

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

Date of decision : 23rd of March, 2023

CWP-4089-2021 (O&M)

Bhola Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CWP-7746-2021 (O&M)

Amarjeet Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.S. Bal, Sr. Advocate with
 Mr. Laxman Choudhary, Advocate
 for the petitioner (in CWP-4089-2021).

 Mr. Vishal Sharma, Advocate
 for the petitioner (in CWP-7746-2021).

 Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

 Mr. S.C. Jindal, Advocate
 for respondent No.6 and 7 (in CWP No.4089 of 2021).

 Mr. Sandeep S. Mann, Advocate
 for respondent No.5 (in CWP-7746-2021).

 Mr. Ranwant S. Sangha, Advocate
 for respondent No.7 (in CWP-7746-2021)

PANKAJ JAIN, J. (ORAL)

 Challenge in the instant writ petitions filed under Article

226/227 of the Constitution of India is to the termination by the employees

of the Cooperative Societies.

2. The ground of the challenge is that the authors of the inquiry report were part of the Managing Societies which acted upon such inquiry report leading to the orders of termination. Thus the same is in the teeth of basic maxim that nobody can be a judge of his own cause.

3. Counsel appearing for the parties are *ad idem* that similar controversy was adjudicated by Co-ordinate Bench of this Court in **CWP No.11208 of 2014** titled as **Sajjan Singh vs. State of Punjab and others** which was decided vide judgment dated March 20, 2015 leading to the setting aside of the order of termination and reinstatement with 50% backwages. Reliance was placed upon the law laid down by the Apex Court in the case of **Cantonment Executive Officer and another vs. Vijay D. Wani and others, 2008(4) RSJ 582** wherein it has been held as under :-

“5. The question of a bias is always the question of fact. The courts has to be vigilant while applying the Principles of bias as it primarily depends on the facts of each case. The court should only act on real bias not merely on likelihood of bias. In the present case, so far as the members of the committee who conducted a disciplinary inquiry was also the members of the Cantonment Board where the report was to be considered, decided and whether to accept it or not & finding the respondent (herein) guilty or not. The very fact that these three persons who conducted inquiry were also the members of the Board and that Board was to take a decision in the matter whether the report submitted by the Enquiry Committee should be accepted or not. Therefore, the participation of these three members in the committee is given a real apprehension in the mind of the

respondent that he will not get a fair justice in the matter because of the three members who submitted the report would be interested to see that their report should be accepted. This bias in this case cannot be said to be unreal it is very much real and substantial one that the respondent is not likely to get a fair deal by such disciplinary committee. [Emphasis supplied by me]

6. In this connection a reference may be made to the decision in the case of Institute of Chartered Accountants of India (Supra) in which a member, accused of misconduct is entitled to a hearing by the Council. In this case Enquiry Committee composed of the President and the VicePresident and three other members of the council who constituted as members of the disciplinary committee, was also members. Their Lordships held as under:

“Accordingly, the finding of the council holding the respondent members guilty of misconduct was vitiated by the participation of the members of the Disciplinary committee.”

This was on the basis of the Principle of apprehension of a bias. Their Lordships observed in the case of **Manek Lal v. Prem Chand** reported in **AIR 1957 SC 425** wherein it was observed :

“It is well settled that every member of a tribunal that is called upon to try issue in judicial or quasi- judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a

member of the Tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.”” Similarly in the judicial review of the administrative action by Professor S.A. de Smith has also observed: "

“... a report will normally include a tatement of findings and recommendations, which may be controverted before the parent body; and in such a case, the participation of members of the sub-committee in the final decision may be of dubious validity. The problem is not merely one of strict law; it is also one of public policy."

*Similarly, in the case of **Pinochit Ugarta No.2**, reported in **1999 (1) All ER 577 (HL)**, it was observed that a judge is automatically disqualified from hearing a matter in which he has a pecuniary interest in the outcome as also when the decision would lead to promotion of a cause in which he is involved, together with one of the parties.*

*Similarly, in the case of **Amar Nath Chowdhury v. Braithwaite & Co. Ltd** reported in **2002 (2)SCC 290**, it was observed that Managing Director dismissing an employee cannot sit in the Board of Directors to hear the employee's appeal. Doctrine of necessity was inapplicable as the Board could have delegated its appellate power to a committee.*

*Similarly in Sir Bloom-Cooper's Comment on “Bias in appeal””, 2005 Public Law 225 in which he quotes at page 227 a very illuminating judgment of Judge Jerome Frank in the case of **Rt.J.P. Linhan Inc.**, (138 F20 650) a brief excerpt from which reads:*

“Democracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and disinterestedness. If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will”

It was observed in the Ninth edition of Administrative Law by H.W.R. Wade & C.F. Forsyth that Twentieth-century judges have generally enforced the rule against bias in administrative proceedings no less strictly than their predecessors as exemplified by the following cases:

“The mere presence of a non-member while a tribunal is deliberating is enough to invalidate the proceedings. Thus the proceedings of a Watch Committee, hearing an appeal by a police sergeant against his dismissal by his chief constable, were fatally flawed by the presence of the chief constable, whose mind was made up and who was in effect the respondent, during the committee's deliberations. For similar reasons the court quashed the decision of a disciplinary committee which had consulted privately with the chief fire officer who had reported a fireman for indiscipline.”

7. Therefore, the ratio of all these cases is that a person cannot be a Judge in his own case. Once the disciplinary committee finds the incumbent guilty; they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. The objectivity is the hallmark of a judicial system in our country. The very fact is that the disciplinary committee who found the respondent(herein) guilty participated in decision making process for finding the respondent(herein) guilty and to dismiss him from service is bias which is apparent & real. Consequently, the view taken by the Division Bench of the High

Court cannot be faulted.” [Emphasis supplied by me]”

4. The said order was taken by the Cooperative Society in *Intra* Court Appeal i.e. **LPA No.629 of 2015** titled as **Himtana Cooperative Agricultural Service Society Ltd. vs. Sajjan Singh and others** which also stands finally decided vide judgment dated 16th of May, 2017 holding as under :-

“(7) Having heard learned counsel for the parties, we are of the considered view that since the first respondent was under suspension before his services were terminated vide resolution dated 22.10.2009, he was liable to be treated to be under suspension after his reinstatement pursuant to the order of learned Single Judge. In that event, the first respondent was entitled to be paid Subsistence Allowance only which has been eventually paid to him. Since the first respondent could not have been reinstated as directed by learned Single Judge, the direction to that extent was stayed. Meanwhile, the Society has reconsidered the matter in the light of the directions of the learned Single Judge and again has resolved to terminate his services. In this view of the matter, we are satisfied that there is nothing left to be complied with on behalf of the appellant-Society. The directions issued by learned Single Judge as also by this Court stand complied with.”

5. Resultantly, the present writ petition is allowed. Orders of termination are hereby set aside. Liberty is granted to the respondents to proceed afresh against the delinquent petitioners from the stage of consideration of inquiry report.

6. For the period in the interregnum the petitioners shall be

2023:PHHC:042791

treated to be under suspension and their right to claim subsistence allowance shall be dealt with in accordance with law.

- 7. Ordered accordingly.
- 8. A copy of this order be kept on the file of other connected case.

March 23, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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