

226

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 09.05.2024

(I) CWP-2283-2020 (O&M)

SANJEEV KUMAR

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

(II) CWP-2569-2020

VIJAY KUMAR

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

(III) CWP-2304-2020

SHEEL KUMAR

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

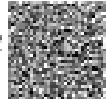
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rakesh Nagpal, Advocate for the petitioner(s).

Mr. R. S. Budhwar, Addl. A.G., Haryana.

Mr. Sajjan Singh, Advocate for respondents No.3 and 4.

Ms. Sunita Dhanda, Organizing Secretary of the Society
(appearing through video conferencing)



JASGURPREET SINGH PURI, J. (Oral)

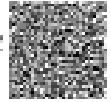
1. The present are three writ petitions filed by three different petitioners seeking similar relief and they are being taken up together for final disposal with the consent of the learned counsels for the parties as the issue involved in all the three cases is identical in nature and even the facts are similar.

2. The facts are taken from *CWP-2283-2020*, titled as *Sanjeev Kumar versus State of Haryana and others* being the lead case.

Facts of the case:-

3. The facts of the present case are that petitioner-Sanjeev Kumar was initially appointed to the post of Accounts Clerk-cum-Store Keeper on 19.07.1999 vide Annexure P-2 on consolidated emoluments of Rs.2,750/- per month fixed on contract basis for a period of six months on various terms and conditions, except for the fact that Vijay Kumar (petitioner in CWP-2569-2020) was appointed as Accounts Clerk and Sheel Kumar (petitioner in CWP-2304-2020) was appointed as Sweeper. Thereafter, the term of service was extended from time to time. Ultimately, vide Annexure P-3 dated 03.01.2005, the services of the petitioner were regularized on regular fixed salary basis subject to ratification by the Standing Committee with effect from the date of decision of the Society i.e. 21.12.2004.

4. Thereafter, on 23.04.2015 vide Annexure P-4 in pursuance of the decision of the meeting of Standing Committee held on 09.02.2006, Sanjeev Kumar (petitioner in CWP-2283-2020) and Vijay Kumar (petitioner in CWP-2569-2020) were re-designated as Accountants against the vacant posts of Accountants. As per the learned counsel for the parties, all the three petitioners



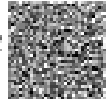
were working on regular basis. Annexure P-5 dated 19.07.2016 is an experience certificate issued by the Haryana Welfare Society for Persons with Speech and Hearing Impairment, Panchkula, wherein it has been specifically stated that the services of the petitioner were regularized on 21.12.2004.

5. The petitioner was therefore a regular employee of the respondent-Society and was in service and had served the Society for about 20 years. On 09.12.2019 vide Annexure P-6, a show cause notice/office memorandum was issued to the petitioner, which is reproduced as under:-

OFFICE MEMORANDUM

“WHEREAS it has come to notice that a press conference was organized, in an unauthorized manner, by Shri Sanjeev Kumar, Accountant, Welfare Centre for Persons with Speech and Hearing Impairment, Nagina on 01.12.2019 wherein Shri Vijay Kumar, Accountant and Sh. Sheel Kumar, Sweeper, Welfare Centre for Persons with Speech and Hearing Impairment, Hisar, Sh. Amit Kumar, Store Keeper cum Clerk, (Contractual) and Sh. Mukesh Kumar, Chowkidar, (Contractual) Welfare Centre for Persons with Speech and Hearing Impairment, Sirsa were also participants;

WHEREAS in the said conference, the fair name and reputation of the Society was sullied by leveling baseless, false and wild allegations using highly objectionable language giving a prima facie impression as if some irregularities were happening in the Society. To falsely allege that money is being spent on "ashprasaty" of the Chairperson, as was done in the press conference, is crossing all the limits of decency and acceptable behavior. The word ashprasaty itself is objectionable to the core and is a direct unprovoked attack on the dignity of a woman;



WHEREAS the authority of the President of the Society who is the Hon'ble Governor of the State was challenged in an indirect manner by raising questions against the decisions taken by Hon'ble Governor to sanction Honorarium, Accommodation and other provisions to the positions of the Chairperson of the Society;

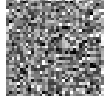
WHEREAS the utterances in the said Press Conference, which were carried out in several local newspapers and other media, created a wrong prima facie perception about the functioning of the Society which is doing a yeoman's service for the welfare of children with speech and hearing impairment and showed the State Govt in bad light;

WHEREAS it is quite evident the press conference was the outcome of the fact finding inquiries which were ordered by the Chairperson and are underway in the illegal siphoning of Society's funds in the past for which some of the participants in the press conference were found prima facie involved;

WHEREAS the presence of Shri Sanjeev Kumar, Accountant, Welfare Centre for Persons with Speech and Hearing Impairment, Nagina in the press conference held in an unauthorized manner proves his active participation and is a grave misconduct as it is against general principle of disciplinary prudence.

WHEREAS in all such Societies and even in Government, only authorized person can address the press;

WHEREAS taking cognizance of the aforesaid misconduct, the undersigned is of the considered view that it would be against the interest of the Society and against the larger public interest if the misconduct as aforesaid on the part of Shri Sanjeev Kumar, Accountant, Welfare Centre for Persons with Speech and Hearing Impairment, Nagina goes unpunished and therefore the undersigned proposes to take

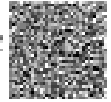


appropriate action against him in the light of facts and circumstances of the case and after considering his reply, if any, to this Memorandum;

NOW THEREFORE Shri Sanjeev Kumar, Accountant, Welfare Centre for Persons with Speech and Hearing Impairment, Nagina is hereby afforded an opportunity, as a matter of natural justice, to show cause within 3 days of the receipt of this Memorandum, as to why the appropriate action may not be taken against him. If no reply is received from Shri Sanjeev Kumar, Accountant, Welfare Centre for Persons with Speech and Hearing Impairment, Nagina within stipulated time, it would be presumed that he has nothing to say and action as deemed fit in the light of facts and circumstances of the case would be taken against him.

*Sd/-
Organising Secretary”*

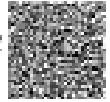
6. As per the aforesaid show cause notice, the allegation against the petitioners was that they have organized a Press Conference in an unauthorized manner and have levelled baseless, false and wild allegations using highly objectionable language against the higher officials and many such other allegations were levelled. In the aforesaid show cause notice/office memorandum, only three days' time was given to the petitioner from the date of receipt of the aforesaid show cause notice/office memorandum as to why appropriate action may not be taken against him. However vide Annexure P-7, the petitioner wrote a letter to the Organising Secretary, Haryana Welfare Society for Persons with Speech & Hearing Impairment, Panchkula, which was dated 12.12.2019, i.e. after 3 days of issuance of aforesaid show cause notice/office memorandum that he is not in a position to file a reply because of



handing over the charge of Accounts to one Dalbir Singh with regards to some enquiry and also because of health issues and keeping in view the above circumstances, he requested for one week's more time to file a proper reply to the aforesaid show cause notice/office memorandum. However, vide impugned order dated 13.12.2019 (Annexure P-8), the services of the petitioner were dispensed with. In the aforesaid impugned order, it has also been mentioned that the petitioner instead of submitting reply on merits of the facts as mentioned in show cause notice/office memorandum has solicited time for submitting reply and the reasons for extension of time have not been found to be very cogent and appears to be merely an attempt to delay the matter. On the basis of allegation of misconduct, the services of the petitioner were dispensed with immediate effect and in this way, in four days' time from the date of issuance of aforesaid show cause notice/office memorandum, the services of the petitioner, who was a regular employee were dispensed with by the Organizing Secretary of the respondent-Society on 13.12.2019. The present three writ petitions have been filed challenging the aforesaid impugned order dated 13.12.2019.

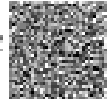
Submissions by learned counsel for petitioner(s):-

7. Learned counsel appearing on behalf of all three petitioners submitted that it is a case where the respondent-Society had bias and grudge against the petitioners. He further submitted that although the Chairperson was impleaded as a party in the present case but notice was issued in the present case only to the Society i.e. respondents No.3 and 4. He further submitted that it is a case where all the three petitioners were regular employees of the respondent-Society and by way of aforesaid show cause notice/office memorandum, allegations were made pertaining to misconduct, which is clear



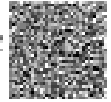
from the aforesaid show cause notice/office memorandum itself. He further submitted that the allegations of misconduct were rather serious in nature, wherein the allegations were that the petitioners had organized a Press Conference dated 01.12.2019 while being in service and they had levelled several allegations against the higher officials of the respondent-Society and as per the allegations, it was not in the public interest to have done so and because of this reason, the aforesaid show cause notice/office memorandum was issued to them but instead of waiting for their reply, straightaway the impugned order dated 13.12.2019 has been passed by which the services of the petitioners have been dispensed with within a period of four days from the date of issuance of the aforesaid show cause notice/office memorandum. He further submitted that neither any charge-sheet was issued nor any enquiry was conducted against the petitioners and therefore, it was a direct violation of the principles of natural justice. He further submitted that not only the services of a regular employee cannot be dispensed with without holding any departmental enquiry but also the allegations in the show cause notice/office memorandum were pertaining to misconduct which were stigmatic in nature and once the allegations are stigmatic in nature then even otherwise also it is a settled law that the same have to be proved by way of holding a departmental enquiry and by adopting a proper procedure and it cannot be done with one stroke of pen.

8. Learned counsel for the petitioners also submitted that a perusal of the reply which has been filed on behalf of the respondent-Society would show that it has been so specifically stated that earlier also there were number of allegations against Sanjeev Kumar (petitioner in CWP-2283-2020), in which the respondent-Society themselves had issued charge-sheets to the petitioners



and conducted enquiry and in one of the cases rather after conducting a proper enquiry, warning was issued to the petitioner and therefore, it cannot be said that the respondent-Society is not aware of the procedure to be followed and on the other hand, they have been following the procedure of conducting regular enquiries against the petitioner but in the present case, where allegation was of misconduct, which is also a serious allegation, no enquiry was conducted nor any charge-sheet was issued and straightaway within a period of four days from issuance of show cause notice/office memorandum, termination/dispensing with the services order has been passed. Therefore, the aforesaid impugned order is liable to be set aside.

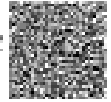
9. Learned counsel for the petitioners also submitted that the bias and grudge of the functionaries of the respondent-Society was so strong that in the show cause notice/office memorandum only three days' time was given for filing reply which goes into show the level and extent of biasness and grudge against the petitioners. He further submitted that within the aforesaid period of three days, Sanjeev Kumar (petitioner in CWP-2283-2020) wrote a letter to the Organizing Secretary that because of reasons given in the application, only one week time be granted so that a proper reply can be filed but the same was not extended and on the very next day i.e. on the fourth date, his services were terminated/dispensed with, which further fortifies that the respondent-Society was bent upon to dismiss the petitioners without following the procedure. He further submitted that had the petitioners filed reply to the aforesaid show cause notice/office memorandum by giving explanation, the services of the petitioners could not have been terminated/dispensed with in view of the explanation which they would have given. He further submitted that because of the



aforesaid reasons, the aforesaid impugned order dated 13.12.2019 is liable to be set aside.

Submissions by learned counsel for respondents No.3 and 4-Society:-

10. On the other hand, Mr. Sajjan Singh, learned counsel for respondents No.3 and 4 submitted that the allegations against the petitioners were so strong pertaining to misconduct that it was in the interest of justice and in the larger public interest that the services of the petitioners were terminated/dispensed with. He further submitted that considering the nature of allegation, no further time could have been granted to the petitioners because the petitioners had organized a Press Conference by levelling various baseless and frivolous charges against the functionaries of the respondent-Society and therefore, the aforesaid impugned order dated 13.12.2019 cannot be termed as erroneous order. He further submitted that the misconduct of the petitioners was continuous in nature and while referring to the reply filed by the respondent-Society and annexures appended thereon, he submitted that earlier on many occasions Sanjeev Kumar (petitioner in CWP-2283-2020) had indulged into various activities in which several times he was issued charge-sheets and enquiries were conducted and even warning was given in one case and further, even recommendation was given to dispense with his services and considering the background of the petitioner and his past deeds, it was not in the interest of the respondent-Society to have retained his services and therefore, his services were terminated/dispensed with. He further submitted that apart from the above, the petitioners also did not care to file reply to the aforesaid show cause notice/office memorandum and therefore, their services were rightly terminated/dispensed with.



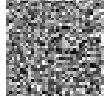
11. Learned counsel for respondents No.3 and 4 has raised issue of maintainability of the petitions on the ground that the Society is not a State within the ambit of Article 12 of the Constitution of India and he referred to judgment of a Division Bench of this Court in **CWP-12204-2006, Poonam Dhameja versus State of Haryana and others, 28.08.2006** (Annexure R-3/1) and one judgment of Coordinate Bench of this Court in **CWP-10205-1988, Mrs. Bhagwati versus the State of Haryana and others, 25.04.2011** (Annexure R-3/2). He further submitted that considering the aforesaid position, even the writ petition was not maintainable against the present Society.

12. At this stage, learned counsel for the petitioners while rebutting the argument raised by learned counsel for respondents No.3 and 4 pertaining to maintainability has referred to another judgment of a Division Bench of this Court in **Janki Devi versus State of Haryana and others, LPA-1124-2015, 22.10.2018** vide Annexure P-14 and submitted that a later judgment of a Division Bench of this Court had held that petition was maintainable and rather judgment passed by a learned Single Judge was set aside and the appeal was allowed. He further submitted that in view of the later judgment of a Division Bench of this Court, writ petition against respondents No.3 and 4-Society is maintainable being a State within the ambit of Article 12 of the Constitution of India because they were exercising public function.

Analysis of submissions made by learned counsels for the parties:-

13. I have heard the learned counsels for the parties.

14. Before proceeding on merits, the issue of maintainability has to be considered first. Learned counsel for respondents No.3 and 4 has referred to judgment of a Division Bench and a Coordinate Bench of this Court vide



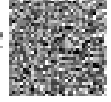
Annexure R-3/1 and Annexure R-3/2 as aforesaid, wherein it was held that writ against the present Society was not maintainable. However, learned counsel for all the petitioners has referred to another judgment of a Division Bench of this Court vide Annexure P-14 as aforesaid, in which it was held that writ was maintainable. The aforesaid judgment dated 22.10.2018 (Annexure P-14) i.e.

Janki Devi's case (supra) is reproduced as under:-

“1. Challenge in this Letters Patent Appeal is to the order dated 4.5.2015 passed by the learned Single Judge whereby CWP-23058-2014 filed by the appellant was dismissed being not maintainable.

2. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. Initially, the appellant was appointed as House Mother on 3.8.1992. She was matriculate and had also passed the NTT and Foundation Course. She requested the respondents to promote her to the post of Nursery Teacher. In the meeting of the Standing Committee held on 20.6.1992, the qualification of Nursery Teacher was re-considered and the House Mothers were allowed to be promoted on the post of Nursery Teacher. Since the appellant was teaching regularly to LKG and UKG in the centre, she was promoted as Nursery Teacher vide order dated 25.7.2011 but in her own pay scale of House Mother. She requested the respondents to allow her the pay scale of Nursery Teacher, but to no effect. Accordingly, the appellant filed CWP-23058-2014. The learned Single Bench vide order dated 4.5.2015 dismissed the said writ petition being not maintainable against respondents No.2 to 4 on the basis of the order dated 26.3.2015 passed by this Court in CWP-22199-2013. Hence, the present Letters Patent Appeal.

3. We have heard learned counsel for the parties.

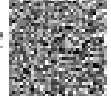


4. The solitary question in this appeal that arises for consideration is whether the Haryana Welfare Society for Hearing and Speech Handicapped in the State of Haryana is 'State' under Article 12 of the Constitution of India or not?

5. The Full Bench of this Court in **Shakuntla Devi v. The Deputy Commissioner and another (CWP-1286-1987 and other connected cases)** decided on 13.8.2010, after relying upon the decisions of Seven Judges' Bench in **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2002) 5 SCC 111** and Five Judges' Bench in **Zee Telefilms Ltd. and another v. Union of India and others (2005) 4 SCC 649**, had held that the respondent District Council for Child Welfare is 'State' under Article 12 of the Constitution. Accordingly, it was opined that it is 'authority' within the meaning of Article 226 of the Constitution amenable to writ jurisdiction. Further, it was expressed that when a private body exercises its public functions even if it is not a State, the aggrieved person had a remedy not only under the ordinary law but also under the Constitution by way of a writ petition under Article 226 of the Constitution of India. Merely because a non-governmental body exercises some public duty that by itself would not suffice to make such body a State for the purpose of Article 12 of the Constitution of India.

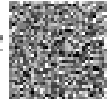
6. It was not disputed by the learned counsel for the parties that in view of Full Bench judgment in **Shakuntla Devi's case (supra)**, the writ petition was maintainable.

7. Accordingly, the appeal is allowed and the order dated 4.5.2015 passed by the learned Single Bench is set aside. The matter is remitted back to the learned Single Bench for deciding the same on merits, in accordance with law.”



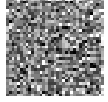
15. A perusal of the aforesaid judgment would show that vide para No.4 it has been so observed that the solitary question in this appeal that arises for consideration is whether the Haryana Welfare Society for Hearing and Speech Handicapped in the State of Haryana is 'State' under Article 12 of the Constitution of India or not and reference was also made to a Full Bench judgment of this Court in *Shakuntla Devi versus The Deputy Commissioner and another (CWP-1286-1987 and other connected cases)* and Seven Judges' Bench of Hon'ble Supreme Court in *Pradeep Kumar Biswas versus Indian Institute of Chemical Biology, (2002) 5 SCC 111* and another Five Judges' Bench in *Zee Telefilms Ltd. and another versus Union of India and others, (2005) 4 SCC 649*.

16. Although there was an earlier judgment of a Division Bench and a Coordinate Bench of this Court which has been relied upon by learned counsel for respondents No.3 and 4 vide Annexure R-3/1 and Annexure R-3/2, which is of the year 2006 and 2011, respectively, but a judgment of a Division Bench of this Court has been relied upon by learned counsel for the petitioners vide Annexure P-14 is of the year 2018. Therefore, the aforesaid judgment Annexure P-14 is later in point of time. During the course of arguments, a query was raised to learned counsel for respondents No.3 and 4 as to whether the aforesaid judgment Annexure P-14 was assailed by the respondent-Society or not to which he has submitted that it was not assailed by the respondent-Society and it has attained finality. Therefore, this Court is of the considered view that the later judgment of the year 2018 of a Division Bench i.e. Annexure P-14 will prevail and therefore, writ against the present respondents No.3 and 4-Society will be maintainable being a State under Article 12 of the Constitution of India.



17. On merits, Sanjeev Kumar (petitioner in CWP-2283-2020) and Vijay Kumar (petitioner in CWP-2569-2020) were working as Accountants on regular basis and Sheel Kumar (petitioner in CWP-2304-2020) was working as a Sweeper, which according to learned counsel for the petitioners was on regular basis but the same has been denied by the learned counsel for respondents No.3 and 4. However, similar show cause notice/office memorandum was issued to all the three petitioners on 09.12.2019 on the basis of allegation of misconduct. The allegation against the petitioners was pertaining to organizing of Press Conference dated 01.12.2019 by using highly objectionable language which was alleged to be baseless, false and wild allegations and the allegations were against the higher authorities. In the aforesaid show cause notice/office memorandum, only three days' time was granted to file reply and when the petitioners sought time on different grounds, the same was not considered by the authorities but on the fourth day, the order of termination/dispensing with the services was passed on 13.12.2019. Admittedly, neither any charge-sheet was issued nor any enquiry was conducted nor any disciplinary proceedings were held.

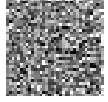
18. There is nothing on the record to show that there are any Service Regulations of the respondent-Society. When there were some allegations against the petitioner as aforesaid prior to the show cause notice/office memorandum, which is so reflected in the reply filed on behalf of the respondent-Society it would show that for number of times against Sanjeev Kumar (petitioner in CWP-2283-2020), disciplinary proceedings were conducted on the basis of allegations and even Enquiry Officer was appointed after issuance of charge-sheets and in one case, even warning was issued after



holding disciplinary enquiry. Therefore, it is clear that the respondent-Society was very well aware of the law that when there are allegations of misconduct and which are stigmatic in nature, then charge-sheet has to be served and departmental enquiry has to be conducted. The relevant portion of the aforesaid reply filed on behalf of the respondent-Society is reproduced as under:-

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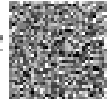
*3. That the petitioner has been facing various inquiries from time to time. The petitioner was also imposed stoppage of two increments with cumulative effect vide order dated 01.05.2007 in a case of nuisance with the deaf and dumb children at Raipur Rani Centre under the impact of intoxication on 22.01.2007. In consequence of above act of the petitioner was also transferred from Raipur Rani to Karnal. The copy of relevant notings, suspension order, memorandum of charges and punishment order dated 01.05.2007 are annexed herewith as **Annexure R-3/5 (Colly)**. It is again pertinent to mention here another inquiry was conducted by the Inquiry Officer against the petitioner on the allegations of absence from duty without permission and threat to commit suicide by the petitioner on 19.09.2018 and 20.09.2018 (where a suicide note was found in his car parked in the office), maligning the atmosphere of the society and also ascertain whether the salary of this period be given or not and also to make other observations and recommendations deemed fit in the context. The Inquiry Officer in his inquiry report **Annexure R-3/6** dated 16.12.2019 against the petitioner has recommended that the competent authority may consider his removal from service as the charges which have been proved against him are serious in nature and he does not deserve any leniency. It was also recommended by the Inquiry Officer with regard to*



*salary for the absence period from 20.09.2018 till he joins duty, that period may be considered on the basis of above observations being wilful absence from duty which tantamount to misconduct. It is also pertinent to mention here that in past various recoveries have also been made against the petitioner for the acts of embezzlement by the petitioner at different centres including Karnal and Sirsa. The copy of relevant order against the petitioner in one case of embezzlement is annexed herewith as **Annexure R-3/7**. It is very pertinent to mention here that there are some other inquiries still pending against the petitioner. The copy of relevant communications to this effect is attached herewith as **Annexure R-3/8**. It is further submitted that the petitioner had withdrawn an amount of Rs. 40000/- from account of Karnal Centre on 15.5.2009 for publishing of advertisement/s, but the amount could not be used for the purpose for which it was withdrawn. Further, the petitioner was transferred from Karnal to Sirsa on 19.6.2009. The Assistant Secretary of the Society Head Office went to Karnal Centre on 22.8.2009 to conduct an enquiry into this matter. On 14.1.2010 the petitioner sent a letter to the answering society stating that he had deposited this amount through one acquaintance of his i.e. Mr. Mukesh Kumar on 29.8.2009 in the bank account and the original deposit slip of Rs. 40000/- was with him only. The matter was closed after giving warning to the petitioner because this amount had already been deposited in the bank. However, Sh. Sanjeev Kumar was charge sheeted vide Memo No. HWSHS/PF/ 2010-11/1630-32 dated 30.8.2010 in this case.*

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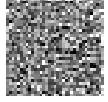
19. A persual of the aforesaid would show that repeatedly the respondent-Society had been conducting enquiries against the petitioner-



Sanjeev Kumar in this regard. However, when the show cause notice/office memorandum was issued to the petitioner, then no such enquiry or charge-sheet had been issued and allegations were of misconduct which are stigmatic in nature and rather on the very fourth day, the services were terminated/dispensed with without holding any enquiry. Therefore, the action of the respondent-Society was totally contrary to the principles of natural justice.

20. There is another aspect of the present case. During the course of arguments, learned counsel for the petitioners also submitted that it was because of a personal grudge and bias of the respondent-Society including the Organizing Secretary against the petitioners and because of that reason, time period fixed was only three days and request for grant of time was not accepted by the respondent-Society and on the very fourth day, the termination/dispensing with the services order was passed. The procedure which has been followed by the respondent-Society was *ex facie* illegal procedure and contrary to the principles of natural justice. The fact of granting of only three days' time under the garb of larger public interest cannot be accepted and is unsustainable. Heavens were not going to fall if a reasonable time would have been given to the petitioners for filing their respective replies and therefore, on the face of it, the impugned order dated 13.12.2019 terminating/dispensing with the services of the petitioners was bad in law and tainted with *mala fide*.

21. In view of the aforesaid facts and circumstances, all the three writ petitions are allowed. The impugned order dated 13.12.2019 (Annexure P-8) in CWP-2283-2020, impugned order dated 13.12.2019 (Annexure P-8) in

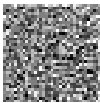


CWP-2569-2020 and impugned order dated 13.12.2019 (Annexure P-6) in CWP-2304-2020, are hereby set aside.

22. The respondent-Society may proceed further from the stage of issuance of show cause notice/office memorandum and shall follow the due process of law.

23. Since the petitioners have been kept away by the respondent-Society from discharging their duties by passing of the aforesaid illegal termination order and it was not because of the fault of the petitioners but because of the fault of the respondent-Society and which resulted in miscarriage of justice, the principle of *no pay for no work* shall not apply to the petitioners. The petitioners were ready to work but have been kept away because of the illegal orders of termination. The Hon'ble Supreme Court in ***The Commissioner, Karnataka Housing Board versus C. Muddaiah, 2007 (7) SCC 689*** held as under:-

"34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as



has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected.”

24. Therefore, all the three petitioners shall be entitled for salary of the aforesaid period from the date of termination till the date of joining, which shall be paid to them by the respondent-Society within a period of three months from today. However, there shall be no order on interest.

25. Since the aforesaid impugned order is *ex facie* illegal and the petitioners were kept out of service and the order is also tainted with *mala fide*, the petitioners are also entitled to costs, which are assessed as Rs.10,000/- per petitioner, which shall also be paid to them within a period of aforesaid three months from today.

09.05.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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