

113.

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

CWP-15875-2022

Date of Decision: 25.07.2022

TAJINDER SINGH AND ANR.

.... Petitioners

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. ADS Jattana, Advocate,
for the petitioners.

JAISHREE THAKUR.J

The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of certiorari for setting aside order dated 15.07.2022 (Annexure P-13) passed by respondent No.3 whereby second appeal has been taken up for hearing and an ex-parte stay has been allowed.

In brief, the facts are that both the petitioners herein are the Managing Committee members of the Saha Primary Agriculture Cooperative Society. Respondent No.6 was found to have acted with gross misconduct while performing his services and duties towards the Society, consequent to which, a charge-sheet was issued upon him. Respondent No.6 filed his reply which was found to be unsatisfactory, upon which, an Enquiry Officer was appointed, who was none other than the Inspector, Cooperative Societies

Barara, District Ambala. The Enquiry Officer, after having gone through the record, charge-sheet and the reply filed and giving an opportunity of hearing to the employee, submitted his enquiry report dated 25.11.2021. The allegations in the charge-sheet were proved. A special audit was also done of the Saha Primary Agriculture Cooperative Society for the year 2020-21 and the Auditor also came to the conclusion that there was an embezzlement of Rs.1.27 crores having been committed by the Manager i.e. respondent No.6. Upon submission of the enquiry report, a show cause notice was issued by the Managing Committee of the said Society. Respondent No.6 submitted his reply and the competent authority of the Society passed an order of dismissal of respondent No.6 on 14.02.2022. Respondent No.6, after dismissal, deposited an amount of R.5.71 lakhs. An appeal under Rule 26 of the Primary Agricultural Cooperative Societies/Primary Cooperative Credit & Service Societies Staff Service Rules, 2014 (amended in 2017), was preferred against the order of dismissal but the order was upheld by respondent No.4 being the first Appellate Authority. Against the order of dismissal of his first appeal, respondent No.6 preferred second appeal under Rule 26(2) of the aforesaid Rules before the Deputy Registrar Cooperative Societies, Kurukshetra, respondent No.3, who has stayed the order vide impugned order Annexure P-13 and fixed the matter for final disposal on 26.08.2022.

Mr. Jattana, learned counsel appearing on behalf of the petitioners herein would assail the said order by contending that respondent No.3 while staying the order has not taken into consideration the detailed order passed by the first Appellate Authority, challenged by respondent

No.6. It is submitted that the impugned order was passed without issuing a notice to the Society and is an ex-parte one, while further submitting that in case the impugned order as passed by the Deputy Registrar Cooperative Societies, Kurukshetra is not stayed, irreparable loss and injury will be caused to the Society who would necessarily have to take respondent No.6 back in service. It is argued that there is enough material available to show that respondent No.6 had misappropriated and embezzled funds of the Society which would be evident from the fact that he had deposited an amount of Rs.5.71 lakhs.

I have heard learned counsel for the petitioners and this Court, after perusal of the documents, proposes to dispose of this petition in limine without issuing notice of motion to the respondents. The facts of the writ petition are not being narrated again for the sake of brevity. The main grouse of the petitioners herein is that they were given no opportunity of hearing before respondents No.3 stayed the resolution dismissing respondent No.6 and the orders as passed by the first Appellate Authority. The contention raised herein is that the order does not show that there was any active consideration of the orders as passed by the first Appellate Authority which had dismissed the appeal of respondent No.6.

An audit report has also been relied upon reflecting embezzlement to the tune of Rs.1.27 crores. A reading of the impugned order staying the resolution and the order of the first Appellate Authority does not reflect whether or not the said audit report was taken into account along with other documents while staying all proceedings. However, as the matter is now listed for 26.08.2022, let the matter be heard on the date so fixed and if

for some reason, the appeal cannot be heard on the said date, it be heard positively within a period of two weeks thereafter. Operation of the order Annexure P-13 is kept in abeyance till the decision on the appeal on merits.

The present petition is disposed of in limine on the above terms.

(JAISHREE THAKUR)
JUDGE

25.07.2022

sanjeev

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