

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5049 of 2013 (O&M)
Date of decision : August 10, 2016

Prem Devi

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.K. Yadav, Advocate for
Mr. R.D. Yadav, Advocate for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Arun Yadav, Advocate for respondent No.3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Late Sh. Bula Ram, husband of the petitioner was working as a Driver in the Rewari Cooperative Marketing Society Ltd., Rewari-respondent No.3 (in short 'respondent-Society'). On 02.03.2009, Bula Ram died in harness leaving behind the petitioner along with four minor children. On 17.03.2009, the petitioner approached respondent No.3 for grant of financial assistance and also sent representations to respondent Nos.1 and 2 regarding her grievance. However, respondent-Society passed Resolution No.5 (Annexure P-2), stating that the request will be considered when the financial condition of the respondent-Society will become good and the then

financial assistance shall be given as per rules. The petitioner preferred CWP No.14634 of 2011 and this Court vide order dated 11.08.2011 directed the respondent-Society to take a final decision on the legal notice of the petitioner within 90 days, in accordance with law. Accordingly, the respondent-Society passed an order dated 02.11.2011 (Annexure P-4), stating that the Haryana Compassionate Assistance to the dependents of deceased Government Employee Rules, 2006 (in short 'the Rules 2006') are not applicable to the petitioner. Therefore, the claim of the petitioner was denied.

In the written statement filed on behalf of respondent No.2, similar stand has been taken as taken in the impugned order dated 02.11.2011 (Annexure (P-4). It is stated that the services of the husband of the petitioner were governed by the Haryana State Supply and Marketing Cooperative Service (Common Cadre), Rule 1988, not by the Rules applicable to the Government Employees. He was getting the pay as per Rules applicable to the respondent-Society. Therefore, the petitioner is not entitled to the claim of ex-gratia assistance, in terms of the Rules 2006.

I have heard learned counsel for the parties and have also carefully gone through the case file.

So far as the Rules are concerned, it comes out that the respondent-Society itself had passed its Resolution dated 22.02.2011, whereby it was decided that the financial condition of the respondent-Society was not good at that time and that whenever it will become better, then the Board shall consider the request of the petitioner and financial assistance shall be given as per rules. The decision was taken to provide

financial assistance to the petitioner on account of death of her husband.

The Rules of 2006 were notified on 01.08.2006, wherein there is a provision of granting financial assistance to the legal heirs of the deceased-employee.

The plea of the respondent-Society is that these Rules are not applicable to the Society.

The same stand is taken in the impugned order dated 02.11.2011 (Annexure P-4). A letter dated 07.03.2007 (Annexure P-5) from the Registrar Cooperative Societies, Haryana shows that the said Notification regarding the ex-gratia financial assistance on the compassionate ground was made applicable to the respondent-Society and a direction was issued that ex-gratia financial assistance be provided on compassionate ground to the family of the deceased-official. It was also made clear that in terms of the Policy of the Government in the year 2003, there is provision to pay ₹2,50,000/- and as per Policy in the year 2006, there is provision to pay ₹5,00,000/- and the said instructions of the Registrar, Co-operative Societies, Haryana are applicable to all the Societies. Accordingly, the petitioner is entitled to ex-gratia financial assistance amounting to ₹5,00,000/-, in terms of the Rules 2006.

Learned counsel for the respondent-Society has vehemently argued that the Society is not a State within the meaning of Article 12 of the Constitution of India. Therefore, writ does not lie.

Learned counsel for the respondent-Society has placed reliance on the authorities of this Court delivered in cases of ***“Ajmer Singh v The Registrar, Co-operative Societies, Punjab, Chandigarh and others”, 1980***

(3) *SLR 347* and “*Jai Singh v Haryana State Cooperative Apex Bank Limited and another*”, 2014(4) PLR 280.

On the other hand, learned counsel for the petitioner has produced the authority of Hon'ble the Apex Court delivered in case of “*U.P. State Co-operative Land Development Bank Ltd. v Chandra Bhan Dubey*”, 1999(1) Apex Court Journal 190, wherein Hon'ble the Apex Court examined the matter as to whether the writ can be issued under Article 226 of the Constitution of India to the State Co-operative Land Development Bank Ltd. and observed as under:

“ In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution

also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High

Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article 226.

We, therefore, hold that appellant is an authority controlled by the State Government and the service condition of the employees of the appellant particularly with regard to disciplinary proceedings against them are statutory in nature and thus writ petition was maintainable against the appellant. To this extent, we agree with the High Court. However, disciplinary proceedings were held against the respondents in accordance with law with due observance of the rules of natural justice. The judgment of the High Court is, therefore, not correct to that extent."

Similarly, in case of ***Supriyo Basu and others v West Bengal Housing Board and others***", 2015 AIR (SCW) 5223, Hon'ble the Apex Court held that writ petition is maintainable only if it is established that a mandatory statutory provision of a statute has been violated. Mere fact that the Society is governed by statute is not enough.

This Court in case of ***"Raj Narayan Yadav v State of Haryana"***, 2008(5)SLR 492, in the similar circumstances issued a writ against the Cooperative Sugar Mills Limited, holding it is maintainable.

In the present case also, the respondent-Society is controlled by the Registrar of Co-operative Societies, Haryana. It has its own Rules and the Rules are being violated while denying the compassionate financial assistance to the family of deceased-employee. Therefore, this Court has got the jurisdiction to issue a writ to quash the impugned order dated 02.11.2011 (Annexure P-4) and issue a writ of mandamus directing the respondent-Society to provide financial assistance under the Rules 2006.

In view of the foregoing discussion, the present petition is allowed and the respondent-Society is directed to provide financial assistance to the petitioner as per the Rules 2006 (Annexure P-3) within three months from the date of receipt of certified copy of this order along with interest @ 9% per annum starting from three months after the death of the deceased-employee i.e. 02.03.2009 till its payment.

As such, the present petition is allowed.

(KULDIP SINGH)
JUDGE

August 10, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes