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

**CWP 10056 of 2020 (O&M)
Date of Decision: October 29, 2020**

Rishi Kumar ......Petitioner

Versus

State of Haryana and others .... Respondents

**CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. D.S. Patwalia, Sr. Advocate with
Mr. Tejashwar Singh, Advocate
for the petitioner.

Mr. D.S. Nalwa, Addl. A.G. Haryana
for respondents No. 1 to 3.

Mr. Pardeep Solath, Advocate
for respondent No.4.

**FATEH DEEP SINGH, J. (Oral)**

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

**CM 7127 of 2020**

In the light of the averments in the application, the same is allowed subject to all just exceptions. Additional affidavit of Shri Rishi Kumar alongwith Annexures P-37 to P-43 are taken on record. Office to tag the same as per Rules.

**CWP 10056 of 2020**

The petitioner Rishi Kumar working as Assistant Registrar Cooperative Societies Gurguram (ARCS) was found involved in embezzlement of lacs of rupees in connivance with his colleague respondent No.4 Arvind Kumar @ Arvind Sharma, Inspector Cooperative Societies, Gurgaon (1) (appointed by the then Assistant Registrar Cooperative Societies, Gurgaon as the official liquidator of the Gurgaon Marketing Cooperative Society Ltd. Gurugram, which was under process of "winding up"). It was as a consequence of this malfeasance Cooperation Department Haryana Government vide order dated 08.07.2020 Annexure P-31 placed the petitioner under suspension with headquarters at Panchkula. To further ensure that the petitioner might not alienate his properties and that of his family members with a view to escape the recovery of the embezzled amount, the Deputy Registrar Cooperative Society Gurugram through order dated 08.07.2020 (Annexure P-33) has passed the following order:-

> " A direction has also been issued to ensure that the amount of embezzlement is recovered at the

earliest by taking all possible legal steps in the matter. Since, a direction to Shri Avrind Kumar, Liquidator was issued as per his confession dated 01.07.2020 to deposit the embezzled amount immediately, however, RCS has directed you to collect the information about the moveable and immovable properties of Shri Rishi Kumar, ARCS Gurugram (under suspension) and of Shri Arvind Kumar, Liquidator (under suspension) including the property in the name(s) of family member(s) and to proceed to get attached the same till the recovery of the embezzled amount and pendency of disciplinary action. It has also been directed you that in case the Saving Bank Account related to their salary is sealed then the amount of subsistence allowance, so given to them in their Salary Account, should not be restricted to be withdrawn by them."

Aggrieved over these two orders, the petitioner has come up in this civil writ petition under Article 226 of the Constitution of India seeking issuance of a writ of *certiorari* for quashing both of these orders Annexures P-31 and P-33 and meanwhile stay on the operation of the same.

The brief claim of the petitioner is of total innocence having been falsely implicated on account of vengeance and revenge and staking plea that it was the act of respondent No. 4 which has led to this and who has got the petitioner falsely roped in and scuttled the inquiry against himself. The petitioner has also assailed the registration of the first information report pertaining to these allegations. It is termed that the entire act of the respondents was of gross arbitrariness and unreasonableness and, thus, liable to be quashed.

In response, respondents No. 1 to 3 besides taking up usual pleas by way of preliminary objections, the answering respondents pleaded that the petitioner has concealed the material facts to safeguard himself from his fraudulent activity of cheating the department and that suspension of the petitioner is no punishment but to facilitate holding of inquiry and administrative action so as to ensure that the petitioner does not in any manner is able to exercise pressure and duress upon the official holding such administrative action and, thus, influence the outcome. It is claimed that the petitioner failed to carry on his duties diligently in not supervising the affairs of the department being circle in-charge and has rather colluded and connived with respondent No. 4 to cause irreparable loss of prestige besides causing loss in terms of money. Each and every para of the petition is denied claiming that appropriate action under the law has been initiated and the present petition is nothing but to delay and scuttle due process of law.

Respondent No.4 in a separate reply besides taking preliminary objections tried to throw the entire burden on the shoulders of the petitioner, wherein, certain allegations having no relevance to the present petition were raked up and claimed that the petitioner has tried to unduly blame the answering respondents of the embezzlement when he himself has done so. Terming each and every averment to be figment of lies of the petitioner and painted himself totally innocent and has sought a prayer for dismissal of the petitioner.

Heard Mr. D.S. Patwalia, Sr. Advocate assisted Mr. Tejashwar Singh, Advocate for the petitioner, Mr. D.S. Nalwa, Addl. A.G. Haryana for respondents No. 1 to 3 and Mr. Pardeep Solath, Advocate for respondent No.4 and has gone through the records.

It is in no manner displaced as to the appointment and functioning of the petitioner in his department. The factum of embezzlement/misdemeanor having taken place in the department is well elicited and it is a different matter as to its outcome and of the administrative action that might ensue. The siphoning of 45.4 lacs from the central cooperative banking system could not be displaced during the course of submissions by the two sides. It is well settled position of law that suspension can only be challenged either on the grounds that it was *mala fide* or the same having been not passed by a competent authority. Though Shri Patwalia learned counsel for the petitioner has argued at length to build up a case for the petitioner and, thus, invariably lead to the suggestion that he was wholly innocent and that not a single penny has been received in the account of the petitioner nor there is any document to this effect much less any signatures attributed to him. In the present case, it is fairly conceded at the bar that criminal proceedings too have been initiated and which are under way and charge sheet has been served and, therefore. leads to irresistible conclusion and that there are *prima facie* allegations that the petitioner engaged himself in activities which were prejudicial to the interests of the department and caused them immense economic loss as well as loss of reputation.

To the specific query of the Court, counsel for the petitioner could not convince how under Haryana Civil Services (Punishment and Appeal) Rules, 2016, the Appointing Authority can not suspend an employee on initiation of disciplinary proceedings by resorting to the provisions of Rule 5.

Furthermore, this Court seeks support from **State of**

**Orissa** **Vs.** **Bimal Kumar Mohanty,** **1994(2) S.C.T. 625** to hold out as has been argued by the counsel for the respondents that there are *prima-facie* allegations of misconduct hovering around defalcation of money which is of serious nature and thus keeping in view the gravity of offence of misconduct the administrative order was necessitated. The counsel for the petitioner could not highlight how the same was vitiated by malaise. Rather it is a safeguard to ensure that an employee does not scuttle the inquiry by misuse of his position and perpetrate his illegalities and acts of misconduct and which is also the ratio laid down in **Union of India** **Vs.** **Ashok Kumar Aggarwal** **2013(16) SCC 147** cited on behalf of respondents No. 1 to 3.

Being a case of serious malfeasance inclusive of moral turpitude in a bank owned by the instrumentality of Government and the inability of the counsel for the petitioner to show how the order of suspension Annexure P-31 is illegal, malafide and unsustainable and this Court is not inclined to show inclination in interfering in such an order.

A close perusal of the second order under assail Annexure P-33, whereby, as a consequence of this malfeasance, the official respondents have issued directions to ensure that amount of embezzlement is recovered at the earliest **<u>"by taking all possible legal steps in the matter"</u>** and further that directions have been issued to collect the information about the moveable and immovable properties of the petitioner and of respondent No.4 including the properties in the names of their family members and to proceed to get the same attached till the recovery of the embezzled amount and pendency of the disciplinary action.

Thus, as has been submitted by Mr. Nalwa, learned State counsel, it is not a case as has been sought to be put-forth by Mr. Patwalia, learned counsel for the petitioner that it is of penal consequence as neither the properties *suo moto* stand attached by the authority issuing Annexure P-33 nor recovery has been effected and rather it is only a direction to the official to initiate and take appropriate steps in that directions so as to safeguard the interest of the bank and ensure the petitioner delinquent employee may not succeed in scuttling the recovery of the loss so caused to the employer.

To the specific query of the Court, learned counsel for the petitioner could not convince as to what illegality or perversity is elucidated from the impugned order under challenge as being a pure case of administrative action being bank against its erring employees for such a serious misconduct, which would have its ramifications in the entire bank dehors this Court from acceding to the prayers of the petitioner.

The petition is wholly *mala fide* and unsustainable and is outrightly dismissed.

**October 29, 2020** **(FATEH DEEP SINGH)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No