

CWP No.4199 of 1996

#1# Manoj Kumar
2017.03.08 16:33
I attest to the accuracy and
integrity of this document

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.4199 of 1996

Date of decision: 03.03.2017

Harjit Singh

....Petitioner

Vs.

Joint Secretary Cooperation (Appeals)

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mrs. Abha Rathore, Advocate for the petitioner.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Gurjot Grewal, Advocate for the respondents.

Jaswant Singh, J

1. Petitioner-Harjit Singh had filed the present writ petition challenging the order dated 25.5.1995 (**P.8**) passed by respondent No.1-Joint Secretary (Appeals) thereby setting aside the order dated 28.10.1994 (**P.6**) as well as order dated 04.11.1993 (**P.3**) passed by the Joint Registrar and Deputy Registrar, Cooperative Societies, Punjab vide which the order dated 20.5.1993 (**P.1**) passed by Managing Director, The Hoshiarpur District Cooperative Milk Producers Union Ltd, Hoshiarpur dismissing said Harjit Singh were set aside.

2. It is pertinent to notice here that the petitioner died during the pendency of the present petition on 29.2.2016 and his LRs (Wife and three daughters) have since been impleaded as

party vide order dated 11.5.2016 to pursue the same. For the sake of convenience, the reference shall be made to the petitioner instead of LRs.

3. Learned counsel for the petitioner contends that the impugned order dated 25.5.1995 (**P.8**) passed by respondent No.1-Joint Secretary while entertaining a revision petition under Section 69 of the Cooperative Societies Act, 1961 (for short "1961 Act") at the instance of respondent No.3 is wholly erroneous and liable to be set aside in view of the fact that the petitioner was dismissed from the post of Helper-cum-Cleaner by the then Managing Director of respondent No.3 vide order dated 20.5.1993 (**P.1**) without issuing any charge sheet and conducting of any inquiry as per Punjab State Cooperative Milk Producers' Federation Limited Employees Service (Non-Common Cadre) Rules, 1985 (for short "1985 Rules") and thus the same were rightly set aside vide orders (**P.3**) as upheld vide (**P.6**).

On the other hand, learned counsel for the respondents has argued that the impugned order has rightly been passed by respondent No.1 and restored the dismissal order dated 20.5.1993 passed by respondent No.3 in the interest of the establishment as the petitioner had misbehaved and gheroed the higher officials including Managing Director. On earlier occasions also, he had been charge sheeted and punished but taken into service on account of tendering his written apology but he did not mend his ways and consequently has rightly been dismissed.

4. Heard learned counsel for the parties and perused the paper book with their able assistance.

A perusal of paper book reveals that on 14.5.1993, petitioner left his place of postings Milk Chilling Centre, Padrana at about 1.00 PM without any permission or leave of the Incharge and reached Milk Plant Hoshiarpur. Thereafter, petitioner along with his colleagues i.e Malkiat Singh etc moved from one section to another of the plant and instigated the workers to join in a demonstration, when the Managing Director, Milkfed comes to visit the Plant, for enhancement of dearness allowance. Consequently, petitioner along with others gheraoed Doctor R.S. Gill, MD Milkfed from 7.15 PM to 11.00 PM and did not allow him to go out of the office and shouted slogans in abusive and filthy language in the following manner:

"M.D. Milkfed Murdabad

Gandi Management Murdabad

M.D. De Pithu Murdabad

Gill Mama Mar Gaya, Mami Randi kar Gaya."

The abovesaid incident had taken place despite the fact that there was an injunction order dated 06.5.1991 against holding of any demonstration within the premises of Milk Plant.

In view of the gravity of the situation and indiscipline created by the petitioner along with other colleagues as well as the past conduct of the petitioner, the Managing Director-respondent No.3 dismissed the petitioner from the post of Dairy Helper-cum-Cleaner with immediate effect vide order dated 20.5.1993 **(P.1)**.

Aggrieved against the order of dismissal, the petitioner preferred an appeal, which was allowed by the Deputy Registrar, Cooperative Societies, Hoshiarpur vide order dated 04.11.1993

(P.3) and set aside the dismissal order, however, liberty was granted to the Management to hold the inquiry and take appropriate action according to law.

The order dated 04.11.1993 was challenged by Respondent No.3 by filing a petition under Section 27 (3) of the Punjab Cooperative Societies Act, 1961 (for short "Act of 1961"). But the same was dismissed by Joint Registrar (MS) Cooperative Societies, Punjab vide order dated 28.10.1994 **(P.6)** and affirmed the order dated 04.11.1993 **(P.3)**.

Both the orders dated 04.11.1993 **(P.3)** and 28.10.1994 **(P.6)** were challenged by respondent No.3 in a revision petition under Section 69 of the Act, 1961, which was allowed by the Joint Secretary Cooperation (Appeals), Punjab exercising the powers of Government vide order dated 25.5.1995 **(P.8)** and set aside the order dated 04.11.1993 and 28.10.1994 and upheld the dismissal of the petitioner vide order dated 20.5.1993 **(P.1)**.

5. There is no dispute that at the relevant time, service conditions of the petitioner were governed by 1985 Rules and Rule 29 thereof prescribes major penalties and that includes dismissal also. However, under Rule 32, a procedure is prescribed for a major misconduct by issuing a charge sheet and after holding a inquiry. But admittedly in the present case, neither any charge sheet was issued; nor any inquiry was conducted by respondent No.3 before passing the order of dismissal of the petitioner. Even otherwise, affording of an opportunity of hearing before passing an order of dismissal is *sine qua non* in such like cases. But at the

same time, the sequence of events, which have been narrated by the respondents in para 2 of the Preliminary Objections clearly reveals that the petitioner had been bent upon to create all acts of nuisance with the Management as well as against the smooth running of the Milk Plant and there is no replication or rejoinder to those instances and for ready reference, the gist of the previous bad record of the petitioner is reproduced hereinbelow:

"i) Charge sheeted on 7.7.1980 on account of serious charges of insubordination, disobedience and goondaism and remained under suspension, however, pursuant to an agreement and tendering of written apology, he was reinstated on 12.9.1980 with 'warning' and withholding of 50% of wages;

ii) Charge sheeted on 12.10.1981 due to giving false evidence in domestic inquiry and was dismissed from service on 01.4.1983 but on tendering unconditional apology, he was taken back in service on 18.5.1983.

iii) Charge sheeted on 23.1.1986 for taking part in illegal strike and instigating workers and creating goondaism in the premises and placed under suspension. Disciplinary proceedings were withdrawn on 23.3.1989, in view of a settlement;

iv) Placed under suspension on 19.10.1988 and charge sheeted on 02.11.1988 for wilful and illegal absence from duty using indecent disrespect and defamatory words against the M.D. On completion of domestic inquiry, punishment of stoppage of one annual grade increment with cumulative effect was imposed. Show cause issued to the petitioner on 02.8.1989 for disobeying orders of the superiors resulting into warning.

v) Charge sheeted on 03.5.1991 on account of

wilful and illegal absence from duty and organizing the demonstration at the factory gate and instigating workers against the Management. Another charge sheet issued on 29.7.1991 on account of charges of throwing sand and dust on the face and head of the M.D besides shouting slogans in filthy language along with other associates. Domestic inquiry ordered on 04.10.1991 in both the aforesaid charge sheets. The petitioner did not participate in the inquiry and did not allow the inquiries to be finalized.

On 14.5.1993, he along with associates gheraoed and misbehaved with the M.D and other officials in the factory premises.

6. Be that as it may, one thing is clear that dismissal order is not only violative of principles of natural justice but *de hors* the Rules of 1985 and the same were rightly set aside by the Deputy Registrar-cum-Administrator vide order dated 04.11.1993 (P.3) while observing that "the Management would be at liberty to hold inquiry and take appropriate action against him", which was legally and validly upheld by the Joint Registrar vide order dated 28.10.1994.

Respondent No.1 while passing the impugned order dated 25.5.1995 had neither taken into consideration the principle of natural justice; nor made any reference of 1985 Rules applicable for the disciplinary proceedings but still set aside the well reasoned order passed by Deputy Registrar as well as Joint Registrar by adopting a wholly irrelevant approach. Therefore, this Court is left with no alternative except to allow the writ petition and quash the impugned order dated 25.5.1995 **(P.8)** while

restoring orders **P.3 and P.6**. Ordered accordingly.

Although, this Court vide order dated 29.2.2016 granted time to the Management to obtain instructions to pay compensation in terms of money to resolve the issue instead of deciding the matter on merits; but the Board of Directors did not agree for payment of any lumpsum amount towards settlement of claims. Therefore, tentatively, this Court was of the opinion to set aside the dismissal order and remit the matter back to the Authorities for a fresh disposal according to law but since the petitioner is not alive, therefore such a course is not justified.

Keeping in view the facts and circumstances of the case and in order to do a complete justice between the parties, the dismissal order of the petitioner is set aside and he shall be deemed to be in service till the age of superannuation. Although the petitioner remained out of service on account of dismissal order passed by respondent No.3 but taking into account the instances reproduced in para 2 of the Preliminary Submissions, the petitioner will be entitled to 50% of his due salary from the date of dismissal till superannuation i.e 30.6.2012. However, the retiral benefits shall be calculated on the basis of full salary admissible at the time of superannuation.

7. Petition stands allowed in the above terms. The Competent Authority is directed to complete the entire exercise of admissible benefits within three months of receipt of certified copy of the order, and thereafter ensure release of the dues within next two months, failing which, interest @ 9% on arrears of awarded compensation payable till 31.3.2017, arrears of admissible pension

and family pension, if any, as per rules, payable till 31.3.2017 shall become payable to be recovered from the officials concerned, apart from making themselves liable for contempt proceedings.

March 3rd, 2017
manoj

(JASWANT SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>