

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

**CWP No.14846 of 2015
Date of decision: 29.09.2016**

Sampuran Singh

..Petitioner

Versus

**Special Secretary Cooperation, Punjab
and others**

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. M.S. Bedi, Advocate
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab
for respondents No.1 to 3 -State.

None for respondent No.4.

Daya Chaudhary, J.

The prayer in the present writ petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for setting aside impugned order dated 03.03.2015 (Annexure P-7) passed by respondent No.1, order dated 07.03.2012 (Annexure P-5) passed by respondent No.2, whereby, the revision filed by the petitioner has been dismissed as well as order dated 14.03.2011 (Annexure P-4) passed by respondent No.3.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner was appointed as peon-cum-chowkidar with respondent No.4-Society and thereafter, he was promoted as Salesman in the society vide resolution dated 25.01.2006 (Annexure P-1). He was placed

under suspension for remaining absent on 02.01.2008 but he was on leave from 31.12.2007 to 08.01.2008, which was duly sanctioned. He was not given any charge sheet and no inquiry proceedings were initiated against him. Even no show cause notice was issued after placing him under suspension. He was terminated from service vide resolution dated 16.08.2008. Said order was conveyed to the petitioner subsequently and earlier he was not aware about the passing of that order. The order of termination was challenged by way of filing appeal under the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 (for short 'the Service Rules, 1997) before Deputy Registrar, Cooperative Societies, Ferozepur as the appeal was to be filed within a period of 60 days. The appeal was dismissed being time barred vide order dated 14.03.2011. Aggrieved by said order, the petitioner filed revision petition under Rule 15 (ii) of the Service Rules, 1997 before the Joint Registrar, Cooperative Societies, Ferozepur and the same was also dismissed on the same ground vide order dated 07.03.2012. Thereafter, again the petitioner filed revision petition under Section 69 of the Punjab Cooperative Societies Act, 1961 before the Special Secretary, Cooperation and the same was dismissed on 03.03.2015 (Annexure P-7). Orders of termination from service, dismissal of appeal as well as dismissal of revision petition are under challenge in the present writ petition.

Learned counsel for the petitioner submits that the work and conduct of the petitioner was satisfactory and no complaint was pending against him. Even he never remained absent and performed his duties honestly. The petitioner submitted an application for leave as he was having

some urgent work and sought leave from 31.12.2007 to 08.01.2008, which was duly received by the Committee Members. Learned counsel further submits that the petitioner was placed under suspension because of said leave whereas it was not a case of absence from duty. During the period of suspension, no suspension allowance was paid to him and he was always termed as peon-cum-chowkidar. The petitioner was promoted as Salesman and was discharging his duties for the said post. Learned counsel also submits that without issuing any charge sheet and without conducting any inquiry or even without issuing any show cause notice, the services of the petitioner were terminated. The order of termination came to the notice of the petitioner subsequently and he filed appeal within the period of limitation but the same was dismissed on the ground of delay whereas it was filed within the period of limitation from the date of knowledge of the impugned order of termination, which was passed in violation of principles of natural justice. Similarly, the revisional authority also upheld the same order and no reason whatsoever was mentioned. The appeal as well as the revision filed by the petitioner were dismissed on the ground of delay whereas it has not been mentioned as to when the same were filed and how many days delay was there. The impugned orders are totally non-speaking and have been passed without any application of mind. Learned counsel also submits that it has not come on record or has not been mentioned in the impugned orders that the order of termination was served upon the petitioner at the time of passing of the same whereas it came to the knowledge of the petitioner on 24.03.2009 as it was given by the Secretary of the Society and thereafter, the appeal was filed by him on 19.05.2009,

which was well within the limitation period i.e., 60 days from the date of receipt of certified copy of the termination order. At the end, learned counsel for the petitioner submits that the appellate authority as well as the revisional authorities have not taken into consideration the date of receipt of certified copy of the impugned order and filing of appeal as well as the revision.

Learned State counsel opposes the submissions made by learned counsel for the petitioner and submits that the orders were passed by the appellate authority as well as the revisional authority in accordance with law. The petitioner remained absent from duty and he was placed under suspension. Thereafter, the society vide resolution dated 17.01.2008, constituted a three members sub-committee to conduct an inquiry. Even the charge sheet was issued but the petitioner refused to receive the same. The registered notice was also sent to the petitioner and he was directed to appear before the sub-committee on 20.07.2008 but it was not accepted by him. Thereafter, a public notice was also published on 30.07.2008 in the Punjab Kesari and the petitioner was directed to appear before the Committee on 16.08.2008 but still he did not appear. Thereafter, the Committee decided to dismiss the petitioner from service. Learned State counsel also submits that there was delay of seven months in filing of the appeal whereas the period of limitation was 60 days.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as other documents available on the file.

The facts with regard to appointment of the petitioner, his

promotion as well as order of placing him under suspension are not disputed. Even it has not been disputed that the services of the petitioner were terminated by passing a resolution and no charge sheet was issued to him. The orders passed by the appellate authority as well as the revisional authority are also not disputed.

As per case of the petitioner, the impugned order of termination was not given to him and he came to know about the same subsequently. As per case of the petitioner, an application for leave was submitted by him on 31.12.2007 stating that he was having some urgent work and he requested for leave from 31.12.2007 to 08.01.2008, which was received by one Joginder Singh, Committee Member as is clear from Annexure P-2. The services of the petitioner were terminated vide resolution dated 16.08.2008 on the ground that he was negligent with regard to his duties and remained absent. A Sub-Committee was constituted for conducting inquiry. The charge sheet was also issued and order of suspension was passed, which was not accepted by the petitioner. As per impugned order, the Sub-Committee of the Society sent a registered notice to the petitioner to appear on 25.06.2008 but it came back due to wrong address and it could not be served. Thereafter, another registered notice was sent to the petitioner to appear before the Sub-Committee on 20.07.2008. Said notice was refused to be accepted by the petitioner as per report of the postman. Thereafter, a notice was published in Punjab Kesari on 30.07.2008 but still the petitioner did not come present. By considering these facts, the services of the petitioner were terminated, which was challenged in the appeal filed before the Deputy Registrar, Cooperative Societies, Ferozepur. As per grounds

mentioned in the appeal, the services of the petitioner were terminated on 16.08.2008. The attendance register was kept by the President of the Society himself and the petitioner was not allowed to mark his presence. The show cause notice was also sent at the wrong address. All the proceedings were concluded within one day and thereafter, resolution dated 16.08.2008 and 02.01.2008 were written by one employee with the same ink. It is also the case of the petitioner that neither any charge sheet was issued to him nor any notice was issued. The passing of order of termination from service was not in the knowledge of the petitioner as show cause notice was issued at the wrong address. Nowhere it has been mentioned that the petitioner was served with the show cause notice or passing of order. It was specifically mentioned in the grounds of the appeal that the petitioner was on leave from 31.12.2007 to 08.01.2008 and the application was duly received by one Joginder Singh. The petitioner was suspended vide resolution dated 02.01.2008 at his back. The petitioner came to know about the order of termination on 24.03.2009 and the appeal was filed within the period of 60 days. The appeal filed by the petitioner has been dismissed by the appellate authority simply on the ground that no discretion was there with him to condone the delay. Nothing was said on merits and even it has not been stated as to how the appeal was treated as time barred. The period of 60 days is to be considered from the date of receipt of copy of order of termination or from the date of knowledge of the order. The impugned order passed by the appellate authority is totally non-speaking and without discussing anything on merits including the reasons for not condoning the delay.

Similarly, the order passed by the revisional authority is also non-speaking as no reason has been mentioned. Neither any sufficient opportunity was granted to the petitioner nor the grounds mentioned in the appeal/revision were taken into consideration while passing the impugned orders.

As per requirement of principles of natural justice not only the reasons are necessary to be recorded but opportunity of hearing should also be given. The giving of reasons is one of the fundamentals of good administration. Failure to give reasons amounts to denial of justice as reasons are the live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Moreover, right to reason is an indispensable part of a sound judicial system. The rationale in passing of order with reasons is a paramount consideration as the party has a right to know as to on what grounds, the order has been passed. One of the salutary requirements of natural justice is to spell out the reasons, meaning thereby, a speaking order is required to be passed.

Even in respect of administrative orders Lord Denning, M.R. in ***Breen v. Amalgamated Engg. Union (1971 (1) All ER 1148)*** observed: (All ER p.1154h) 'The giving of reasons is one of the fundamentals of good administration.' In ***Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120 (NIRC)*** it was observed: 'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.' Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it

can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The 'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.

In ***Raj Kishore Jha vs. State of Bihar and Ors., 2003 (4) RCR (Criminal) 935***, Hon'ble the Supreme Court has held that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.

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The Division Bench of this Court in ***Hari Singh vs. State of Punjab and another, 2004(2) RSJ 693*** has observed that recording of reasons is a safeguard to observe rule of law, introduce clarity, check extraneous consideration and minimize arbitrariness.

The decision of the appellate authority is liable to be quashed on an additional ground, i.e., non-compliance of one of the facets of natural justice namely, recording of reasons by every authority entrusted with *quasi-judicial* functions and communications thereof to the affected party.

The requirement of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authorities chartered with the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimises arbitrariness in the decision making process. Another reason which makes it imperative for the *quasi-judicial* authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory appeal and revision but also by filing writ petition under Article 226 of the Constitution. Such decisions can also be challenged by way of appeal under Article 136 of the Constitution of India. The High Courts have the power to issue writ of certiorari to quash the orders passed by a *quasi judicial* authority/Tribunal. Likewise, in appeal the Apex Court can nullify such order/decision. This power of judicial review can be effectively exercised by the Superior Courts only if the order under challenge contains no reasons. If such order is cryptic and devoid of reasons, the Courts cannot effectively exercise the power of judicial review and we cannot countenance a situation in which the administrative authorities vested with the power to decide the rights of the parties may stultify the powers of the Court simply by not recording reasons in support of their decisions or by refraining from communicating such reasons to the affected person. This is the reason why

the Courts have insisted on rigorous compliance of the requirement of recording of reasons and communication thereof by every *quasi judicial* authority.

Same view was held in judgment of Hon'ble the Apex Court in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and others, 2009(4) SCC 240***. The relevant portion of said judgment is reproduced as under :-

"5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudhan Rao

(vide SCC para 20: JT para 19) and in M.P. Industries Ltd. v. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. vs. Union of India (vide SCC para 6 : AIR para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in S.N. Mukherjee case, it has been observed that : (SCC p. 613, para 36)

"36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

In the present case, the appellate authority as well as the revisional authority have neither considered the points raised by the petitioner in his appeal/revision nor assigned any reason for rejecting the same. Nothing has been said even on merits. Simply the appeal has been dismissed being time barred. Even no efforts have been made to mention as to when the appeal was filed and when order of termination from service was passed or whether the impugned order was in the knowledge of the petitioner whereas it has been stated in so many words that the impugned order was never conveyed to the petitioner.

Therefore, there is no escape from the conclusion that the impugned orders have been passed, which are violative of principles of natural justice.

For the reasons as stated above, the present writ petition is allowed and impugned orders dated 03.03.2015 (Annexure P-7), 07.03.2012 (Annexure P-5) and 14.03.2011 (Annexure P-4) are, hereby, quashed with a direction to the appellate authority to decide the appeal afresh by passing a speaking order within a period of three months from the date of receipt of certified copy of this order.

29.09.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No