

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.2195 of 2017 (O&M)
In CWP No.10600/2017
Date of Decision: 18.01.2018

Dinesh Sharma

.... Appellant

Versus

State of Punjab and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA**

Present: Ms. Savita, Advocate for the appellant.

B.S.WALIA, J.

1. Writ petitioner has come up in intra-court appeal against order dated 31.07.2017 whereby the writ petition seeking quashing of order dated 08.06.2016 (Annexure P-6) dispensing with his services and seeking reinstatement as Senior Manager was dismissed on ground of there being no pleadings in the writ petition to show that respondent No.3 i.e. Sun Pharmaceutical Industries Limited was a 'State' or 'Instrumentality of State' so as to be amenable to writ jurisdiction, besides on grounds of lack of territorial jurisdiction as the impugned communication (Annexure P-6) had been passed by respondent No. 3 located in Mumbai while the appellant-petitioner's resignation had been accepted while he was serving in Andhra Pradesh.

2. Brief facts of the case leading to the filing of the instant Intra-court Appeal are that the appellant was appointed as Supervisor on 26.12.1981 in Ranbaxy Laboratories Limited at its Branch office, Industrial Area, Mohali.

Subsequently, the appellant was promoted as Senior Manager -Production i.e. a Class B-I job w.e.f 01.01.2004. In December 2011, Ranbaxy Plant in Mohali was closed down whereupon the appellant was appointed as Senior Manager, Class B-2 and was transferred to Ranbaxy Branch in Ropar, Tonsa, Punjab from where he was transferred to Ranbaxy Branch at Dewas, District Indore, Madhya Pradesh. In the year 2015, Ranbaxy Laboratories Limited was taken over by respondent No. 3 whereupon the appellant joined respondent No. 3 in March 2015. On 10.03.2016, the appellant claims that he was asked to submit resignation whereupon he had to submit his resignation as he was threatened that otherwise his services would be terminated. On 08.06.2016, the appellant received letter of acceptance of his resignation by the Management informing him that he would be relieved from duty on the closing of working hours of 08.06.2016.

3. Grievance of the appellant-petitioner is that resignation was taken from him by respondent No.3 without assigning any misconduct, violation of duties and responsibilities of the post and the same was violative of Service Rules as specified in the Code of Conduct Rules of the respondent-Industry. In the circumstances, the appellant invoked the extraordinary writ jurisdiction of this Court by filing CWP No.10600 of 2017. In paragraph No.14 of the grounds of appeal, it has been mentioned that pursuant to order dated 19.07.2017, counsel addressed arguments on the issue of maintainability of the writ petition on 31.07.2017 and referred to various judgments but the learned Writ Court dismissed the writ petition on ground of jurisdiction without considering the submissions advanced by the counsel, therefore, the impugned order is unsustainable. The learned Writ Court had failed to

consider that cases involving public interest did not have any jurisdiction limits.

4. In the aforementioned background, prayer is for allowing the appeal by setting aside order dated 31.07.2017.

5. We have heard learned counsel for the appellant and have perused the writ petition. The same is bereft of pleadings to show amenability of respondent No. 3 to the writ jurisdiction of this Court under Article 226 of the Constitution of India. There is not even a whisper in the writ petition so as to make out a case that respondent No. 3 will be amenable to the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

6. Whether a Corporation is an instrumentality or Agency of Government and consequentially amenable to the writ jurisdiction of a High Court under Article 226 of the Constitution of India is dependent upon certain tests which have been stipulated in various decisions of Hon'ble the Supreme Court. In **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology (2002) 5 SCC 111**, Hon'ble the Supreme Court noted with approval the tests laid down in its earlier judgment in **Ramanna Dayaram Shetty v. International Airport Authority of India, AIR 1979 SC 1628**. The same are as follows :

“(1) One thing is clear that if the entire share capital of the Corporation is held by Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the Corporation, it

would afford some indication of the Corporation being impregnated with Governmental character.

(3) It may also be a relevant factor.... whether the Corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the Corporation are of public importance and closely related to Government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the Corporation being an instrumentality or agency of Government.”

7. A learned Single Bench of this Court in **“Arvinder Goyal versus State of Punjab & others” 2013(3) SCT 328** while taking note of various decisions of Hon’ble the Supreme Court reported as **Tekraj Vasandi alias K. L. Basandhi vs Union of India and others (1988) 1 SCC 236, Mysore Paper Mills Limited vs Mysore Paper Mills Officers' Association and another - (2002) 2 SCC 167-G. Bassi Reddy vs International Crops Research Institute and another (2003) 4 SCC 225-General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. vs Satrugan Nishad and others-(2003) 8 SCC 639, and Lieutenant Governor of Delhi and others vs V. K. Sodhi and others-(2007) 15 SCC 136 as also Ramanna Dayaram Shetty vs. International Airport Authority of India, AIR 1979 SC 1628**, dismissed the writ petition by holding that none of the tests Nos.1

to 3, 5 and 6 as laid down in **Ramanna Dayaram Shetty's** case (supra) were fulfilled as entire share capital of the company was not held by the government, entire expenditure of the company was not met with financial assistance from the State, the company was not enjoying monopoly status either State conferred or State protected, functions of the Company were not of public importance and closely related to Government functions as it was merely a commercial establishment besides, none of the departments of the Government had been transferred to the Company. Besides, there was absence of deep and pervasive State control despite the Company being a subsidiary of Punjab State Industrial Development Corporation Limited, its Managing Director being an IAS Officer serving in the State of Punjab, Principal Secretary, Department of Industries Government of Punjab being its ex-officio chairman, 7 out of the 9 Directors on the Board of the Company being either employees of the State Government or nominees from the IDBI/IFCI, besides all senior officers of the Company being officers of the State of Punjab.

8. The aforementioned decision of the learned Single Bench was upheld by the Hon'ble Division Bench of this Court in **"Arvinder Goyal versus State of Punjab & others" 2013(3) SCT 284.**

9. Decision of Hon'ble the Andhra Pradesh High Court in **"Ch.Seetharamaiah vs. Andhra Pradesh Paper Mills M/s Andhra Pradesh Paper Mills Limited" 2001 (5) ALT 494** relied upon by the counsel for the appellant petitioner has no applicability in the facts of the case for in the said case it was on the basis of pleadings and consequential finding of deep and pervasive control of the Government over its functioning that it was concluded that the company was an instrumentality / Agency of State.

However, aforesaid judgement has no applicability in the facts and circumstances of the case as there is not even a word either in the writ petition or for that matter in the grounds of appeal setting out facts to show that respondent No. 3 is amenable to writ jurisdiction on the basis of the tests laid down by Hon'ble the Supreme Court in **Ramanna Dayaram Shetty's case (surpa)** as referred to above.

10. The writ petition is bereft of any pleading whatsoever to show as to whether the share capital of respondent No. 3 is held by the Government and if so to what extent, whether the expenditure of the Company is met with financial assistance from the State and if so, to what extent, whether the Company is enjoying monopoly status, either State conferred or State protected, whether functions of the Company are of public importance and closely related to Governmental functions or whether the same is merely a commercial establishment, whether the Government exercises deep and pervasive control over the functioning of the respondent-Company so as to afford an indication that the Corporation is a State Agency or instrumentality. Neither in the writ petition nor in the grounds of appeal nor at the time of hearing, anything has been urged in respect of the aforementioned points so as to show that the respondent No. 3 is amenable to the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

11. We are constrained to observe that in the circumstances, the Letters Patent Appeal is misconceived and is thus a gross misuse of the process of law. We were inclined to dismiss the appeal with exemplary costs but refrain from doing so solely on the ground that the appellant is without a job and should not be penalized for being wrongly advised.

12. Finding no merit in the appeal, the same is dismissed in limine. Consequentially, the application for condonation of delay in filing the appeal is also dismissed.

(RAJESH BINDAL)
JUDGE
January 18, 2018
ps

(B.S.WALIA)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No