

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

CWP No.14337 of 2003

Date of Decision:19.04.2017

Ranbir Singh

... Petitioner

Vs.

Cane Commissioner, Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Jitender Nara, Advocate for the petitioner.

Ms. Sushma Chopra, Advocate for the respondent-Society.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has questioned the validity of various disciplinary actions like charge-sheet, inquiry officer's report and orders vide Annexures P-7, P-9, P-10 and P-13 respectively.

Petitioner while working as a Secretary in the office of second respondent is alleged to have committed certain misconduct. There were 13 allegations against the petitioner and he has been charge-sheeted. In the inquiry, allegations No.1 to 9 have been proved whereas allegations No.10 and 11 were not proved. Based on the inquiry officer's report, the competent authority proceeded to pass order of termination after following due procedure like issuance of show cause notice and obtaining reply. Thereafter, petitioner is stated to have filed objection and the same has been considered by the next higher authority-Cane Commissioner. Thus, the petitioner has questioned the validity of the disciplinary actions.

Learned counsel for the petitioner submitted that as per the bye laws 25 (11), before dismissing the petitioner from service previous approval of the Registrar is required to be obtained and such approval is not obtained. Thus, there is non compliance to the aforesaid provision

before order of termination/dismissal. On this score the order of termination is liable to be set aside. It was further submitted that petitioner has attained the age of superannuation and retired from service during the pendency of this petition in the year 2004. Therefore, at this distance of time, matter cannot be remanded to the disciplinary authority from the defective stage to proceed afresh in the matter.

Per contra, learned counsel for the respondent-society submitted that Cane Commissioner has examined the petitioner's objection who is superior to the Registrar and passed order, while exercising power of Registrar. Consequently question of previous approval before termination or dismissing petitioner from service do not arise. Having regard to the allegations as well as the fact that the petitioner did not co-operate in the disciplinary proceedings, the petitioner is not entitled for any relief. It was further contended that the petitioner has alternative remedy of appeal. Without exhausting the remedy of appeal, the present petition has been filed. Even on this score, the petition is liable to be rejected.

Heard learned counsel for the parties.

It is true that the petitioner has not exhausted the remedy of appeal. However, matter is admitted. Therefore, at this stage, this Court cannot examine the remedy of appeal that too matter relates back to of the year 2003. Hence, the preliminary contentions raised by the learned counsel for the respondent-Society that writ petition is not maintainable is hereby rejected. Insofar as non compliance of bye laws 25 (11) that prior approval of the Registrar is required to be obtained for the purpose of dismissing the petitioner from service, question of dispensing the same do not arise for the reasons that it mandates "to appoint, suspend and dismiss employees with

the previous approval of the Registrar”. Therefore, before competent authority proceeded to appoint, suspend or dismiss an employee, prior approval of the Registrar is required to be obtained. The said procedure cannot be dispensed. In the present case, the said provision has been dispensed on the score that the resolution has been passed and subsequently the same has been examined by the Cane Commissioner exercising the powers of Registrar, Co-operative Society, Haryana. The said resolution has been approved on 14.5.2003 after terminating the service of the petitioner. In other words, post facto approval is obtained which is impermissible when the statutory provision of bye laws 25(11) is specific that previous approval of the Registrar is required to be taken into consideration for the purpose of dismissing an employee. Therefore, by ratification of resolution does not cure the defect. Hence, in view of the non compliance of bye laws 25(11), impugned dismissal/termination order is hereby set aside.

Petition stands allowed.

At this stage, learned counsel for the respondent-society vehemently contended that initiation of inquiry is at the behest of Cane Commissioner exercising the powers of Registrar under the Act. Therefore, question of obtaining prior approval before dismissing the petitioner from service do not arise.

However, bye laws do not prescribe any waiver if the initiation of inquiry is at the behest of Registrar or any officer who exercises the powers on behalf of the Registrar. Moreover, Cane-Commissioner had not been delegated the power of initiation of inquiry or approval of dismissing an employee. Supreme Court in the case of **Captain Sube Singh and others** v. **Lt. Governor of Delhi and others**; (2004) 6 SCC 440 held that statutory

rules are to be strictly followed. Extract of the judgement reads as under:

“29. In Anjum M.H. Ghaswala a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (see also in this connection Dhanajaya Reddy v. State of Karnataka.) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67 (1) (d) read with sub-clause (i) thereof.”

Therefore, above contention is rejected.

19.04.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**