

In the High Court for the States of Punjab and Haryana at Chandigarh

CWP No. 24896 of 2013 (O&M)
Date of Decision: March 25, 2019

Pawan Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Ms. Ambika Sood, DAG, Punjab.

Mr. I.S. Saggu, Advocate,
for respondents no. 4 and 5.

Arun Monga, J. (Oral)

The present writ petition has been filed seeking issuance of writ in the nature of certiorari quashing order dated 04.06.2013 (Annexure P/7) passed by Revisional Authority/respondent no.1, upholding order dated 03.10.2012 (Annexure P/6) passed by Appellate Authority/respondent no.2, whereby order dated 03.11.2011 (Annexure P/5) passed by Deputy Registrar, Cooperative Societies, Ludhiana was reversed and resolution dated 01.03.2011 (Annexure P/4) passed by Society/respondent no.4 was upheld stating, *inter alia*, that proper procedure has been followed. 2.

Learned counsel for the petitioner has drawn my attention to Rule 14 of the Punjab State Cooperative Agricultural Service Society Service Rules, 1997. For ready reference, relevant of same is extracted herein below:-

“14. Penalties

1. *The following penalties for good and sufficient reasons may be imposed on an employee by the competent authority for the mis-conduct established on his part:-*

(i) *Minor punishment:*

(a) *censure*

(b) *Reduction in emoluments*

(c) *Stoppage of increments*

(ii) *Major Punishments*

(a) *Reduction in rank.*

(b) *Removal or dismissal from service.*

In addition to the afore-mentioned penalties, the Committee may order recovery from the pay of the employee due to pecuniary loss caused by him to the Society by his negligence or by any willful acts of omissions or commissions on his part.

2. *No order imposing any of the penalties specified in sub rule (i)(i) above shall be passed except after giving written notice to the employee about the charge or charges leveled against him and after giving him an opportunity to represent his case within 15 days from the receipt of notice to be served on him.*

3. *In the case of inflicting major punishment as enumerated in sub rule I. II above inquiry proceedings have to be initiated giving him reasonable opportunity to represent his case as per the details given below:-*

(i) *Notice in writing to the employee by the competent authority enumerating therein the charge/charges levelled against him shall be given with a direction to represent his case in writing within 15 days from the receipt of notice.*

(ii) *After the representation from the employee*

- is received, the competent authority shall consider this representation in the light of charges levelled against him.*
- (iii) *If after consideration of representation competent authority reaches at a conclusion that the reply of the employee is not satisfactory then he shall appoint some person as enquiry officer and another person as presenting officer.*
- (iv) *The concerned employee shall be informed about the appointment of enquiry officer and presenting officer. The Enquiry Officer shall hear the case by affording opportunity of hearing to the concerned employee. The Presenting Officer shall put forth the case of the Society to the Enquiry Officer. Copies of all the documents relied upon in the enquiry shall be given to the concerned employee.*
- (v) *The enquiry officer shall submit the report to the competent authority and competent authority after considering the report, if reaches at a conclusion that some major penalty is required to be inflicted on the employee, shall give a notice to the concerned employee proposing therein the penalty to be inflicted on the employee and to give him an opportunity to represent within a period of 15 days as to why this penalty should not be inflicted upon him.*
- (vi) *After the expiry of 15 days and after considering the reply of the employee, if received, the competent authority shall pass the orders of inflicting of major*

penalty on the employee.

(vii) The order of infliction of major penalty on employee shall be communicated to him immediately.”

3. A perusal of the above Rule leaves no manner of doubt that, in order to award major punishment, the same has to be in accordance with the procedure prescribed above viz. written notice to the employee has to be given followed by a charge-sheet and thereafter by instituting appropriate enquiry proceedings by giving him reasonable opportunity to represent his case.

4. The petitioner was issued a charge sheet dated 27.09.2010 (Annexure P-1) which was duly replied by him vide Annexure P-2. Vide enquiry report dated 11.02.2011 (Annexure P-3), submitted by Sub Committee, petitioner was indicted and all the charges were held as proved against the petitioner.

5. A careful perusal of so-called enquiry report of the Enquiry Sub Committee shows that it was allegedly submitted pursuant to a purported enquiry. Actually, enquiry report has been furnished based simply on the reply submitted by the petitioner in response to the show cause notice. No enquiry proceedings were either initiated or conducted as per rules, as no enquiry officer was ever appointed. Thus, neither the petitioner was given any reasonable opportunity to defend himself, by appearing in the enquiry proceedings, nor even otherwise, any proceedings have been conducted as envisaged under Rule 14, *ibid*.

6. In view of my above discussion, I am of the opinion that since, concededly, no enquiry proceedings as envisaged under the Rules, *ibid*,

were conducted, therefore, all the consequential proceedings including the

impugned order passed by the Punishing Authority and the impugned Revisional order upholding the punishing authority's order, fail to withstand judicial scrutiny.

7. Accordingly, purported enquiry report dated 11.02.2011 (Annexure P/3) and as a consequence thereof, punishing authority's impugned resolution dated 01.03.2011 (Annexure P/4), as well as, Appellate Authority's impugned order dated 03.10.2012 (Annexure P/6) and Revisional Authority's impugned order dated 04.06.2013 (Annexure P/7) are set aside. The respondents are at liberty to proceed afresh against the petitioner in accordance with law, as envisaged under the Rules, supra.

8. With these observations, present writ petition is allowed in above terms.

March 25, 2019
vkd

(Arun Monga)
Judge

Whether speaking / reasoned : Yes / No

Whether reportable : Yes / No