

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22419-2020

Reserved on 04.08.2023

Decided on 14.11.2023

Ravinder Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

RSA-1003-2022 (O&M)

Ravinder Singh

... Petitioner

VS.

Jagdish Kumar & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Pardeep Solath, Advocate for the petitioner/appellant

Mr. Kapil Bansal, DAG Haryana

Mr. RK Malik, Sr.Advocate with

Mr.Sandeep Dhull, Advocate for respondent No.7

Sandeep Moudgil, J.

(1). This order shall dispose of the above-cited writ petition as well as the connected regular second appeal, the facts of which are inter-connected and as such the same are being decided by way of this common order. For facts, CWP-22419-2020 is treated as the lead case.

(2). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of the impugned order dated 10.09.2019 (Annexure P-10) passed by respondent No.2 i.e. Registrar Cooperative Societies, Haryana as well as the order dated 25.11.2020 (Annexure P-17) passed by respondent No.1 i.e. Additional Chief Secretary and Secretary to Government of Haryana, Cooperation Department whereby directions have been issued to respondent

No.6 to terminate the services of the petitioner and to make recovery of the salary received by him, allegedly without any charge-sheet or enquiry.

(3). Factual matrix of the case are that in the year 2005, the Maujgarh Co-operative Credit & Service Society Ltd., sought permission from the Assistant Registrar, Co-operative Societies, Dabwali- respondent No.4 (in short, the ARCS) to make recruitment for the post of Salesman. The ARCS, Dabwali vide letter dated 01.07.2005 referred the request of the Society to the Deputy Registrar, Co-operative Societies, Hisar-respondent No.3 (in short, the DRCS, Hisar) for appointment/recruitment to the post of Salesman. The case was returned back by the DRCS, Hisar vide letter dated 02.09.2005 informing the ARCS, Dabwali that the Society has not make compliance to the Circular dated 08.02.1999 so far, issued by Registrar, Co-operative Societies, Haryana. However, despite such observation of DRCS, Hisar, the Managing Committee of the Society vide resolution No.3 passed on 30.11.2005, appointed the petitioner as Salesman on D.C. rate allegedly in violation of the above letter dated 02.09.2005 issued by the DRCS, Hisar.

(4). The Board of Administrators (BOA) of the Alika Primary Agriculture Cooperative Society (in short, the Alika PACS) passed resolution No. 2 on 06.02.2007 to remove the services of the petitioner, being in violation of the letter dated 02.09.2005 (Annexure R-2/1) issued by the respondent No.3 i.e. DRCS, Hisar. The petitioner challenged the removal order dated 06.02.2007 (Annexure R7/5) before the Labour Court, Hisar vide Reference No. 7 of 2007. The Labour Court vide its award on 03.10.2011 (Annexure P-1) answered the reference in favour of the workman to the effect that the termination of his services was vitiated due to non-compliance of Section 25-F of the Act and was

awarded compensation of Rs.15,000/-. The petitioner further challenged the above award dated 03.10.2011 before this Court in CWP No.1015 of 2012 which was dismissed vide order dated 18.01.2012 (Annexure P2) declining reinstatement but moulded the relief to one of compensation of Rs.15,000/- in lieu of reinstatement. As such removal of the petitioner has since attained finality.

(5). Thereafter, on a representation dated 09.01.2013 filed by the petitioner before the respondent No.4 i.e. ARCS, Dabwali, the Inspector Co-operative Societies, Dabwali forwarded a wrong enquiry report to ARCS, Dabwali vide letter dated 06.02.2013 recommending rescinding of the resolution dated 06.02.2007 passed by BOAS vide which services of the petitioner were removed and as such, DRCS, Hisar rescinded the resolution dated 06.02.2007 vide order dated 27.01.2017 (Annexure P-3) and resultantly, the petitioner joined his service and even earned promotion as Prabandhak.

(6). One Jagdish Kumar respondent No.7 had filed a Civil Suit No.283 of 2018 (Annexure P-6) for setting aside the orders dated 27.01.2017 passed by respondent No. 3 (Annexure P-3). The said respondent also filed 2nd complaint at CM window on 30.08.2019 and in pursuance thereof, respondent No.2 vide order dated 10.09.2019 (Annexure P10) while terminating the services of the petitioner, allegedly without issuing any notice and vide orders dated 12.09.2019 and 13.09.2019 (Annexures P11 & P12 respectively), issued directions for recovery of salary drawn by the petitioner.

(7). The petitioner filed revision petition No.79 dated 20.09.2019 under Section 115 of the Haryana Cooperative Societies Act, 1984 before the Additional Chief Secretary. Meanwhile, the petitioner also approached this

Court by way of filing CWP No.27357 of 2019. The said writ petition was disposed of vide order dated 04.12.2019 (Annexure P15) with a direction to the revisional authority to decide the revision petition. The said revision petition been dismissed vide order dated 25.11.2020 (Annexure P17). The aggrieved petitioner has filed the instant writ petition.

(8). Learned counsel for the petitioner, at the outset, contended that the impugned orders dated 10.09.2019 & 25.11.2020 (Annexures P10 & P17, respectively) are without jurisdiction and barred by the principle of *res judicata*. The order dated 27.01.2017 (Annexure P16) vide which the petitioner's service has been restored, is already upheld in appeals before respondent No.2. The action of filing complaint before CM window is bad since the appropriate recourse is to file appeal under the service rules.

(9). It is further vehemently contended that the inaction of the respondents is writ large inasmuch the complaint filed by respondent No.7 before the CM window is enquired in one day and direction is issued to terminate the petitioner's services absolutely against the principle of natural justice and the procedure prescribed under Rule 25 of the Primary Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit & Service Societies Rules, 2014 (in short, the Rules, 2014).

(10). Notice of motion was issued on 06.01.2021 and pursuant thereto, respondents No.1&2 have filed the short reply wherein it has been informed that the civil suit, referred to above, filed by respondent No.7 against the petitioner has been decreed in favour of the respondent No.7 vide judgment dated 19.10.2021 and the order dated 27.01.2017 (Annexure P3) passed by DRCS, Hisar rescinding the resolution dated 06.02.2007 passed by BOA under

Section 27 of Haryana Cooperative Societies Act, 1984, has been set aside. It is also informed that the petitioner has filed RSA-1003-2022 challenging the above-said judgment dated 19.10.2021.

(11). Heard learned counsel for the parties and gone through the records of both the cases.

(12). A perusal of the findings returned by the civil court after going through the order dated 03.10.2011 (Annexure P1) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and order dated 18.01.2012 (Annexure P2) passed by this Court it is therein observed that once the petitioner/defendant No.4 availed his remedy against his termination by filing petition before the Labour Court and further writ petition which has been ultimately decided on 18.01.2012 (Annexure P2) upholding the order dated 03.10.2011 passed by the Labour Court, Hisar and aforesaid order of this Court became final, as no appeal has been filed against the said order, the DRCS/defendant No.1 was having no authority to set-aside or cancel Resolution dated 06.02.2007 and ordered reinstatement of the petitioner/defendant No. 4 vide aforesaid impugned order dated 27-01-2017 (Annexure P3). It was thus held that the Order dated 27-01-2017 (Ex-P10) and subsequent letter/order dated 12-03-2018 (Ex-P9) were passed in collusion with the petitioner/defendant No.4 with the purpose of giving of undue benefits to him.

(13). The Civil Court further observed that the respondent No.7 being a member of defendant No.5/Alikan PACS, in which petitioner was appointed, terminated and further reinstated under the garb of order dated 27.01.2017 cause of action is made out to the respondent No.7 to file the civil suit against

the petitioner. It was further held that the provisions of Section 128 of 1984 Act, has no applicability to the case of the petitioner as the order challenging the reinstatement of an employee/worker in accordance with the order of DRCS, Hisar is not within the ambit of Section 128 the 1984 Act.

(14). A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision on a matter in issue, is a composite decision: the decision of law can not be dissociated from the decision on facts on which the right is founded.

(15). A decision on an issue of law will be as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has, since the earlier decision, been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

(16). The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice has been so much emphasised by the Constitution which is founded and a judgment of the High Court under Article 226 passed after a hearing on the

merits must bind the parties till set aside in appeal as provided by the Constitution.

(17). Considering the fact that the appointment/reinstatement of the petitioner itself, which was challenged by respondent No.7, has been set aside by the Civil Court by way of returning reasonable finding of facts, this Court has no option but to hold that the principle of *res judicata* would apply in this case. Thus, this Court does not find any illegality or infirmity in the impugned order.

(18). Accordingly, the writ petition is dismissed.

14.11.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No