

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 448 of 2003**

Rambabu Choudhary, Son of Shri Gopikrishna Choudhary, aged about 53 years, employee (Sales Promotion Orgnaizer) of Raipur Dugdha Sangh, Sahkari Samiti, Works Urla PO. B.M.Y. (Charoda) Distt. Durg (Chhattisgarh)

---- **Petitioner****Versus**

1. The State of C.G. through : Secretary, Co-operative Society, DKS Bhawan, Raipur
2. Chairman, Dugdha Sangh, Raipur (Chhattisgarh)
3. Assistant Manager, Marketing Raipur Dugdha Sangh, Raipur (CG)

---- **Respondents****And****WP No. 194 Of 2003**

Indrajeet Pathak, aged about 56 years, son of Shri Mohanlal Pathak, residence of village – MIC – 2, Dugdh Sheet Kendra, Koni, Bilaspur (CG)

---- **Petitioner****Vs**

1. State Of Chhattisgarh Through : Secretary, Co-operative Society, DKS Bhawan, Raipur
2. Chairman, Dugdha Sangh, Raipur (Chhattisgarh)
3. Assistant Manager, Marketing Raipur Dugdha Sangh, Raipur (CG)
4. Superintendent (Marketing), Raipur Dugdh Sangh, Raipur (CG)

---- **Respondents****And****WP No. 708 Of 2003**

Dharampal Singh Chouhan aged about 55 years, son of Late Shri Sewa Singh, Resident of LP / 2, Padum Nagar, Bhilai, Distt. - Durg (Chhattisgarh)

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through : Secretary, Co-operative Society, DKS Bhawan, Raipur
2. Chairman, Dugdha Sangh, Sahkari Samiti Maryadit, Raipur (Chhattisgarh)
3. General Manager (Marketing), Raipur Dugdh Sangh Sahkari Samiti Maryadit, Raipur (CG)

---- Respondents

And

WP No. 2170 Of 2003

Gendraj Singh Parihar, aged about 55 years, son of Shri Rishi Raj Singh Parihar, resident of A.K.Shah, 23 / 1 Matrikunj, Rishali, Bhilai, Distt. - Durg (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through : Secretary, Co-operative Society, DKS Bhawan, Raipur
2. Chairman, Dugdha Sangh, Raipur (Chhattisgarh)
3. Assistant Manager, Marketing Raipur Dugdha Sangh, Raipur (CG)
4. Superintendent (Marketing), Raipur Dugdh Sangh, Raipur (CG)

---- Respondents

And

WP No. 982 Of 2002

1. Habeeb Khan, aged about 52 years, S/o Shri Waris Khan.
2. R.B.Saxena, aged about 52 years, S/o Late G.L.Saxena
3. Jahan Singh Khuswaha, aged about 48 years S/o Shri Walthu Singh
4. K.B.Singh Parihar, aged about 52 years S/o Shri Rameshwar Singh
5. P.K.Khare, aged about 56 yrs. S/o Shri Ganga Prasad Khare

All employees (Sales Promotion Organize) of Raipur Dugdha Sangh Sahkari Samiti Works Urla, P.O. B.M.Y. (Charoda) Distt. - Durg.

---- Petitioner

Vs

1. State Of Chhattisgarh through Secretary, Co-operative Society, Mantralaya, DKS Bhawan, Raipur (CG)
2. Chairman, Dugdha Sangh, Raipur (CG)
3. Assistant Manager, Marketing, Raipur Dugdha Sangh, Raipur (CG)

---- Respondents

Shri Kishore Bhaduri and Shri Chandresh Shrivastava, counsel for the petitioner/s.
Shri S.P.Kale, Dy.A.G. for the State.
Shri N.K.Vyas, counsel for the respondent / Federation.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

23/10/2017

The aforesaid petitions are being disposed off by this common order as number of issues arising in these cases are based on similar facts and similar allegations.

2. All the petitioners in the aforesaid petitions admittedly were engaged as Sales Promotion Organizers with the respondent / Cooperative Dairy Federation, a State Level Apex Society. The petitioners in all these petitions assailed legality and validity of recovery notices issued to them, by which, the respondents have directed deductions to be made from their salary on the allegations that the petitioners failed to make recovery of sale proceeds of milk from the booths under their supervision.

3. Return has been filed by the Federation in WP No.708/2003 and WP No.982/2002. In other cases, no return has been filed by the Federation. Reply, however, has been filed by the State in all the cases.

4. The petitioners were engaged as Sales Promotion Organizer in the services of the respondent / Cooperative Milk Federation. In all the petitions, the petitioners have pleaded that they were engaged to work towards promotion of sale of milk from the

booths of the Cooperative Federation and they were not engaged as Recovery Officer. Further submission is that it was none of their duty to recover the sale proceeds collected at the booths under their respective supervision. Therefore, sale proceeds, if any collected at any individual milk booths have not been deposited with the Federation Office, petitioners cannot be held responsible. The other important submission of learned counsel for the petitioner is that the recovery orders have been issued without affording opportunity of hearing and therefore, on this count, all the recovery orders are liable to be set aside being violative of principles of natural justice. According to learned counsel for the petitioner, in view of the authoritative pronouncement of the Supreme Court in the case of **Madhya Pradesh State Cooperative Dairy Federation Limited and anr. v. Rajnesh Kumar Jamindar and ors. 2009 (15) SCC 221**, the respondent / Milk Cooperative Federation is a State under Article 12 of the Constitution of India and amenable to writ jurisdiction.

5. The main contesting party, the Milk Cooperative Federation represented by their counsel has come out with a case by filing return in WP No.708/2003 (Dharampal Singh Chouhan v. State of Chhattisgarh and ors.) and W.P.No.982/2002 (Habeeb Khan and ors. v. State of Chhattisgarh and ors.) that the employees were engaged not only for promoting sale of milk in the area of their operation but also to ensure recovery of sale proceeds at different milk booths in their supervision and deposit in the Federation Office. According to learned counsel for the respondent / Federation, such letters requiring these petitioners to work as Recovery Officer in addition to sale proceeds were issued as and when the booth agent was appointed in the booth within their jurisdiction. Moreover, it is submitted that these Sales Promotion Organizers were being paid allowances not only to promote sale but also to act as Recovery Officers. To support the submission, documents have been placed on record to show that allowances were taken by the employees towards performing duties of Recovery Officer.

6. Learned State counsel would submit that the petitioners are aggrieved by the action of the Milk Federation and not by the State.

7. Whether the respondent / Federation is the “State” or not, is no longer *res integra* in view of the judgment of the Supreme Court in the case of Madhya Pradesh State Cooperative Dairy Federation Ltd (supra). In this case, overruling earlier Full Bench decision of the Madhya Pradesh High Court in the case of **Dinesh Kumar Sharma v. M.P. Dugdh Mahasangh Sahakari Maryadit, 1993 MPLJ 786**, it has been held -

“32. We have noticed the history of the Federation. It was a part of the Department of the Government. It not only carries on commercial activities, it works for achieving the better economic development of a section of the people. It seeks to achieve the principles laid down in Article 47 of the Constitution of India, viz. nutritional value and health. It undertakes training and research work. Guidelines issued by it are binding on the societies. It monitors the functioning of the societies under it. It is an apex body. We, therefore, are of the opinion that the appellant herein would come within the purview of the definition of “State” as contained in Article 12 of the Constitution of India.”

Therefore, respondent / Milk Federation is clearly amenable to writ jurisdiction. In all the petitions, averments have been made that petitioners were engaged as Sales Promotion Organizers. Respondents have chosen to file reply only in two cases i.e. in WP No.708/2003 and WP No.982/2002 wherein they sought to dispute the assertion by stating in their return that those petitioners were engaged to work not only as Sales Promotion Organizer but it was also their duty to make recovery of the sale proceeds collected at the booths under their supervision. In the case of Dharampal Singh Chouhan and Habeeb Khan and ors., return has been filed. In support of the assertion that the petitioners therein were also engaged as recovery agents, the respondent / Federation has relied upon the bill statement for the month of April, 1999

submitted by the petitioner – Dharampal Singh Chouhan, in which, he, under his own hand writing, has recorded that he discharged the duty of collecting balance amount payable at Marg No.1 and 2 depots along with inspection. In addition, reliance has also been placed on proforma of letter of appointment of booth agents which contains a proforma of endorsement (Annexure R-2/4) that the concerned Sale Supervisor would be responsible to collect cash sale proceeds from the Centre.

In the case of petitioners – Habeeb Khan, R.B.Saxena, Jahan Singh, K.B.Singh and P.K.Khare, with similar pleadings and rebuttal, the Federation has again placed reliance upon similar proforma of letter of appointment of booth agents with a proforma of endorsement for Sales Promotion Organizer. Except this, no other material has been placed on record.

Neither the petitioner nor the respondents have come out with emphatic pleadings as to whether the petitioners were engaged by order in writing or orally. No document of appointment order or order of engagement is placed on record by any of the parties. Therefore, in view of the aforesaid conspectus of disputed facts, it is not known whether the petitioners were engagement on oral basis or under an order of engagement in writing, much less, what was the terms and conditions of service. This disputed fact cannot be gone into in the writ petition. It will essentially depend upon oral evidence. This Court, at this stage, would notice that petitioners otherwise had a remedy of raising their grievance under Section 55 (2) of the Cooperative Societies Act but the petitioners chose to file writ petition presumably because the petitioners thought that it was a case of violation of principles of natural justice.

8. Be that as it may, the issue whether the petitioners' duty was not only to act as Sales Promotion Organizer but also to additionally perform the duties of Recovery Officer, cannot be decided in these petitions.

9. Even assuming that the petitioners were under a duty to collect sale proceeds in the booth and remit the same in the office of the Federation, the manner in which recovery proceedings have been drawn against the petitioner cannot be said to be just and fair and consistent with the principles of natural justice.

10. The petitioners are low paid employees. As far as petitioners - Rambabu Choudhary, Indrajeet Pathak and Gend Raj Singh Parihar are concerned, there is no return filed by the respondent / Federation to rebut emphatic pleadings made in the petitions that the recovery orders were issued against those petitioners without affording any opportunity of hearing. In the absence of rebuttal of fact by counter affidavit, the pleadings made in the petition only by these three petitioners namely Rambabu Choudhary, Indrajeet Pathak and Gend Raj Singh Parihar, it has to be held that recovery orders did not precede any opportunity of hearing to show cause against such recovery order.

11. In so far as the case of Dharampal Singh Chouhan is concerned, the documents filed by the respondents show that number of times, letters were issued to this petitioner to ensure recovery. The respondents have placed on record a notice dated 09/05/2002 issued to the petitioner - Dharampal Singh Chouhan requiring him to submit his explanation as to why the amount of Rs.41,080.25p. allegedly not deposited in the accounts of the Federation, be not recovered from him.

Curiously enough, this notice requires the petitioner to inform as to from whom this amount could be recovered if it is not recoverable from the petitioner. The earlier communication dated 16/04/2002 placed on record shows that the petitioner had submitted before the authorities that the amount of Rs.35,336/- relates to recovery for the period prior to petitioner taking charge but that was not found satisfactory. The respondents have also placed on record another notice dated 17/07/2002 ordering recovery against the petitioner for a total amount of Rs.72261.05p. This notice shows

that vide various letters issued to the petitioner, he was asked to improve the records but as the petitioner failed to effect recovery, notice of recovery of Rs.72261.05p is being issued to him. It is this notice which is under challenge.

From the conspectus of the aforesaid facts floating on the surface of the case, it is clear that the petitioner was given various charges and finally a show cause notice was given to the petitioner proposing a recovery of Rs. 41,080.25p. A communication dated 08/04/2002 referred to above would further show that though against the petitioner i.e. Dharampal Singh Chouhan, when notice was issued, he had substantial defence that out of total amount of Rs.41,080.25p allegedly recoverable from him, Rs.35,336/- relates to the period prior to his taking charge which the respondents did not find satisfactory. This has also not been clearly stated in the impugned notice as to in what manner, the petitioner was found responsible for loss of Rs.41,080.25p. In any case, the impugned notice seeks to recover Rs.72,261.05p for which, no show cause notice was issued to the petitioner. Therefore, it appears that without making proper verification and without affording proper opportunity of hearing, huge amount of recovery has been ordered against the petitioner also. As far as the petitioners – Habib Khan and others are concerned, there is nothing on record to show that any show cause notice records of their case, proof of any show cause notice preceded against those employees. Therefore, their case also stand on the same footings as that of Rambabu Choudhary, Indrajeet Pathak and Gend Raj Singh Parihar.

12. As an upshot of discussion, I have to hold that the recovery notice issued to the petitioners in the aforesaid cases suffers from violation of principles of natural justice. Neither proper enquiry was made nor petitioners were heard before issuance of impugned notice. None of the parties before the Court have come out with a case that the petitioners were given any prior notice under the statutory rule of disciplinary action under which recovery could be one of the penalty. Even in such a case, the

constitutional mandate under Article 14 of the Constitution of India is required to be followed. In the facts and circumstances of the case which has been discussed, I am disposed off to think that the petitioners were not afforded proper opportunity of hearing.

13. In the result, the recovery orders are quashed. It would, however, be open for the respondents to give proper notice affording opportunity of hearing and then pass appropriate orders in individual cases. It has to be noticed that under the interim orders, petitioners were protected in the manner that recovery of 50% shall not be made.

If any recovery has been made as directed above, the same shall be refunded to the petitioners.

14. The petitions are accordingly allowed. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge