

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

CRR-2083-2008 &
CRR-1454-2008 (O&M)
Date of decision: September 12, 2017.

State of Haryana &
Ved Parkash

... **Petitioners**

v.

Ghanshyam &
Ghanshyam and another

... **Respondents**

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri Ashok Khubbar, Advocate for the petitioner
in CRR-1454-2008.
Ms. Tanushree Gupta, Dy. Advocate General, Haryana
for petitioner in CRR-2083-2008.
Shri Vikram Singh, Advocate for respondent Ghanshyam

A.B. Chaudhari, J. (Oral):

These two revision petitions, i.e., one by the State of Haryana and the other by the complainant Ved Parkash are directed against the order made by the trial court discharging the accused respondent No.1 Ghanshyam on the ground that he does not fall within the meaning of 'public servant' as defined in Prevention of Corruption Act, 1988.

In support of the revision petition, Learned Counsel for the State as well as counsel for Ved Parkash submitted that the accused/respondent No.2 was appointed by Haryana State Cooperative Housing Federation Ltd., Chandigarh (Hafed) and the same is fully financed by the State of Haryana though registered as a cooperative society.

According to Learned Counsel for the revision petitioners, the trial court was impressed by the fact that at the relevant time, respondent No.1 was posted as a Development Officer in the Radaur Jamna Cooperative House Building Society which was also a society registered under the Cooperative Societies Act and, therefore, the accused was not the public servant. Learned Counsel for the petitioners then submitted that with reference to the order of promotion of the respondent of 22.11.1985, which is placed on record as Annexure P-1 with the present petition, by which respondent Ghanshyam was promoted by Hafed as Assistant Development Officer. The said order has been ignored by the trial court and the respondent would obviously fall in the category of public servant.

Heard learned Counsel for the rival parties. Perused the record. Upon perusal of order at Annexure P-1, it is clear that the accused was promoted to the post of Assistant Development Officer by Hafed. Obviously, he was appointed initially also by the same Corporation. On the date of offence, he was an employee of Hafed. The said Corporation is a Government corporation run by the finances provided by the State of Haryana. The decision in the case of State of Maharashtra and another v/s Prabhakar Rao and another, 2002(3) RCR (Cl.) 615 therefore aptly applies to the facts of the case. In the said Supreme Court judgment, the matter was sent back by the Supreme Court for fresh examination. In my opinion, the respondent should be given a chance to have a point for determination, whether he is a public servant or not as the same is a mixed question of fact and law. It would be appropriate to quote the relevant extracted portions from the said judgment, which read thus:-

“The provision so far as material for the present case is quoted below:

“2(c): “Public servant” means :-

(a) any person in the service or pay the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central/Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(ix) any person who is the president, secretary or other officer – bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a state Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

Explanation 1 – Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 – Wherever the words, “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.”

3. Under clause (iii) of Section 2(c) any person in the service or pay of a corporation established by or under Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government and under clause (ix) the president, secretary and other office-bearers of a registered co-operative society engaged in agriculture, industry, have been included in the definition of ‘public servant’.”

In that view of the matter, both the revision petitions must succeed. In the result, I make the following order:-

ORDER

- (i) CRR-1454-2008 and CRR-2083-2008 are allowed;
- (ii) Order dated 8.5.2008 is quashed and set aside;
- (iii) the proceedings of the trial are sent back to the trial court
for holding trial in Sessions case No.21 of 2007 for holding
sessions trial on merits;
- (iv) the accused would be entitled to ask for framing of a point
as to the issue of public servant in the trial along with other
points for determination but shall not be allowed to interject
the proceedings by asking for the order that he is not a public
servant;
- (v) respondent No.1 Ghanshyam shall pay costs in the sum of
Rs.10,000/- to the State of Haryana which is a pre-condition.
- (vi) the trial shall be expedited and completed within six
months.

September 12, 2017.

kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No