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

CWP No.16408 of 2012
Date of Decision.01.02.2017

The Rania Cooperative Marketing-cum-Processing Society Ltd.
.......Petitioner

Vs

State of Haryana and others ....Respondents

Present: Mr. S.S. Dalal, Advocate
for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

Mr. Pardeep Solath, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

The petitioner, known as Rania Cooperative Marketing-cum-processing Society Ltd. Rania, District Sirsa through its Manager has knocked the door of this Court by invoking the Article 226 of the Constitution of India, seeking writ in the nature of certiorari for quashing of the order dated 11.10.2010 (Annexure P-10) passed by the Registrar, Cooperative Societies, Haryana, Panchkula and 09.08.2011 (Annexure P-12) passed by the Financial Commissioner and Principal Secretary to Government Haryana and 25.06.2012 (Annexure P-17) passed by the Additional Chief Secretary to Government Haryana vide which the review for recalling of the impugned order dated 09.08.2011, has been dismissed.

Mr. S.S. Dalal, learned counsel appearing on behalf of the petitioner-society submitted that the service of private respondent-Jagdish Chander-respondent No.3, who was working as Manager in the petitioner-society was terminated for embezzlement of funds on 17.10.1966. Before that vide order dated 20.05.1966, he was placed under suspension in pursuance of the initiation of arbitration proceedings by the Society. An Award was passed against him which has been upheld upto High Court. However, after a gap of 25 years, Jagdish Chander filed an application under Section 102 of the Haryana Cooperative Societies Act, 1984 (hereinafter called "Act of 1984") before respondent No.2-Registrar, Cooperative Societies seeking reinstatement, fully aware of the fact that his services already stood terminated.

He further submitted that Jagdish Chander had also filed an appeal against the Award dated 15.03.1967 passed against him before the Deputy Registrar, Cooperative Societies wherein, while dismissing the appeal, it was clearly mentioned that the delinquent had failed to make good the shortages. The copy of the order is dated 22.03.1968 (Annexure P-1). The application under Section 102 was dismissed by the Registrar vide order dated 31.07.1992 (Annexure P-2). However, on the basis of misc. application, the Registrar sought the comments from the Assistant Registrar and rescinded the resolution dated 17.10.1966 vide which the services of the private respondent were terminated under Section 27 of the Act. The aforementioned order is dated 22.03.1994 (Annexure P-3). The aforementioned order was challenged through appeal before the Financial Commissioner, who vide order dated 08.09.1995 (Annexure P-4) held that the Registrar was not vested with the powers under Section 27 of the Act to set aside the resolution and granted status quo ante i.e. before the passing of the order dated 22.03.1994.

However, the Society was directed to issue a regular charge-sheet along with statement of allegation to the delinquent employee to determine the case on the basis of proceedings thereafter on merits. The aforementioned order of Financial Commissioner was challenged vide CWP No.16117 of 1995 in this Court. The aforementioned writ petition was dismissed, with the observation that cause of action, if any, would be of private respondent, vide order dated 01.03.2002 (Annexure P-5). Therefore, the Society issued a charge-sheet to the delinquent Jagdish Chander and enquiry officer was appointed, who vide order dated 17.09.2004 (Annexure P-6), after issuing show cause notice, confirmed the earlier order dated 17.10.1966. The same was assailed by Jagdish Chander-respondent No.3 before the Registrar under the Common Cadre Rules, which was dismissed on 15.03.2007 (Annexure P-7). The aforementioned order was challenged by filing a writ petition bearing No.18526 of 2007 in this Court, which was decided vide order dated 16.02.2009 (Annexure P-8) with a direction to decide the appeal of respondent No.3 on merits.

The Registrar, Cooperative Societies vide order dated 11.10.2010 (Annexure P-10) allowed the appeal of the private respondent. The factum of having availed the remedy after lapse of time had not been adverted to. The Society, aggrieved of the aforementioned order of Registrar, preferred a revision petition under Section 115 CPC. The same was dismissed vide order dated 09.08.2011 (Annexure P-12). A review of the aforementioned order was also sought by the Society but the same was resulted into dismissal vide order dated 25.06.2012.

He further submitted that the Financial Commissioner had wrongly stated in the impugned order that the order dated 20.05.1966 was set aside by the Minister-in-Charge vide order dated 08.04.1970. In fact, the private respondent No.3 never challenged the order of his termination/removal dated 17.10.1966, thus, there was no question that the said order was set aside by Minister-in-Charge.

The revision petition of Jagdish Chander against the order dated 22.03.1968 passed by the Deputy Registrar and against the Award dated 15.03.1967 passed by the Arbitrator itself revealed that Jagdish Chander had never challenged the order of the petitioner-Society, terminating his services, before the Minister-in-Charge. The finding of the Financial Commissioner that the order passed by the Registrar setting aside the resolution dated 17.10.1966 was never challenged by the Society is not only perverse but erroneous as the same was challenged which fact is evident from the order of Financial Commissioner dated 08.09.1995. The review sought was also dismissed on the ground that there was no provision for recalling the order under the Act. The Financial Commissioner had not noticed the fact and the judgment cited at bar that the petition filed by Jagdish Chander was barred by time.

In order to buttress his arguments, Mr. Dalal submitted that Jagdish Chander was aware of the order passed by the Society dismissing his services but he filed appeal under Section 55/56 of the Punjab Cooperative Societies Act, 1961 after a period of 25 years whereas the prescribed limitation is three years. In fact, he misrepresented the facts before the Financial Commissioner resulting into passing of the impugned order dated 09.08.2011. It is settled law that wherever the order is obtained on misrepresentation, it can be recalled at any stage, thus, urges this Court for allowing of the writ petition.

On the contrary, Mr. Pardeep Solath, learned counsel appearing for private respondent No.3 submitted that the appeal of the answering respondent No.3 filed before the Deputy Registrar, Cooperative Societies against the Award was dismissed but the amount of arbitration was reduced vide order dated 22.03.1968 (Annexure P-1). The revision petition was accepted by the Minister-in-Charge whereby the respondent No.3 was exonerated from all the charges, which fact is evident from the order dated 08.04.1970 (Annexure P-13), thus, it cannot be lost sight that the respondent No.3 had availed the remedy against the Award. Rather an attempt has been made by the petitioner to mislead this Court.

In view of the aforementioned (Annexure P-13), the answering respondent made a request to the Society for reinstatement but the Society filed the writ petition bearing No.2394 of 1970 before this Court which fact had not been disclosed in the present writ petition and the same was admitted. However, the Society neither joined the answering respondent nor any charge-sheet was served. However, the aforementioned writ petition was dismissed vide order dated 27.08.1981 (Annexure P-14). LPA bearing No.1214 of 1981 assailing the aforementioned order was also dismissed on 02.02.1982.

Since the order of Minister-in-Charge had attained finality, the answering respondent moved an application for reinstatement but vide letter dated 15.03.1982, the then President informed that the petitioner-Society was contemplating to file SLP. However, after a long wait when no information was received, the answering respondent filed petition under Section 102 before the Registrar Cooperative Societies, though it was dismissed on the ground of maintainability on 31.07.1992 (Annexure P-2).

Having left with no other option, the answering respondent moved an application to the then Registrar, Cooperative Societies, who looked into the matter and marked a fact finding enquiry to the Assistant Registrar, Cooperative Societies vide order dated 16.09.1992. The Assistant Registrar vide letter dated 26.10.1993 enclosed the copy of the report with the finding that none of the charges against the answering respondent been proved, in essence, no procedure was followed by the petitioner-Society, thus, the Registrar while exercising the powers under Section 27 of the Act vide order dated 22.03.1994 rescinded the alleged resolution of termination dated 17.10.1966 by holding that no enquiry was conducted, much less, no permission was taken before passing the order of termination. Even alleged resolution was not produced by the society.

The aforementioned order dated 22.03.1994 was assailed by the society in revision petition No.8 of 1994 and the Financial Commissioner, Cooperation vide order dated 08.09.1995 observed that the respondent being a permanent employee cannot be terminated and directed the society to issue the charge-sheet by following the procedure. The order is annexed as Annexure P-4.

All these facts would reveal that there was no delay in seeking the redressal of the grievance. The society did not stop here and even challenged the aforementioned order vide by filing the writ petition bearing No.16117 of 1995. However, during the interregnum, the respondent attained the age of superannuation and deemed to be retired on 31.08.1998. The aforementioned writ petition was dismissed on 01.03.2002 (Annexure P-5).

After five years of retirement of the answering respondent, the petitioner-Society served a charge-sheet upon him on 29.03.2003 and statement of allegation. The same was replied on 19.04.2003 but vide letter dated 05.012004, Manager of the petitioner society requested the Assistant Registrar, Cooperative Societies to appoint Inspector, Cooperative Societies as enquiry officer and the enquiry report was submitted on 09.06.2004 finding all the allegations baseless. In fact, no charge was proved. Yet the Manager sent a dissenting note and issued a show cause notice qua charge No.1 and 3 vide letter dated 29.07.2004 which was duly replied by the answer respondent on 09.08.2004

However, the Manager without any authority passed the impugned order dated 17.09.2004 (Annexure P-6) and dismissed the answering respondent with retrospective effect from 17.10.1966. The aforementioned order was assailed by filing an appeal. The appeal was heard on the issue of maintainability and vide order dated 15.03.2007 (Annexure P-7), the then Registrar Cooperative Societies dismissed the same being not maintainable.

The aforementioned order (Annexure P-7) was assailed before this Court in CWP No.18526 of 2007 which was allowed by this Court vide order dated 16.02.2009 (Annexure P-8) with a direction to decide the appeal on merits. The Registrar, Cooperative Societies vide order dated 11.10.2010 (Annexure P-10) allowed the appeal and the order of termination of the answering respondent was set aside. The revision petition filed by the society assailing the aforementioned order was dismissed on 09.08.2011 (Annexure P-12). There was no provision of review but yet the society filed a review petition which was dismissed on 25.06.2012 (Annexure P-17).

All these facts would reveal that the petitioner society did not disclose the fact of availing the remedy against the order of Minister-in-

Charge by filing the CWP No.2394 of 1970.

In support of his contention with regard to maintainability of the review petition, he has relied upon the ratio decidendi culled out in ***Ajit Kumar Rath Vs. State of Orissa AIR 2000 (SC) 85***.

He further submitted that quasi judicial orders are not reviewable as per the provisions of Section 21 of the General Clauses Act, 1987. In this regard, relied upon the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in ***Indian National Congress (I) Vs. Institute of Social Welfare 2002(2) RCR (Civil) 791.***

As regards the entitlement of wages for 20 years, the aforementioned point has already been debated upon by the Hon'ble Supreme Court in ***Central Cooperative Consumers' Store Ltd. through its General Manager Vs. Labour Court, H.P. at Shimla 1993(3) SCT 478***, thus, urges this Court for dismissal of the writ petition with exemplary costs.

I have learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Dalal. Once the enquiry officer had already given a finding that no charges have been proved, the Manager-disciplinary authority could not have given a dissenting note and differ with the finding. In case, he had to do so, he was required to give notice to respondent No.3. The aforementioned principle of law is not longer res integra. However, I would be failing in my duty if I do not refer the ratio decidendi culled out in the judgment rendered by Hon'ble Supreme Court in ***Yoginath D. Bagde Vs. State of Maharashtra and another AIR 1999 SC 3734*** wherein it has been held that liberty granted to the petitioner was to issue charge-sheet and follow the procedure.

It cannot be lie in the mouth of the petitioner-society that the answering respondent had raised this issue after 25 years.

By virtue of resolution dated 17.10.1966, services of the answering respondent was terminated without following proper procedure i.e. without holding any enquiry. Charge-sheet, as noticed above, was issued on 29.03.2003 which was totally against the Service Rules. Be that as it may be.

Once respondent No.3 is permanent employee of the petitioner-society, services of the petitioner could not have been dispensed with without following the due procedure. The matter reached twice to this Court and the Minister-in-Charge vide order dated 08.04.1970 (Annexure P-13) had set aside the orders passed by the Deputy Registrar, Cooperative Societies. Even according to the answering respondent, the Manager had no power as he was not the appointing authority. The answering respondent was appointed by Managing Committee and he had been working under the general control of the Managing Committee. Bye Law No.41 of the petitioner-society referred to in the synopsis submitted by respondent No.3 reads as under:-

> "*41. The Managing Committee shall appoint a Manager or Munim, Assistant Munim (if necessary) subject to the approval of the Registrar. The Manager, the Munim and Assistant Munim (if any) shall work under the general control of the Managing Committee. The Manager shall also perform the duties of a treasurer if no one else has been appointed in this capacity.*"

Even the appointing authority has no jurisdiction to take disciplinary proceedings against the Government servant. The petitioner deemed to have retired on 31.08.1998 at the age of 58 years. There was no power with the Secretary, Cooperation for review of the order. It appears that the society is bent upon to harass the answering respondent No.3 by filing the writ petition as revealed from the facts noticed above. I would again be failing in my duty if I do not refer the relevant portion of the order dated 08.04.1970 passed by the Minister-in-Charge which reads as under:-

> *"9. The circumstances explained above, I think we cannot fix a liability upon the petitioner with regard to any amount and therefore, his revision is accepted. There is no order as to costs."*

In fact, vide order dated 01.03.2002 the writ petition bearing No.16117 of 1995 filed by the petitioner-society was dismissed and nothing survived in the case, yet after 5 years of retirement, the respondent No.3 was served with a charge-sheet. The order dated 08.09.1995 of the Financial Commissioner, Cooperation laid down that since respondent No.3 was a permanent employee, he could not have been terminated in the manner as done by the society vide resolution dated 17.10.1966.

Initially the order is lacking jurisdiction. However, even if the same had attained finality in the trial, the same cannot be read and referred to against the affected person. Though the charge-sheet could not have been served upon the retired employee, yet once the enquiry report came in his favour, the Manager had no authority to differ and again challenge the same as indicated above. Even the dissenting order was set aside by the Registrar, Cooperative Societies vide order dated 11.10.2010 and the order of termination dated 17.09.2004 with retrospective effect was set aside. There had been no compliance of principles of natural justice by the then Manager who assumed the role of disciplinary authority while dissenting with the report of the enquiry officer. Such an exercise without giving an opportunity to the answering respondent was nothing but violation of doctrine akin to *audi alteram partem.*

For the reasons aforementioned, I do not intend to differ with the orders under challenge (Annexures P-10, P-12 and P-17). No ground for interference is made out. The writ petition is dismissed.

(AMIT RAWAL)
JUDGE

February 01, 2017
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No