

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

**CWP No.3817 of 2009
Date of decision: 25.10.2016**

The Dharsul Khurd Primary Agriculture Cooperative Society Limited

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vijay S. Kajla, Advocate
for the petitioner.

Mr. S.S. Mann, Sr. DAG, Haryana.

Mr. Aftab Singh, Advocate
for respondent No.3.

RAMESHWAR SINGH MALIK, J. (ORAL)

Petitioner-Society, feeling aggrieved against the order dated 13.08.2008 (Annexure P-4) passed by the Financial Commissioner and Principal Secretary to Govt. Haryana, Cooperation Department, whereby revision petition filed by the petitioner-Society was dismissed and the order dated 22.02.2007 (Annexure P-2) passed by Registrar, Cooperative Societies, Haryana, allowing the appeal of respondent No.3 was upheld, has approached this Court, by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Notice of motion was issued and in compliance thereof, written statement was filed on behalf of respondent No.3, he being the only contesting

respondent. Petitioner filed its replication. Thereafter, the writ petition was admitted for regular hearing vide order dated 25.05.2010 passed by this Court. That is how, this Court is seized of the matter.

Learned counsel for the petitioner-Society vehemently contended that there were serious allegations against respondent No.3. The matter was thoroughly inquired into by an Inquiry Committee and accordingly, inquiry report was submitted vide Annexure P-1. Thereafter, General Body Meeting of the petitioner-Society was convened. General Body being the supreme authority of the Society, appropriate action was taken by it against respondent No.3 on the basis of abovesaid inquiry report (Annexure P-1). In such a situation, any further inquiry was not called for and the impugned orders (Annexures P-2 and P-4), based on said subsequent inquiry report, were patently illegal orders and the same are liable to be set aside. He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for respondent No.3 submits that since members of the petitioner-Society were feeling aggrieved against respondent No.3, they were not required to become judges in their own cause, by constituting an Inquiry Committee comprising of members of the Society. Since the members of the Society, who were also members of the Inquiry Committee, were biased against respondent No.3, said inquiry report was the result of an action without jurisdiction. It was the Managing Committee of the petitioner-Society who was competent to take appropriate action for the alleged misconduct on the part of respondent No.3. General Body of the petitioner-Society was not the competent authority and any action taken by an incompetent authority would be an action without jurisdiction. He further submits that having been left with

no other option, respondent No.3 approached the competent authority of the department. Deputy Registrar, Cooperative Societies appointed the Inspector, Cooperative Societies, Fatehabad as Inquiry Officer who conducted the inquiry in accordance with law. After conclusion of the inquiry, respondent No.3 was found totally innocent, as the petitioner-Society could not substantiate any of the allegations levelled against respondent No.3. Under these circumstances, learned counsel for the respondent No.3 would contend that the impugned orders (Annexures P-2 and P-4) were the perfect orders, which deserve to be upheld and the writ petition is liable to be dismissed. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, none of the impugned orders have been found suffering from any patent illegality and the same deserve to be upheld. The writ petition is without any merit, which is liable to be dismissed, for the following more than one reasons.

It is a matter of record that as per the relevant provisions of law and byelaws of the petitioner-Society, it was the Managing Committee of the petitioner-Society, who was competent to take any disciplinary action against the employees of the petitioner-Society. However, in the present case, it was the General Body of the petitioner-Society, who passed the order against respondent No.3. Thus, the action taken by the General Body of the petitioner-Society was an action without jurisdiction. Another reason to say so was that decision of the

General Body was based on an inquiry conducted by members of the Society itself. Once the members of the Society were already biased against respondent No.3, the inquiry report submitted by an Inquiry Committee comprising of members of the petitioner-Society itself, would be of no consequence, because said inquiry report would cause manifest injustice against the delinquent employee, respondent No.3 herein. Such an action would also be running contrary to the basic principles of natural justice.

Under the circumstances of the case, Deputy Registrar, Cooperative Societies rightly appointed the Inspector, Cooperative Societies, Fatehabad as Inquiry Officer, at the instance of respondent No.3. Proper inquiry was conducted and finally the Inquiry Officer completely exonerated respondent No.3 from all the charges levelled against him. That was the appropriate stage for the petitioner-Society to substantiate its allegations against respondent No.3, however, it failed to do so. Having been left with no other option, respondent No.3 rightly approached Registrar, Cooperative Societies, Haryana by filing an appeal against the resolution dated 05.06.2004 passed by General Body of the petitioner-Society, whereby services of respondent No.3 were terminated. Registrar, Cooperative Societies, Haryana granted opportunity of being heard to both the parties, examined all the relevant aspects of the matter and recorded his cogent findings, before passing his impugned order dated 22.02.2007 (Annexure P-2), which have been found based on sound reasons.

The relevant operative part of the impugned order dated 22.02.2007 (Annexure P-2) passed by Registrar, Cooperative Societies, Haryana, which deserves to be noticed here, reads as under: -

“I have gone through the record of the case and considered the

contentions of both the counsels. The recovery work has done by the secretary of the society not by the salesman. The less fertilizer issued the members not related to the period of the appellant as he was entrusted that work in Nov. 2002. The appellant issued the fertilizer to the members as per directions of the secretary of the society. The secretary himself used unparliamentary language with the appellant. The secretary was already infransted to the appellant and when the appellant submitted leave application, the secretary did not allow the same. The respondent's counsel failed to produce any document with regard to absence of the appellant. The medical certificate for illness is available on record and the appellant was not absent intentionally. Enquiry was conducted by Inspector, Coop. Societies, Fatehabad, therein all the charges levelled against the appellant have not been proved. The services of the appellant are governed by the Services Rules applicable to the employees of this society. The managing committee of the society is competent to take the decision in regard to the services of its employees but in this case it is not known as to why the General Body has awarded the punishment to the appellant. The general body of the society has no power to take such decision. Therefore, the decision taken in the general body meeting held on 5.6.2004 is patently wrong vide which the services of the appellant have been terminated. Accordingly, the present appeal is accepted and the resolution dated 5.6.2004 passed in the general body meeting of the society is declared as invalid.”

Feeling aggrieved against the order passed by Registrar, Cooperative

Societies, Haryana, petitioner-Society filed its revision petition before the Financial Commissioner, Department of Cooperation vide Annexure P-3, which also came to be dismissed vide impugned order dated 13.08.2008 (Annexure P-4). The matter was reconsidered by the Financial Commissioner and since the order passed by Registrar, Cooperative Societies, Haryana was not found suffering from patent illegality or perversity, revision petition filed by the petitioner-Society was rightly dismissed and the operative part of the impugned order dated 13.08.2008 (Annexure P-4), reads as under: -

“I heard arguments of both the parties. The petitioner reiterated the contents of the petition. The respondent No.2 filed written argument. The main contention of the respondent No.2 are that as per Staff Service Rules only the Managing Committee has the power to take action against an employee of the Society under Rule 18 of the PCCS Staff Service Rules, 1992. Thus, resolution passed by the General Body of the Society vide which his services were terminated is against the rules and bye-laws of the Society. It is further argued that he has been exonerated by the Enquiry Officer appointed under the directions of the Deputy Registrar, Cooperative Societies, Hisar. Furthermore, he has been exonerated of all charges less than the chargesheet in the enquiry conducted by Development Officer of Cooperative Bank, Fatehabad. The respondent No.2 also referred the decision of Hon'ble High Court in CWP No.12397 of 2000 decided on 12.1.2001 on the basis of which Shri P.K. Chaudhary, IAS, the then Commissioner and Secretary, Cooperation Department has accepted the revision petition No.42

of 2002 vide order dated 13.10.2003. The Hon'ble High Court has held "that vide President who was a member of Managing Committee was appointed an Enquiry Officer. After he was appointed an Enquiry Officer he gave his report against the respondent No.3. He sat in the meeting where resolution for terminating the services of respondent No.3 was passed. Thus, the proceedings of meeting held by the society are vitiated." The facts of this case are similar to the facts of above said case. In this case also the services of respondent No.2 have been terminated upon the Enquiry Report of the Seven Members appointed as Enquiry Committee vide resolution dated 12.1.2004. Thus, the resolution passed by General Body dated 5.6.2004 vide which the services of the respondent No.2 were terminated stands vitiated being against the rules and settled law. Hence, I hereby dismiss this petition and upheld the order dated 22.2.2007 of Registrar, Cooperative Societies, Haryana."

During the course of hearing, when confronted with the cogent findings recorded by Registrar, Cooperative Societies, Haryana as well as Financial Commissioner in both the abovesaid impugned orders (Annexures P-2 and P-4), learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Although, he tried to justify the action of the petitioner-Society, contending that there were serious allegations against respondent No.3, yet he was unable to substantiate any of the allegations against respondent No.3 referring to any material available on the record.

In fact, in the circumstances of the present case, learned counsel for

the petitioner-Society was fully justified in not making any improvement in the case of the petitioner, because respondents No.1 and 2 have recorded concurrent findings of facts, while passing the impugned orders (Annexures P-2 and P-4). Further, no prejudice, of any kind whatsoever, has been pointed out, which might have been caused to the petitioner-Society, by passing the impugned orders (Annexures P-2 and P-4), which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders (Annexures P-2 and P-4) have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. The writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

25.10.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No