

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

LPA No.1603 of 2019 (O&M)
In CWP No.3094 of 2013
Date of Decision: 03.10.2019

Chamiara Co-op. Agricultural Service Society Ltd ...Petitioner

Versus

Presiding Officer, Industrial Tribunal Jalandhar and anr. ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

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Present: - Mr. B.S. Kathuria, Advocate for the petitioner.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 18.03.2019 passed by learned Single Bench in CWP No.3094 of 2013.

2. The appellant is a Cooperative Society registered under the Punjab Cooperative Societies Act, 1961. Respondent No.2 was appointed as a Salesman in the appellant-Society on 07.1.1987. Vide resolution dated 01.08.1998 of the appellant-Society, respondent No2 was removed from service. The charges against him were that he constantly quarrelled and misbehaved with the Managing Committee, that he did not submit a surety bond as required and that he remained absent from duty without requisite authorisation. Admittedly, no inquiry was conducted.

3. Respondent No.2 filed an appeal against the resolution before the Deputy Registrar, Cooperative Societies, Jalandhar the Appellate Authority under the Punjab Cooperative Agricultural Service Society Rules, 1997 (For short "1997 Rules"). The operation of the termination

order dated 01.08.1998 was stayed during the pendency of the appeal before the Deputy Registrar. Respondent No.2 was allowed to join duty. The appeal was withdrawn by him on 24.3.2001. Thereafter, he challenged the order of termination before the Industrial Tribunal. Vide letter dated 19.12.2006, the matter was referred to the Industrial Tribunal Jalandhar for adjudication under Section 10 (1)(c) of the Industrial Disputes Act. The Industrial Tribunal passed award dated 7.11.2012. The resolution dated 8.1.1998 terminating services of respondent No.2 was set aside. He was reinstated in service with continuity and all other service benefits with 50% back wages from the date of his termination till the date of the award and full wages thereafter.

4. The appellant-Society filed the writ petition against the award, which has been dismissed vide the impugned order.

5. The primary contention of the appellant-Society before the learned Single Judge as noticed in the impugned judgment was that a request had been made by the appellant before the Tribunal for leading evidence in defence of the termination order and the Tribunal ought to have permitted the appellant to lead evidence to justify the termination in terms of Section 11-A of the Industrial Disputes Act

6. To determine the validity of the claim of the appellant, learned Single Judge referred to the pleadings of the parties before the learned Industrial Tribunal namely the claim statement and the corresponding averments in the written statement.

7. Learned Single Judge has held that a bare reading of the defence statement of claim by the appellant revealed that no request had been made by the Management that in case the termination was held to be

illegal on the ground of not holding a regular inquiry into the allegation of his conduct, the appellant Management should be afforded an opportunity to prove its case by leading evidence in justification of order of termination. Learned Single Judge has held that as per settled law, in a case where domestic inquiry conducted against a workman is found to be flawed in any manner, the Management can also reserve its right to justify the termination by legal evidence in terms of Section 11-A of the Act. In the absence of the Management reserving such rights at any stage before the award is passed, the Management cannot complain that it ought to have been given such an opportunity. The Tribunal or the Court is not to act suo moto in aid of those, who do not seek such an opportunity.

8. Ld. Single Judge noticed that before the Tribunal only two issues were framed:

- (i) Whether the applicant falls within the definition of 'workman' under Section 2 (s) of the Act?
- (ii) Whether his services were illegally terminated? If so, then for what relief workman is entitled to?

9. While deciding issue No.2, Industrial Tribunal has considered this aspect and held that in the written statement no plea had been taken by the Management that an inquiry has been held and that the Management claimed the right to prove the charges on merit before the Tribunal. The Management had not claimed the framing of preliminary issue to justify its action before the Tribunal. Learned Single Judge further held that the second issue was broad enough for the Management to adduce every piece of evidence it had to prove that the termination was legal and valid.

Nothing stopped them from discharging the burden to prove that the termination was legal and valid. They failed to do so.

10. Learned Single Judge further took note of the unusual haste of the Management in terminating the services of respondent No.2. The term of the Managing Committee was to expire on 04.8.1998. Show cause notice was issued to the respondent on 16.07.1998 regarding his absence and non-furnishing of surety bond. The resolution of termination was despatched to him on 03.08.1998. There was no time where a full fledged inquiry could be conducted. Even the surety bond, which had been sought by the Management, had been furnished by respondent No.2 and placed on file before the Managing Committee and even before the Deputy Registrar, who referred the same to the Managing Committee for action. The surety bond of requisite immoveable property had been furnished by the father of respondent No.2. This aspect was not considered by the Managing Committee. Another glaring fact was that the dispute regarding joining duty and furnishing surety bond was settled before the Deputy Registrar, Co-op Societies on 20.7.1998 in the presence of Darshan Singh and Atma Singh, the President and Vice President respectively of the Society. Thereafter, the matter was adjourned to 11.8.1998. Meanwhile, the resolution dated 01.08.1998 was passed by the Managing Committee terminating his services on the ground that surety bond had not been furnished and he had remained absent from duty. In these circumstances the Tribunal rightly concluded that the Management was in tearing hurry to remove the workman.

11. Learned Single Judge also held that the decision making process was vitiated on account of bias as members of Three Member Sub-

Committee, which had recommended the termination of the petitioner namely Darshan Singh, President, Atma Singh, Vice President and Gurbachan Singh, Member had also participated in and approved the resolution dated 01.08.1998 becoming judges in their own cause. Reliance was placed upon a decision of Hon'ble Supreme Court in **Cantonment Executive Officer & others Vs. Vijay D. Wani & Others, AIR 2008 SC 2953.**

12. Ld. Single Judge negated the argument of the appellant that as respondent No.2 had withdrawn his appeal pending before Deputy Registrar, Co-operative Society without leave to approach an appropriate Forum and consequently was estopped from raising an industrial dispute after noticing that in the head note of his application permission was sought to withdraw the appeal with permission to seek a remedy under the Industrial Disputes Act. In para 2 of the application, it was averred that the appellant-Society had passed another order terminating his services the dispute regarding which was pending before the Labour Court at Jalandhar. In case, his appeal was decided by the Deputy Registrar, Cooperative Societies, there may be conflict of judgments. Though the order dated 24.3.2001 of the Deputy Registrar on the application was

“Keeping in view the prayer of the appellant, he is allowed to withdraw his appeal,”

but keeping in view the contents of the application, there was strong indication that the permission was deemed to be granted.

13. Learned Single Judge held that the Tribunal has appreciated the case in correct perspective and returned findings of facts on the issues before it which were not open to interference under the limited

jurisdiction exercised under Article 226 of the Constitution in reviewing the awards of Tribunals. The writ petition was dismissed.

14. Learned counsel for the appellant has primarily contended that the service of respondent No.2 is governed by the Punjab State Cooperative Agricultural Society Service Rules and in view thereof, the jurisdiction of the Tribunal under Section 10 (1) of Industrial Disputes Act is excluded.

15. Without going into the merits of this contention, suffice it to say that this contention was not raised by the appellant either before the Tribunal or the learned Single Judge. Respondent No.2-workman had been agitating his claim since 2002. It would be neither fair nor proper to entertain this objection at the hands of the appellant, at this stage.

16. Consequently, present appeal is dismissed.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

October 03, 2019
manoj

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No