IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 30.03.2016

CWP No.4662 of 2016

Khushhal Singh ...Petitioner

Vs.

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S.Boparai, Advocate, for the petitioner.

Mr. Rahul Sharma, Advocate, for respondent No.4.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The petitioner has approached this Court facing retirement on 31.03.2016. He claims that he has two more years to serve for reasons below. Briefly stated, the petitioner was appointed as a Seasonal Clerk in the Morinda Cooperative Sugar Mills Ltd. (for short 'the Mills') – respondent No.4. His appointment was converted to permanency and the Mills designated him as a Cane Surveyor. The petitioner has approached this Court for a declaration that he has a right to serve till 60 years as his post falls in Group-D to which group the extra benefit is given. He has been retired by an order in writing dated 02.03.2016 (Annex P-7) informing him that he would stand retired at the end of present March.

The petitioner has impugned this order on various grounds taken in the petition, but it would be not necessary to go into the validity of the order or to define whether the petitioner has a right to serve until 60 years for the reason that respondent No.4 – Mills has filed the written statement taking a preliminary objection that a writ is not maintainable against a Sugar Mills since it neither qualifies as "State" or "other authority" under Articles 12 and 226 of our Constitution. No relief has been sought against respondents No.1 to 3 i.e. State of Punjab; the Registrar, Cooperative Societies, Punjab and the Punjab State Federation of Cooperative Sugar Mills Limited, as the petitioner is not their employee. On merits, it is stated that the petitioner has wrongly projected himself as a Group-D employee. Admittedly, the petitioner is working on the post of Cane Surveyor which is a semi-skilled post. It is only un-skilled workers, who serve in the unrevised pay scale of Rs.2700-4250 or less are considered as holders of Group-D posts. The petitioner was working on a semi-skilled post and enjoying the pay scale of Rs.2880-4530, which cannot be classified as working on a Group-D post. Respondent No.4 – Mills rely on a letter dated 26.02.2009 (Annex R-4/2/1) circulated by the Punjab State Federation of Cooperative Sugar Mills Ltd. to rebut the prayer of the petitioner on merits. However, without expressing any opinion on the merits of the case, I would uphold the preliminary objection that a writ petition is not maintainable against respondent No.4 – Mills for reasons to follow.

In this uphill task and at this precarious stage, Mr. Boparai argues vehemently on the point of maintainability of the petition that it lies in this Court by relying on a selection of judgments of the Supreme Court which include <u>Ajay Hasia & others Vs. Khalid Mujib Sehravardi & others</u>, (1981) 1 SCC 722; <u>U.P.State Cooperative Land Development Bank Ltd. vs. Chandra Bhan Dubey & others</u>, (1999) 1 SCC 741; <u>Gayatri De Vs. Mousumi Co-</u>

operative Housing Society Ltd. & others, JT 2004 (5) SC 554 and S.S.Rana Vs. Registrar, Cooperative Societies & another, JT 2008 (5) SC 186 as well as Single Bench judgment of this Court in CWP No.255 of 2006 titled 'Smt. Pavitar Kaur & another Vs. State of Punjab' decided on 07.07.2010, to contend that the Mills qualify as "any person or authority" or "other authorities" or "instrumentalities" contemplated by Article 12 and 226 of the Constitution in the matter of enforcement of fundamental rights through special remedies provided by Articles 32 and 226 of the Constitution.

Ajay Hasia's case is not a case involving employment or a service matter. The Supreme Court dealt with admissions to Engineering Colleges in the States of Jammu & Kashmir. The factual matrix of which ruling should not detain us in this case. In education matters involving fundamental rights of students, the view taken is different and measured on postulates in Part III of the Constitution involving fundamental rights or those which are elevated to that status by judicial law making. In those cases interference by the writ Court becomes a handy tool to prevent continued unreasonable discrimination or violation of the cherished equality principles in Part III. The Full Bench of this Court in Miss Ravneet Kaur Vs. The Christian Medical College, Ludhiana & others, AIR 1998 P&H 1 dealt with the question answered posed thus: "Is a writ petition maintainable against an un-aided private Medical College which is affiliated to a University?" The question was answered in the affirmative. However, admissions to medical seats are different thing from a case involving conditions of service of workers governed by rules or by contracts of employment. In the present case, fundamental rights are not involved and a dispute itself has been raised to the maintainability of a writ petition against the respondent Sugar Mills. Thus, the said case is of no help to Mr. Boparai.

The case in *Gayatri De* involved the issue of transfer and allotment of flats in a multi-storied building. The question was; whether the right of ownership of a flat is inheritable or transferable right and whether the writ was maintainable against the House Building Society. The rights of ownership were involved in a housing matter, which involves public interest. In that case, flat in question was allotted to the father of the appellant who died as a consequence thereof the heirs of the deceased became entitled as a result of death to the said flat with proportionate interest in the land. The Supreme Court examined Sections 80(c) and 87 of the West Bengal Co-operative Societies Act, 1983 to be of help in favour of the appellant and that it was held the writ was maintainable in the High Court of Calcutta challenging the order of cancellation issued by the Special Officer of the society. I fail to see any parallel in that case with this case. There was an element of public law warranting remedy in the form of mandamus. It was in answer to this question that the Supreme Court held that the writ was maintainable, as there was public law element involved and merely because the opposition was a society, it did not detract from the remedy of mandamus. A declaration was accordingly issued inasmuch as the appellant had a right to succeed to the estate of the deceased and in the apartment of the Society by devolution of interest. The test applied was of pervasive control exercised by the State Government agencies over the functioning of the Society.

In *Chandra Bhan Dubey's case*, the Supreme Court dealt with a case of a dismissed employee challenging the order of dismissal by the Bank. The Court found that the Bank is controlled by the State Government and service conditions of its employees and, therefore, interference by certiorari and mandamus was available. It may, however, be noted that the Supreme Court left the question open as to whether judicial review was limited to the field of public law and does not cover that of private law in the background that prima facie Article 226 does not make a divide between elements of public law and private law domain. The power conferred upon the High Court under Article 226 is so vast, but is subject to the guidelines laid down by the Supreme Court and self-imposed restraints, but those guidelines cannot be mandatory in all circumstances.

The next in line is *S.S.Rana's case*, wherein the Supreme Court considered the provisions of the Himachal Pradesh Cooperative Societies Act, 1968 in relation to the statutes in the Kangra Central Cooperative Bank Employees (Terms of Employment and Working Conditions) Rules, 1980. A cooperative society was running a Bank, which would qualify as 'State' within the meaning of Article 12 of the Constitution and whether writ lies against such Society in a case of termination of service for misconduct. The writ was filed challenging the termination. The High Court held that the Cooperative Society was not a 'State', therefore, the writ was not maintainable. It was not in dispute that the Society had not been constituted under an Act. Its functions like any other Cooperative Society were mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the society. Membership, acquisition of shares and all other matters were governed by the bye-laws framed under the Act. The terms and conditions of employment were governed by the rules of the Society. Nothing was shown to the Court that State has direct or indirect control over the Society, which is deep and pervasive. The State further was not a majority shareholder. The State had the power only to nominate one Director on the Board. The Supreme Court agreed with the opinion of the High Court and dismissed the appeal.

Pavitar Kaur was a case involving issues arising out of a Voluntary Retirement Scheme floated by the Punjab State Cooperative Sugar Mills Limited (Sugarfed). Though maintainability of the petition was not in issue in the case, but there is sufficient authority to indicate that Sugarfed is amenable to writ jurisdiction. This case is also of no help to the petitioner.

Per contra and closer home is the decision of the Supreme Court relied upon by Mr. Rahul Sharma reported as cause title General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, UP Vs. Satrughan Nishad & others, (2003) 8 SCC 639. In this case, the Supreme Court held that the Mill is engaged in the manufacture and sale of sugar, which would not involve any public function and against the Mills the writ jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked. The Court while reaching the conclusion considered its earlier decision in Anandi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jaya Vs V.R. Rudani & Ors, AIR 1989 SC 1607 etc.

Mr. Sharma has also brought to the notice of this Court a judgment of the learned Single Bench rendered in CWP No.14426 of 2012 titled 'Om Parkash Vs. The State of Punjab & others' on 10.09.2012, which is a decision on merits of the issue arising in this petition and whether the case of Om Parkash fell in the term Group-D employee and making him entitled to continue in service till the age of 60 years. The petition was dismissed. But this Court would make no comment on the judgment since I am of the considered view that a writ in not maintainable against the Mills and to reach the conclusion the ratio in *Kisan Sahkari Chini Mills* case is the case in point. The respondent Mills are not involved in performance of public duty. If the rights are purely of a private character no mandamus can issue. The activity should be engaged in obligations akin to public duties or State functions to bring it within the sphere of Article 226 of our Constitution. The body to become amenable to writ should be financially, functionally and administratively dominated by or under the control of the Government; *see* Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & others (2002) 5 SCC 111. I find none of the essential ingredients present in this case clearly demonstrated. If the writ petition is not maintainable then it has to be dismissed without any further discussion on facts. If the petition has to be dismissed for want of maintainability, then the petitioner may avail his remedy elsewhere when the right to sue subsists but remedy lies in some other forum for judicial control of administrative acts complained of. Therefore, the merits of the case have not been dealt with in this case after coming to the conclusion that the writ must fail on the point of maintainability. No material has been placed on the record from where the Court may take a different view applying the recognized tests say in *V.R. Rudani* (supra) or more expansively in Zee Telefilms Ltd. & another Vs. Union of India & others (2005) 4 SCC 649.

For the above reasons, I would dismiss the petition as not maintainable by leaving issues on merits open to debate before the appropriate Forum where remedy is sought, as advised.

30.03.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**