, thus, he has realised a sum of Rs.15,750/- on account of difference between the awarded rate and the current rate in connivance with one Sh. Rup Chand, Field Officer. In this regard, respondent was placed under suspension. Thereafter, disciplinary

proceedings were initiated against him, which were concluded in imposition of penalty of dismissal from service on 30.3.1981. Feeling aggrieved by the order of dismissal, he preferred an appeal before the Appellate Authority-Board. The appeal was also rejected on 6.6.1981. Thereafter, he filed a suit before the trial Court on 6.3.1987. The suit was decreed in favour of the respondent. The appellant preferred an appeal before the lower appellate Court. The lower appellate Court confirmed the order of the trial Court on 12.12.1990. Thus, the appellant is before this Court.

Learned counsel for the petitioner submitted that the respondent had misappropriated the Board money while selling the fertilizer at a higher rate and in not depositing the same with the Board and thereby the respondent has embezzled a sum of Rs.15,750/-, which is a serious allegation. The same has been proved in the disciplinary proceedings. The trial Court set-aside the order of dismissal and the lower appellate Court confirmed the order of the trial Court. The sole ground considered by the trial Court is the author of the dismissal order namely the Managing Director has no authority of law and without the jurisdiction passed the order against the respondent. Even though the respondent was appointed by the Administrative Committee, still the Managing Director has power to impose penalty of dismissal from service on the respondent for the reasons that the Administrator was appointed and he has delegated the powers to the Managing Director.

Consequently, the Appellate Authority being the Board confirmed the order of dismissal. It was submitted that even though the Managing Director has no powers. The Board has the every power to impose the penalty on its employee since the Appellate Authority and Board has confirmed the order of dismissal. There is no lacuna whatsoever insofar as the passing of dismissal order by the Managing Director. Therefore, the trial Court as well as the lower appellate Court erred in holding that the Managing Director has no powers.

Per contra, learned counsel for the respondent submitted that with regard to the status of the respondent with respective pay-scales attached to the post of field assistant, the competent authority to impose the penalty is the Administrative Committee and not the Managing Director. It was further contended that the Administrator has not been empowered to delegate the powers of the Administrative Committee. No regulations have been amended to the extent that Administrator has been empowered to sub-delegate the power of the Administrative Committee to the Managing Director. It was further contended that the Appellate Authority while considering the appeal only confirmed the penalty. Therefore, the contention of the appellant that Appellate Authority imposed the penalty in the present case do not arise. Hence, there is no error committed by the trial Court as well as the lower appellate Court. The appeal is liable to be rejected.

Heard counsel for the parties.

The crux of the issue is whether the Managing Director is competent to impose the penalty of dismissal on a Field Assistant post holder like respondent herein. Admittedly, power to impose major penalty on a Field Assistant is vested with the Administrative Committee. In the absence of the Administrative Committee, the powers should have been delegated by making an amendment to the Regulation to the Administrator. In the present case, in the absence of delegation of powers to Administrator to act as a Disciplinary Authority or sub-delegation of power is vested with the Administrator in order to sub-delegate the powers of Disciplinary Authority to the Managing Director is not forthcoming. Therefore, the Administrator cannot sub-delegate the powers of the Disciplinary Authority to the Managing Director, when it is vested with the Administrative Committee. Contention of the learned counsel for the appellant that in the absence of the Administrative Committee, the Administrator can exercise the powers of the Administrative Committee. Therefore, the Administrator has delegated the powers to the Managing Director. The Administrator can act as a Disciplinary Authority and the power of the Disciplinary Authority cannot be sub-delegated to the Managing Director. Such a power is not existing in favour of the Administrator. Hence, the order of dismissal passed by the Managing Director dated 30.3.1981 is without the authority of law and action or the Managing Director is void *ab-initio*. If the Disciplinary Authority's order itself is void *ab-initio*, the

consequential ratification by the Appellate Authority is a void order and is impermissible in the eye of law. Moreover, void order cannot be ratify by Appellate Authority. Since scope of Appellate Authority is limited to consideration of appeal. Therefore, one cannot draw inference that Appellate Authority has passed the penalty order.

In view of these facts and circumstances, the appeal stands dismissed.

August 10, 2016
amit rana

(P. B. BAJANTHRI)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No