

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1106 of 2019 (O&M)
Date of decision: 14.01.2020

Jagjit Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. M.S.Bedi, Advocate,
for the appellant.

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 28.11.2018, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant against the order, whereby he was dismissed from service, as also the subsequent orders passed by the appellate and revisional authorities, affirming his dismissal, has since been dismissed.

A brief narration of the facts that have led the appellant to the current stage shall be expedient and necessary.

The appellant was employed with respondent No.5, i.e. The Jaitu Multipurpose Cooperative Societies Ltd., (for short 'the Society'), as Peon-cum-Chowkidar since 22.9.1995. For, Balkaran Singh (salesman), engaged in the Society, was suspended, the appellant was assigned the

charge of a salesman. Subsequently, pursuant to reinstatement of Balkaran Singh, the appellant was directed to hand over the charge to the former, along with records and cash lying with him. For, he failed to abide by the instructions, he was suspended on 4.12.2009. A charge sheet was issued to the appellant for embezzlement and the irregularities he had committed, whereafter a regular departmental enquiry was held against him. For, he was found guilty of having embezzled ₹6.41 lakhs of the members of the Society, his services were terminated on 26.03.2010. However, in an appeal filed by him, the appellate authority, vide order dated 13.12.2020, set aside the order of his dismissal. For, the revision preferred against the said order was dismissed on 9.6.2011, the Society approached this Court, vide CWP No. 12530 of 2011, assailing those orders. And, the learned Single Judge, upon consideration of the matter, reached a conclusion: service conditions of the appellant were governed by the Punjab State Cooperative Agricultural Service Society Service Rules, 1997 (for short 'the Rules'), and he was dismissed from service in apparent violation of Rule 14(3)(v) and (vi) of the Rules, which required that in the event a major penalty was to be imposed, the Society was required to furnish a copy of the enquiry report to the employee as also the notice as regards proposed punishment. However, for the appellant was neither supplied a copy of the enquiry report, nor a notice proposing a major penalty was served upon him, order of his dismissal was unsustainable. Resultantly, the order of dismissal, as also the orders passed by the appellate as well as the revisional authorities were set aside, and the matter was remitted to the disciplinary authority to proceed further, in terms of the Rules, from that stage. Whereafter, the Society, vide letter dated 18.9.2012, furnished a copy of the enquiry report to the appellant and he was

also given a show cause notice (resolution No.3), dated 14.9.2012, in terms of Rule 14(1)(ii)(b) of the Rules, proposing punishment of dismissal from service. However, in his reply, dated 27.9.2012 (Annexure P-7) thereto, he disputed the validity of the enquiry and even denied if he had committed any embezzlement. Whereupon, the Society, on consideration of his response, passed a resolution dated 17.10.2012 (Annexure P-8), dismissing the appellant from service. The appeal filed by the appellant against the said order was dismissed on 31.10.2014, and likewise, even his revision met the same fate, for it was dismissed on 24.6.2015. Being aggrieved, the appellant assailed those orders by way of a revision under Section 69 of the Punjab Cooperative Societies Act, 1961, which too was dismissed on 12.10.2017. This is how, he again approached this Court, vide a writ petition, referred to above.

The learned Single Judge, in reference to the earlier order passed by a Coordinate Bench on 14.08.2012 in CWP No. 12530 of 2011, concluded that claim of the appellant that enquiry as also the enquiry report suffered from material illegalities, was misconceived, as validity of the enquiry had already been examined by the Coordinate Bench, while deciding the earlier writ petition, and the enquiry report was impliedly found to be valid. Further, for the action of the Society was vitiated owing to non-compliance of Rule 14(3)(v) and (vi) of the Rules only, the disciplinary authority was required to pass fresh orders making the enquiry report as basis. Therefore, the appellant was estopped by his act and conduct to assail the enquiry proceedings being barred by the Principle of Constructive Res Judicata.

We have heard learned counsel for the appellant, who merely

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reiterated the submissions that were advanced before the learned Single Judge: for neither charge sheet was served upon the appellant, nor any evidence was recorded by the enquiry officer, and thus, the appellant had no occasion to cross-examine the concerned witnesses. Thus, the enquiry conducted by the enquiry officer not being in consonance with the due procedure, the action of the Society, in its entirety, was vitiated. Further, observations recorded by the learned Single Judge that initial order of dismissal of the appellant, dated 26.03.2010, was affirmed by the appellate as also the revisional authority, and being aggrieved, the appellant had filed CWP No. 12530 of 2011, which was disposed of by a Coordinate Bench on 14.8.2012, with certain directions, and therefore, the plea of the appellant that enquiry report was invalid, was barred by the Principle of Constructive Res Judicata, is erroneous and contrary to the record. For, he asserts that, in fact, the appeal filed by the appellant against the order of his dismissal, dated 26.3.2010, was accepted by the appellate authority, the order that was even affirmed in a revision filed by the Society, and the earlier writ petition, i.e. CWP No. 12530 of 2011, was not filed by the appellant but by the Society.

We have heard learned counsel for the appellant and perused the records.

Ex facie, initially the appellant was dismissed from service on 26.03.2010 preceded by a regular departmental enquiry. Indisputably, the said order was set aside by the appellate authority and after revision filed by the Society against the said order failed, the Society approached this Court, vide CWP No. 12530 of 2011, which was disposed of by the learned Single Judge on 14.8.2012. The records show that the matter was at large before the learned Single Judge who having examined all possible issues arising for

consideration, concluded that dismissal of the appellant was unsustainable being in violation of Rule 14(3)(v) and (vi) of the Rules, as he was not supplied with the copy of enquiry report as also the show cause notice. And thus, action of the Society was vitiated, but from that **stage onwards**. The matter was accordingly remitted to the disciplinary authority to proceed further, **on the basis of the enquiry report**:

After hearing learned counsel for the parties and considering their contentions, in my opinion, there is weight in the arguments addressed by learned counsel for respondent no. 1 that there were violation of rule 14 (3) (v) and (vi) of the Rules which requires supply of enquiry report along with the notice proposing the punishment, in case major penalty is to be imposed. Rule 14 (3) (v) and (vi) of the Rules is extracted below:-

“14. PENALTIES :

3 (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 there in 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.”

In the present case, neither copy of the report was supplied before imposition of penalty to the respondent-workman nor any show cause notice was issued to him proposing major penalty.

Accordingly, the order passed by the society terminating the services of the petitioner is vitiated from that stage onwards. As a result thereof, the impugned resolution dated 26.3.2010 terminating the services of the petitioner and the order passed by the Appellate Authority as well as the Revisional Authority dated 13.12.2010 and 9.6.2011, respectively, are set aside. The matter is remitted back to the disciplinary authority for proceeding further on the basis of enquiry report in terms of the provisions of the Rules.”

A bare analysis of the position, as sketched out above, irresistibly shows that all what preceded the procedure to be followed in terms of the Rules 14(3)(v) and (vi) of the Rules was no longer in issue. It is not disputed either that post passing of the order dated 14.08.2012, the Society, in sync with the Rules, furnished a copy of the enquiry report and served upon the appellant a show cause notice proposing a major punishment of dismissal from service. Concededly, the appellant filed a reply thereto and the Society, upon consideration thereof, dismissed him from service, vide order dated 17.10.2012. Thus, in the given situation, the appellant could not be permitted to rake up once again the issue qua the validity of enquiry as also the enquiry report, which formed basis of his dismissal. Needless to assert, if the appellant was aggrieved with the conclusion recorded, vide order dated 14.8.2012, he had his remedies to avail. Indisputably, order dated 14.8.2012, passed by the learned Single Judge, was not questioned any further and thus, attained finality.

We are also reminded, at this juncture, to clarify that observations of the learned Single Judge that initial order of dismissal of the appellant, dated 26.03.2010, was affirmed by the appellate as also revisional

authority and the writ petition, i.e. CWP No. 12530 of 2011, was preferred by the appellant are, as indicated above, contrary to the records. But that too would neither advance the case of the appellant nor enure to his advantage, for, nothing turns thereupon apart from being a factual error in narration of events. The fact remains that, while disposing of the writ petition, i.e. CWP No. 12530 of 2011, vide order dated 14.8.2012, the learned Single Judge had concluded that action of the Society was vitiated from that stage onwards, i.e. stage envisaged under Rule 14(3)(v) and (vi) of the Rules. And the disciplinary authority was directed to proceed further on the basis of the enquiry report. Therefore, It was in this backdrop, the learned Single Judge concluded that validity of enquiry report was gone into by the Coordinate Bench in the previous proceedings and the enquiry report was impliedly found to be valid. Thus, the appellant was estopped by his conduct to question the enquiry proceedings, being barred by the Principle of Constructive Res Judicata.

In the wake of the above, we are dissuaded to interfere with the impugned judgment and order. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

January 14, 2020
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: