

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22421-2019

Date of decision : 05.01.2023

Shamsher Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ashwani Prashar, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. N.S. Vashisht, Advocate
for respondent No.3.

PANKAJ JAIN, J. (Oral)

Present petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of certiorari for quashing of order dated 04.07.2019 (Annexure P-15), whereby order passed by the disciplinary authority dismissing the services of the petitioner dated 09.04.2018 stands affirmed in revisional jurisdiction under Section 69 of the Punjab Cooperative Societies Act, 1961.

2. The necessary facts that need to be culled out for proper adjudication of the case in hand are that the petitioner was working as an Assistant Manager with respondent No.3 posted in Mehraj Branch, Bathinda. Owing to misconduct, the petitioner was issued with a chargesheet dated 31.10.2014 (Annexure P-1). On the basis thereof, an inquiry was conducted and it was found that no loss has been caused to the bank. Inquiry report is on record as Annexure P-3 which finally resulted in

reinstatement of the petitioner by the Board of Directors of the Bank vide resolution No.18 dated 08.06.2015. An FIR No.12 dated 11.07.2015 was registered against the petitioner and on the basis thereof, he was put under suspension vide order dated 15.07.2015 and was served with the chargesheet dated 23.03.2016 (Annexure P-5). Again an inquiry was conducted and the petitioner was exonerated of all the charges. Inquiry report is on record as Annexure P-7. The petitioner was thereafter served with show cause notice dated 14.03.2018 (Annexure P-9) calling upon to show cause as to why his services should not be dismissed. The same resulted in dismissal of the petitioner from services vide order dated 09.04.2018 (Annexure P-11). Thereafter, the petitioner preferred an appeal under Rule 10 of the Punjab State Cooperative Society Financing Institutions Service Rules, 1958. Appeal No.55 of 2018 at the behest of the petitioner was allowed and the order of dismissal was set aside. The order in appeal was further taken in revision by the employer-respondent No.3 which finally culminated in the order dated 04.07.2019 (Annexure P-15), which is subject matter of challenge in the present writ petition.

3. Mr. Prashar while assailing the proceedings initiated against the petitioner submits that from bare comparison of the two chargesheets issued to the petitioner dated 31.10.2014 and that dated 23.03.2016 would show that it is a case of double jeopardy as the petitioner has been served with the same memo as the allegation levelled in both the chargesheets are virtually same. He further submits that apart from that the authorities have proceeded against the petitioner with the pre-determined mind as despite having earned exoneration from the inquiry officer, he has been ordered to be dismissed from services without there being any dissenting note from the competent

authority leave aside the service of such note to the petitioner. He thus submits that impugned order Annexure P-15 cannot be sustained and the petitioner deserves to be reinstated.

4. Per contra, Mr. Vashisht submits that though the facts as stated in the writ petition are not disputed, but the chargesheet dated 23.03.2016 was served after additional facts came to the knowledge of the employer after registration of case by the Vigilance Department against the petitioner. However, he is not in a position to dispute the factual assertions made by Mr. Prashar based on record to the effect that the dissenting note from the competent authority is not part of the record. Since there was no dissenting note, the question of service thereof on the petitioner does not arise.

5. I have heard counsel for the parties and have gone through the records of the case.

6. From the bare perusal of the impugned order, it is evident that there is no reason recorded by the competent authority warranting descent with the findings recorded by the inquiry officer. The law on the issue is well settled by Division Bench of this Court in **Krishan Kumar Sharma vs. Union of India and others, 2011(1) SCT 434**, wherein it has been held as under:-

“xx xx xx

25. It is well settled that if the Enquiry Officer, Punishing Authority or the Appellate Authority has proceeded on the basis of wholly irrelevant material or wholly irrelevant consideration or in violation of principles of natural justice then the Courts are empowered to interfere with the quantum of punishment. In that regard reliance may be placed on the Division Bench judgment of this Court rendered in the case of **Gurdev Singh v. State of Haryana, 2007 (1) RSJ 45**. In

that case a Division Bench of this Court (of which one of us, M.M. Kumar, J. was a member) has considered the application of Wednesbury Principles by referring to para 242 of a Constitution Bench judgment of Hon'ble the Supreme Court in the case of ***Rameshwar Prasad (VI) v. Union of India, (2006) (2) SCC 1***. The aforesaid para 242 reads as under:-

“242. The Wednesbury principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.”

(Emphasis added)

26. When we examine the facts of the present case in the light of the aforesaid observations made by Hon'ble the Supreme Court, it is evident that the judicial review of the impugned orders passed by the Punishing Authority, Appellate Authority as well as the Tribunal would require intervention and it would be perfectly within the four corners of judicial review.”

7. In view of the admitted factual position, that there is no dissenting note by the competent authority and the fact that the petitioner earned exoneration from the inquiry officer, the impugned order dismissing the services of the petitioner and the subsequent order passed by the revisional authority affirming the same cannot be sustained. However, keeping in view the peculiar facts and circumstances of the present case, the authority is granted liberty to proceed afresh against the petitioner after the stage of inquiry report.

8. In view of the aforesaid circumstances, the intermediate period shall be considered as under suspension in view of law laid down in '*State of Punjab & Ors vs. Dr. Harbhajan Singh Greasy, JT 1996 (5) 403*'.

9. Disposed off accordingly.

(PANKAJ JAIN)
JUDGE

05.01.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No