IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

259 **CWP-493-2015**
Date of Decision: 08.03.2019

Darshan Ram
... Petitioner

Versus

Special Secretary, Cooperation, Punjab and others
... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Jagdeep Bains, Advocate,
for the petitioner.

Mr. Ashwani Prashar, Advocate
for respondent No.4.

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ARUN MONGA, J.(ORAL)

The present petition has been filed, *inter alia,* for issuance of a writ in the nature of certiorari assailing the revisional order dated 21.02.2014 (Annexure P-8) passed by respondent No.1/Special Secretary, Department of Co-operation, Government of Punjab whereby, the Appellate Authority's order dated 01.04.2013 (Annexure P-6) has been set aside and as a consequence thereof punishing authority order has been restored.

2. The Punishing Authority vide its order dated

19.09.2012 (Annexure P-5) inflicted a major punishment on the petitioner by reverting him from the post of Assistant Manager to that of lower post of Accountant and directed that the period of suspension of the petitioner i.e. 17.08.2010 to 19.09.2012 would be converted into leave of kind due.

3. Succinctly put, factual matrix is that the petitioner, a differently abled person with 75% physical disability, was originally appointed as Clerk-cum-Cashier on 02.03.1978 in the Central Cooperative Bank (CCB), Amritsar and later on was transferred to CCB, Patiala. He was promoted as Accountant on 20.08.1983 and subsequently as Assistant Manager. On 01.10.2006, he was transferred to CCB, SAS Nagar. The petitioner was allegedly found delinquent qua sanction of certain wrong overdraft limit while serving in the Branch Office at Derabassi. Owing to the same, a charge sheet dated 12.10.2010, under Rule 8 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 was issued to the petitioner and in subsequent departmental/enquiry proceedings the petitioner was indicted. This led to passing of an order dated 19.09.2012 (Annexure P-5) whereby, the Punishing Authority awarded major punishment of reverting the petitioner to lower post of Accountant. However, his pay was protected. The period of suspension from 17.08.2010 to 19.09.2012 was treated as leave of the kind due.

4. The petitioner filed a departmental appeal to challenge the punishing authority order dated 19.09.2012. Vide order dated 01.04.2013 (Annexure P-6), the appeal was allowed and for the reasons stated therein, the Punishing Authority's order was set aside. The Appellate Authority's order was in turn challenged by the respondent bank by way of a revision before respondent No.1.

5. The Revisional Authority was primarily of the view that the Appellate Authority had set aside the order of the Punishing Authority on the ground of non-compliance of principles of natural justice under the impression that the petitioner was not afforded adequate opportunity of being heard. The Revisional Authority observed that if the Appellate Authority was of the view that the petitioner had not been afforded the adequate opportunity, then it ought to have remanded the matter to Punishing Authority instead of setting aside the order of punishment. The Revisional Authority felt that adequate opportunity had been given to the petitioner, therefore, the reasoning adopted by the Appellate Authority was not correct and accordingly it accepted the revision petition and restored the Punishing Authority's order dated 19.09.2012.

6. Hence the present writ petition, impugning the orders dated 19.09.2012 (Annexure P-5) and 21.02.2014

(Annexure P-8) passed by the Punishing Authority and the Revisional Authority, respectively.

7. In reply filed by contesting respondents No.3 and 4, the impugned orders are sought to be justified on the ground that adequate opportunity was given to the petitioner and due procedure was followed before passing the order by the Punishing Authority. It is contended that all the charges as imputed were duly proved by the Enquiry Officer. It is further contended that the enquiry officer's report was duly considered by the Board of Directors of the Bank. After granting an opportunity to the petitioner of being heard by the BoD, it was proposed that punishment of the compulsory retirement be awarded to the petitioner. However, later on, it was decided to take a lenient view and instead of retiring him compulsorily, the petitioner was reverted to the post of Accountant. At the same time, his salary was protected as a Senior Manager vide Resolution No.6 passed by the Board of Directors. In the premises, the dismissal of the writ petition has been sought by the respondents.

8. I have gone through the pleadings as well as the record appended thereto and heard the rival contentions of learned counsel appearing for respective parties.

9. Having given my careful thought, I am of the view

that the impugned orders dated 19.09.2012 (Annexure P-5) 21.02.2014 (Annexure P-8) passed by Punishing Authority and Revisional Authority, respectively, do not stand the judicial scrutiny and are liable to be set aside. As a consequence thereof, order dated 01.04.2013 (Annexure P-6) passed by the Appellate Authority is liable to be upheld.

10. Learned counsel for the petitioner has vehemently relied on Rule 9 of Punjab Cooperative Financing Institution Service Rules, 1958 (for brevity, PCFSIR) framed under the provisions of Punjab Cooperative Societies Act, 1961, as applicable in the present case. It would be instructive to reproduce the relevant Rule 9, ibid, before proceeding further:-

> ***"9. AUTHORITY EMPOWERED TO IMPOSED PENALTY.***
>
> *(i) Authority empowered to impose penalty shall be as specified in the bye-laws of the concerned financing institution provided that in case of Punjab State Coop. Bank Ltd., the authority to punish shall vest in the Managing Director.*
>
> *(ii) The provisions of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 as amended from time to time shall be followed in the matter of awarding punishment to the employees.*

(iii) Every order awarding punishment shall be communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded.

(iv) No employee in any case shall be kept under suspension for a period exceeding 6 months at a time except the case with the prior approval of the Registrar.

(v) During the period of suspension, a member shall be paid suspension allowance equal to 50% of his salary along with full usual allowance..."

11. A perusal of the above Rule shows as below:-

i) the provisions of Punjab Civil Service (Punishment and Appeal) Rules, 1970 shall apply in respect of awarding punishment to the employees of the respondent-bank.

ii) No employee can be suspended beyond a period of six months without approval of the Registrar

iii) During the period of suspension an employee shall be paid a subsistence allowance equal to 50% of his salary alongwith full usual allowances.

12. Learned counsel for the petitioner contends that as far as Sub Rule (v) of Rule 9 is concerned, the same flies in the face of Sub rule (ii) of Rule 9, inasmuch as,under Rule 4 of

Punjab Civil Services (Punishment and Appeals) Rules, the prescribed subsistence allowance beyond a period of six months is 75%. Whereas, contrary to that, Sub Rule (v) *ibid* prescribes 50% subsistence allowance throughout the period of suspension.

13. She further contends that the entire proceedings including enqiry report as well as the impugned order passed by the Punishing Authority are vitiated being in violation of Sub Rule (iv) of Rule 9 above, as no permission of the Registrar was sought, after the lapse of initial period of suspension of six months in the case of the petitioner. She contends that the suspension of the petitioner beyond six months being unlawful and perverse, the petitioner was deemed to have been reinstated for lack of requisite sanction as envisaged in the Rule 9 *ibid*.

14. Per contra, learned counsel for the respondent-bank has argued that in the present case, no sanction was required to be taken in view of the resolution passed on 07.10.2011 by the Board of Directors of the Bank in which a decision was taken to suspend the petitioner. Deputy Registrar of Cooperative Society was also present in said Board meeting as a nominee of the Registrar and therefore the said Resolution would be read as a deemed sanction of the Registrar.

15. I am unable to agree with the arguments advanced by learned counsel for the respondent-bank. The whole purpose of seeking sanction from the Registrar is that there has to be independent application of mind before granting the said sanction. Lack of sanction not only has adversarial consequences qua the job prospects of the delinquent employees, but also is a vested right of the employee as envisaged under Rule 9 Sub rule (v) *ibid.* Merely because the Deputy Registrar Cooperative Societies was present as a nominee of the Registrar when resolution was passed for petitioner's suspension, it cannot be substituted in place of an express sanction as prescribed by the Rules. In any case, a person who is a signatory of an administrative decision cannot sit in appeal to grant sanction of his own administrative action.

16. Learned counsel for the respondent has relied upon the judgment of a Division Bench of this Court rendered as ***Punjab State Cooperative Milk Producers Federation Limited vs. Registrar, Cooperative Societies, Punjab and others, 2012(1) SCT, 262.*** The relevant thereof is reproduced hereinbelow:-

> *"A perusal of the aforesaid para would show that the remedy of revision is not barred where aggrieved person has a right of appeal either under the*

> *Statutory Service Rules or Common Cadre Rules. In the present case, the remedy of appeal under the Common Cadre Rules before the Milkfed-appellant has been availed of and further remedy of revision could be availed before the State Government. In the present case, once the Registrar or his nominee has participated in the proceedings as Appellate Authority, no revision petition could have been entertained by the Additional Registrar. He cannot hear revision petition against his own order or against an order that has been passed by the Board of which he himself or his nominee has been the member. It would be patently against the principles of natural justice. The judicial maxim has throughout been that no man can be judge in his own cause."*

17. A careful perusal of the above judgment in fact shows that the same goes against the contention of learned counsel for the respondent.

18. In the case cited above an order passed by Deputy Registrar was held as deemed to have been passed by the Registrar and, therefore, it was held that no further revision before the Registrar would lie on the principles of 'nobody can be judge his own boss'. The said judgment is not applicable in the present case and as admittedly no sanction

was sought either from the Deputy Registrar or Registrar, the ground that the Deputy Registrar was present in the same meeting of the Board of Directors as a nominee of the Registrar does not meet the statutory requirement of sanction of the Registrar.

19. Other grounds raised by learned counsel for the petitioner as also pleaded in the writ petition, need not be gone into in view of the patent illegality committed by the respondent/bank in not seeking the sanction of the Registrar for continuance of petitioner's suspension beyond a period of six months. The entire process followed thereafter stands vitiated by this illegality.

20. In view of the above, the impugned orders dated 19.09.2012 (Annexure P-5) and 21.02.2014 (Annexure P-8) are set aside. The petitioner shall be entitled to all consequential benefits, including the arrears of salary for the period of his suspension i.e. 17.08.2012 to 19.09.2012 along with 6% interest, after deducting the amount of subsistence allowance already paid to him. It is, however, made clear that since the Punishing Authority had already protected the pay of the petitioner, he is not entitled to any further monetary benefits.

(ARUN MONGA)
JUDGE

08.03.2019
anju

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No