

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

**CWP No.16873 of 2016 (O&M)
Date of Decision: 22.08.2016**

Om Parkash

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.K.Malik, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.

Petitioner who was serving as a Secretary in the Madlauda Cooperative Society Limited Madlauda has filed the instant petition assailing the order dated 30.06.2006 (Annexure P-7) passed by the Managing Director, The Panipat Central Cooperative Bank Limited, Panipat in terms of which he has been dismissed from service. Further challenge is to the orders dated 08.01.2009 (Annexure P-10) and 23.11.2012 (Annexure P-13) passed by the appellate and revisional authorities affirming the penalty of dismissal.

Mr. S.K.Malik, learned counsel appearing for the petitioner would argue that even though disciplinary proceedings had been initiated against the petitioner on the charge of embezzlement of funds yet the special audit report for the period in question reflects an amount which is at variance to the figure finding a mention in the two charge-sheets served upon the petitioner. As per counsel, this in itself casts a serious doubt on the very initiation of proceedings against the petitioner and an impugned

order of dismissal which has been passed upon culmination of such disciplinary proceedings cannot sustain.

It has also been vehemently contended that the action is discriminatory as there were findings of embezzlement even against Jaswant Singh, Clerk, Babu Ram, Salesman and Kiran Pal, Peon and which had been duly proved in the inquiry but it is only the petitioner who has been singled out for such harsh treatment. Primary contention raised by counsel is that the petitioner is the victim of a conspiracy and has been made a scapegoat.

Counsel for the petitioner has been heard at length.

Pleadings on record indicate that the order of dismissal has been passed in pursuance to a regular inquiry having been concluded in relation to two separate charge-sheets dated 04.03.2005 and 01.06.2005. The specific Articles of charge in these two charge-sheets were as regards embezzlement of funds of the Madlauda Cooperative Society, misuse of powers as also dereliction of duties. Findings having been returned against the petitioner whereby he was found guilty of the charges levelled, inquiry report was supplied and a show cause notice was also served in which the major penalty of dismissal from service was contemplated. Petitioner submitted a response to the show cause notice and the matter was thereafter placed before the Board of Directors of the Respondent Bank in its meeting held on 31.05.2006. An opportunity of personal hearing was also given. A unanimous decision was taken by the Board of Directors to dismiss the petitioner from service. It is towards implementation of such decision that the impugned order of dismissal dated 30.06.2006 at Annexure P-7 has been passed. The appeal preferred by the petitioner has been considered by the Registrar Cooperative Societies, Haryana and the same has been dismissed

vide order dated 08.01.2009 at Annexure P-10 with the observations that the inquiry conducted against the petitioner was in consonance with the principles of natural justice and after having associated the petitioner at each and every stage. Similar view has been taken by the Additional Chief Secretary to Government of Haryana, Department of Cooperation while passing the order dated 23.11.2012 (Annexure P-13) and rejecting the revision petition.

The scope of interference in exercise of powers under Article 226 of the Constitution of India by this Court and under judicial review would be extremely limited. It is by now well settled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review of this Court may certainly be invoked to ensure that the petitioner has been granted due opportunity in accordance with law during the course of disciplinary proceedings but it cannot extend to ensure that the conclusion which the competent authority reaches is necessarily correct in the eyes of the Court. When an inquiry is conducted and serious charges of misconduct in the nature of embezzlement as also dereliction of duty are proved the role of this Court would be confined to ensure whether the inquiry was held by a competent authority or whether rules of natural justice are complied with. The findings returned against the delinquent must be based on some evidence. This Court otherwise cannot act as a Court of appeal and be called upon to re-appreciate or reappraise the evidence led. Reference with regard to such settled position of law may be made to the decision of the ***Apex Court in B.C.Chaturvedi Vs. Union of India and others 1995 S.C.C. (6) 749.***

Counsel for the petitioner during the course of hearing has not

pointed out any infirmity or irregularity as regards the inquiry proceedings conducted against the petitioner as also the findings recorded. Rather in the response to the show cause notice served upon the petitioner contemplating the imposition of major penalty of dismissal, the petitioner virtually admitted the charge of embezzlement by stating in the reply appended at Annexure P-6 with regard to a certain cash amount the entry had not been made in the cash book and which was “***an inadvertent mistake and can be corrected at any time.***”

The petitioner while serving as the Secretary of the Society concerned was holding a position of trust. Public funds were involved. In such matters and wherein a specific Article of charge of embezzlement stands proved in a regular inquiry, there would be no scope for leniency. In taking such view, I would draw support from the following observations made by the Hon'ble Supreme Court of India in ***Regional Manager, U.P.S.R.T.C. Etawah and others Vs. Hoti Lal, 2003 (1) S.C.T. 941:***

“If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned single Judge upholding order of dismissal.”

Merely for the reason that certain other officials of the Society were also involved in embezzlement and have not been proceeded against as

has been suggested by learned counsel would not absolve the petitioner of his misconduct and he as such has to face the consequences. Even the submission as regards there being a variance in the quantum of embezzlement as reflected in the charge-sheets served upon the petitioner on the one hand and the special audit report on the other would be of no consequence. What is material is that a charge of embezzlement stands proved and by following due procedure in accordance with law.

No interference in the matter is called for.

Petition is dismissed.

22.08.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No