

CWP No. 16266 of 2015 and connected cases

1

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

(1)

**CWP No. 16266 of 2015
Date of Decision : 02.07.2019**

Bhupal Singh Saini

...Petitioner

Versus

State of Haryana and others

..Respondents

(2)

CWP No. 16222 of 2015

Baljit Singh Saini

...Petitioner

Versus

State of Haryana and others

..Respondents

(3)

CWP No. 16314 of 2015

Vijay Kumar Khanna

...Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ram Niwas Sharma, Advocate for the petitioner(s).

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Mr. R.S. Longia, Advocate for respondent Nos. 3, 4 and 5.

Harsimran Singh Sethi, J.(Oral)

By this common order, three writ petitions, the details of which

CWP No. 16266 of 2015 and connected cases

2

have been given in the heading, are being decided as all the writ petitions involve same question of law and similar facts. For the purpose of this order, facts are being taken from CWP No. 16266 of 2015.

Sh. Bhupal Singh Saini joined Haryana Diary Development Cooperative Federation Limited in the year 1977 and retired as a Deputy General Manager on attaining the age of superannuation on 30.06.2012. A sum of ₹91, 995/- has been deducted from the retiral benefits of the petitioner keeping in view an order dated 27.08.2010 (Annexure P-3) passed by Chief Executive Officer, Milk Union, Ambala, whereby a recovery to the tune of ₹91,995/- was imposed on the petitioner. In the present writ petition, the said order dated 27.08.2010 (Annexure P-3) as well as the order passed by the Managing Director dated 30.04.2015 (Annexure P-11) rejecting the appeal have been impugned.

There was an allegation against the petitioner that while he was working as Assistant Manager and was In-charge of the Milk Chilling Centre, Bilaspur, a loss was caused to the Milk Union on account of fat/SNF (Solid Not Fat), which was noticed by the authorities. A notice was issued to the petitioner on 28.10.2009 making the allegation that the respondent suffered loss due to carelessness and negligence of the officers which included the petitioners as well. Along with the petitioner, Sh. Jagat Ram, Sh. Baljit Singh Saini and Sh. Vijay Kumar Khanna were also issued show cause notice. As per the respondents, loss to the tune of ₹10,67,771/- was caused by the above said persons. After considering the reply filed by all the persons to the show cause notice, Chief Executive Officer, Ambala, passed an order on 27.08.2010 (Annexure-P3), whereby out of ₹10,67,771/-,

recovery to the tune of ₹7,91,906.19/- was imposed upon Sh. Jagat Ram and remaining amount of ₹2,75,864.81/- was equally divided between the petitioner, Sh. Baljit Singh Saini and Sh. Vijay Kumar Khanna, i.e. ₹91,955/- each to be paid by the other three persons. Against the said order, an appeal was preferred which was rejected by the Managing Director on 30.04.2015 (Annexure P-11), wherein it was held that the imposition of recovery is valid and is in consonance with the report given by the Enquiry Committee, submitted on 09.04.2015. These two orders dated 27.08.2010 (Annexure P-3), imposing the punishment of recovery upon the petitioner as well as order dated 30.04.2015 (Annexure P-11) rejecting his appeal, have been impugned in the present writ petition.

Learned counsel for the petitioner(s) argues that the order of recovery is bad in eyes of law on account that the same has been passed by the Chief Executive Officer of the Milk Union, Ambala, whereas under the Haryana Dairy Development Cooperative's Staff Service Rules, 1988 (hereinafter referred to as '1988 Rules'), in respect of the employees belonging to Group B and A, the only officer competent to impose punishment is Managing Director, against whose order the appeal lies to the Personal Committee and therefore, the order which has been passed by the Chief Executive Officer, was beyond his jurisdiction and therefore, the said order is liable to be set aside. The next argument raised by the counsel for the petitioner(s) is that no enquiry was held on the allegation and only by issuing a show cause notice, the order of recovery has been passed and, therefore, the order of recovery, which has been passed against the petitioner(s) is liable to be set aside as the same has been done without

following the procedure as envisaged under the Rule, according to which before imposing the punishment, an enquiry is must.

On the other hand, counsel for the respondents submits that the recovery is not as a matter of punishment in the present case. He argues that as the petitioner(s) failed to adhere to the duties, which were assigned to them by the standing order, were not executed by them in a proper manner, the resultant loss of the said act has been recovered from them, which cannot be stated to be a punishment and, therefore, after the report of the Enquiry Committee, which was set up by the competent authority, where the allegations against the petitioner(s) were proved, the recovery has been ordered by the Competent Authority.

In respect of the arguments raised by the petitioner(s) that Chief Vigilance Officer is not competent to impose punishment, learned counsel for the respondents argues that it is only the case where disciplinary proceedings are being held against an employee, who belongs to 'B' or 'A' category then only the Managing Director has the power to impose the punishment, but in the present case, as the recovery has not been imposed by way of punishment, Chief Executive Officer, the highest ranked Officer of the Milk Union, was competent to impose the punishment which has been imposed upon them vide order dated 27.08.2010 (Annexure P-3). Another argument which has been raised by learned counsel for the respondents is with regard to the maintainability of the writ petitions. Learned counsel for the respondents states that no act of the Milk Union or the Federation can be challenged before this Court under Article 226 of the Constitution of India, as the same is not amenable to the writ jurisdiction

being a Cooperative Society.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Before dealing with the contention of learned counsel for the petitioner(s) about the jurisdiction of the Chief Executive Officer to impose punishment, the objection raised by the counsel for the respondents about the maintainability of the writ petition is being decided. No doubt, writ petition is not maintainable against the cooperative society but in case cooperative society is being managed by the government through its official, the same changes the status of the cooperative society. In the present case, it is admitted that an IAS Officer of the Government of Haryana is the Managing Director of the Federation. Managing Director is the Chief Executive Head of respondent No. 2-Federation and is managing its affair. The appointment of the Managing Director is done by the Government of Haryana and therefore, once Government of Haryana is appointing the Managing Director, who is an IAS Officer of the Haryana Cadre, it cannot be said that the respondent-Federation is not being managed or controlled by the Government in this regard and therefore, keeping in view the above facts, the objection which is being raised by the counsel for the respondents that the writ petition is not maintainable against the federation, is liable to be rejected.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in **Criminal Appeal No.5466 of 2002 titled as General Manager, Kisan Sahkari Chini Mills Ltd. Sultanpur, U.P. Vs. Satrughan Nishad and others, decided on 08.10.2003 (2003 (8) SCC 639),**

it was held that:-

“6. The point raised is no longer res integra as the same is concluded by decisions of this Court. In the case of [Ajay Hasia and others v. Khalid Mujib Sehravardi and Ors.](#), (1981) 1 SCC 722, a Constitution Bench of this Court, while approving the tests laid down in the case of [Ramana Dayaram Shetty v. International Airport Authority of India & Ors.](#), (1979) 3 SCC 489, as to when a corporation can be said to be an instrumentality or agency of the government, observed at page 736 which runs thus:-

"The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case 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 (SCC p.507, para 14)

(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. (SCC p.508, para 15)

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p.508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p.508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p.509, para 16)

(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. (SCC p. 510, para 18) If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in [Article 12](#). "

7. In the case of [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others](#) (2002) 5 SCC 111, a Bench of seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case (supra) and approved in the case of [Ajay Hasia](#) (supra) for determining as to when a corporation can be said to be an instrumentality or agency of the government so as to come within the meaning of the expression 'authority' in [Article 12](#) of the Constitution. There the Bench referred to the case of [Chander Mohan Khanna v. NCERT](#) (1991) 4 SCC 578 where, after considering the memorandum of association and the rules, this Court came to the conclusion that NCERT was

largely an autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilisation of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under [Article 12](#) of the Constitution. Further, reference was also made in that case to the decision of this Court in [Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Association and another](#), (2002) 2 SCC 167, where it was held that the company was an authority within the meaning of [Article 12](#) of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government.”

A bare perusal of above would show that in case any institution is being managed by the State Government either administratively or financially, the same will be amenable to the writ jurisdiction of this Court.

In the present case, the Managing Director of the respondents is an IAS Officer appointed by the State Government and all the decisions are being taken by him and hence, the respondents-institution is being managed administratively by the State and hence will be amenable to the writ jurisdiction of this Court.

Now, with regard to the argument being raised by the counsel for the petitioner(s) that the Chief Executive Officer of the Milk Union has no jurisdiction to impose punishment upon Group 'A' or 'B' employees keeping in view the provisions lies under 1988 Rules is to be examined.

Rule 48.1 of 1988 Rules which deals with the authorities, who are

authorized to impose punishment upon Group A, B, C and D employees, has been mentioned. The same is reproduced hereunder for ready reference:

“Employees in Annexure-A

i) Employee in Group-D

All Penalties under Rule 48.1

	<i>Authority Competent to impose Penalty</i>	<i>Appellate Authority</i>
a) Milk Plant	General Manager Milk Plant	Managing Director
XXXXX	XXXX	XXXX

ii) Employees in Group D & C except Sr. No.

(i) above.

	<i>Authority Competent to impose Penalty</i>	<i>Appellate Authority</i>
Group D & C	Managing Director	Personal Committee

iii) Employees in Group B & A

	<i>Authority Competent to impose Penalty</i>	<i>Appellate Authority</i>
Minor Penalties	Managing Director	Board
Major Penalties	Personal Committee	Board
XXXXX	XXXX	XXXX

A bare perusal of the above Rule would show that for imposing a punishment, even if it is a minor punishment, Managing Director is the competent authority. For major punishment, the same can only be imposed by the personal committee and appeal against the order passed either by the personal committee or the Managing Director, the appeal lies to the board.

In the present case, it is not disputed that the petitioners are working on the post of Assistant Manager which is a Group B post and, therefore, the authority to impose punishment upon the Assistant Manager will only be the Managing Director and the appeal will lie to the board.

Learned counsel for the respondents has argued that the recovery which has

been imposed upon the petitioner(s) is not a matter of punishment and therefore, Rule 48.1 which is being relied by learned counsel for the petitioner(s), will not be applicable in the present case.

Once, a recovery is being imposed upon an employee on an allegation that he failed to discharge his duty properly or according to the standing order or failure to discharge his duties and recovery of loss caused due to the said act commission or omission, will always be a matter of punishment. In the present case, allegation against the petitioner(s) is that they failed to discharge their duties as assigned to them, as per office order dated 14.09.2007, wherein, the duties were assigned to them for making payment and checking out the quantity of FAT kg./SNF kg.

Once, the allegation is for not performing the duties as envisaged, the same will amount to misconduct and any recovery being ordered for not performing the duties which amount to misconduct, will also be punishment and therefore, the arguments which is being raised by the learned counsel for the respondents that the present recovery which has been imposed upon the petitioner(s) is not a matter of punishment, is liable to be rejected.

Once, a recovery has been imposed upon the petitioner(s) by giving them show cause notice and after considering the reply filed, the same will have to be undertaken as per 1988 Rules and as per Rules, only competent authority to take action against an employee of Group A or Group B is the Managing Director. In the present case, the order of recovery has been passed by the Chief Executive Officer, who is not competent to do so as only the Managing Director is empowered to impose punishment upon

Group A or Group B employee, which is a minor punishment. In the present case, the recovery has been ordered which a minor punishment and could have been imposed after giving show cause notice but the said show cause notice has to be given by the competent authority and the consequent order in pursuance to the show cause notice is also to be passed by the competent authority, which in the present case is the Managing Director. Therefore, order dated 27.08.2010 (Annexure P-3) which has been passed by the Chief Executive Officer is held to be without any jurisdiction and hence, cannot be sustained in view of provisions of 1988 Rules and therefore, the same is liable to be set aside and is consequently done.

The appeal preferred by the petitioner(s) was decided by the Managing Director. Once, it has been held that the Managing Director is the punishing authority, chance of the petitioner(s) to file an appeal before the Board has been taken away by the Managing Director, while deciding the appeal and therefore, the said order is also contrary to the provisions of 1988 Rules and cannot be sustained and is also set aside. Impugned order passed by the punishing authority as well as the order passed by appellate authority in all the writ petitions are set aside having not being passed by competent authority as envisaged under the 1988 Rules.

As the orders imposing the punishment and rejecting the appeal of the petitioner(s) in all the writ petitions have been set aside on the technical ground that the authorities which have passed the said order, were not competent to do so, liberty is granted to the respondents to pass an appropriate order in the facts and circumstances of this case afresh in consonance with the 1988 Rules, wherein the punishing authority is the

CWP No. 16266 of 2015 and connected cases
12

Managing Director and against any recovery which is imposed by the Managing Director, the appeal will lie to the Board. All the three writ petitions are allowed. Impugned orders are set aside qua the petitioners in three writ petitions with liberty to the respondents to pass fresh orders in consonance with law as detailed above.

Allowed in above terms.

July 02, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes