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

106 **CM-7711-7712-CWP-2024 in/&
CWP-6821-2024
Date of Decision :06.05.2024**

Ravi Pannu **...Petitioner**

Versus

State of Haryana and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jangjit Singh Dahiya, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Anurag Chopra, Advocate & Mr. Vardaan Seth, Advocate for respondents No. 5 and 6.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-7711-CWP-2024

As prayed for, application is allowed.

CM-7712-CWP-2024

Present application has been filed for impleading the persons mentioned in para 2 of the present application as respondents No. 7 to 10 in the present petition.

As prayed for, application is allowed.

The persons mentioned in para 2 of the present application are ordered to be impleaded as respondents No. 7 to 10 in the present petition.

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CWP-6821-2024

1. In the present petition, challenge is to order dated 31.01.2024 (Annexure P/30) passed by the respondents by which, the services of the petitioner has been terminated by placing reliance upon enquiry report dated 27.12.2023 (Annexure P/31).

2. Learned counsel for the petitioner argues that the petitioner was working with the respondents and his services have been terminated by the respondents vide order dated 31.01.2024 (Annexure P/30) in a totally illegal and arbitrary manner by placing reliance upon enquiry report dated 27.12.2023 (Annexure P/31).

3. Learned counsel for the petitioner further submits that an impartial enquiry should be conducted into the allegations of embezzlement, which have been alleged against the petitioner by an independent agency like CBI or Sessions Judge, Vigilance.

4. It may be noticed that initially the petitioner was working with the Indian Red Cross Society as Computer Operator and, thereafter, he was transferred to Health and Family Welfare Society, Sonepat where the petitioner is working since 2012. While working on the said post, allegations have been alleged against the petitioner regarding the embezzlement of funds of the society to the tune of Rs.17,90,175/- in connivance with other employees of the said society, which allegations have been proved in the enquiry report dated 27.12.2023 (Annexure P/31)

5. As per the enquiry report, the documents have been forged by the petitioner through forged receipts so as to claim higher amount and the

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details of the embezzled amount has been mentioned in the enquiry report and even the forged documents has been made part of the enquiry report.

6. Learned counsel for the petitioner submits that as per the affidavit of the petitioner, which has been filed now by way of CM-7711-CWP-2024, the petitioner was made to do certain things illegally by putting pressure upon him and the allegations have been made against the various employees, who are working in the society.

7. Learned counsel for the respondents submits that keeping in view the fact that petitioner in his pleadings has conceded the fact that illegalities were done while performing the duties, a temporary employee who has no right to hold the post cannot seek that he is allowed to continue in service despite the said admission of illegal acts of embezzlement of funds though, the same are being attributed under coercion of higher authorities.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. First question which arises is, whether the writ petition will be maintainable against the Health and Family Welfare society. Nothing has come on record that the said society has come within the meaning of Article 12 of the Constitution of India and who is controlling the same. Once, the petitioner was working in the society, the same was registered as a society under the "Cooperative Societies Act" and as per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No.5466-2002 titled as ***General Manager, The Kisan Sahkari Chini Mills Limited***

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__Sultanpur, U.P. vs. Satrughan Nishad and others, decided on 08.10.2003__, no writ petition is maintainable against the co-operative society. Relevant paragraphs of the judgment are as under:-

> "8.From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or co-operative society or a company, is not decisive. The real status of the body with respect to the control of government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, Bye Laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter affidavit filed on behalf of the State and it was averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the Mill. Therefore, even if it is taken to be admitted due to non traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has no where been stated that

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the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of Bye-Laws of the Mill would show that its membership is open to cane growers, other societies, Gram Sabha, State Government, etc. and under Bye-Law 52, a committee of management consisting of 15 members is constituted, out of whom, 5 members are required to be elected by the representatives of individual members, 3 out of co-operative society and other institutions and 2 representatives of financial institutions besides 5 members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator. Thus, the ratio of the nominees of State Government in the committee is only 1/3rd and the management of the committee is dominated by 2/3rd non-government members. Under the Bye-Laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less deep and pervasive one. The role of the Federation, which is the apex body and whose ex-officio Chairman-cum-Managing Director is Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members. The letter sent by Managing Director of the Federation on 22nd November, 1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of Mill, as such the same

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being neither instrumentality nor agency of government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution.

9. Learned counsel appearing on behalf of the contesting respondents submitted that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. Learned counsel appearing on behalf of the appellant, on the other hand, submitted that mandamus can be issued against private person or body only if infraction alleged is in performance of public duty. Reference in this connection may be made to the decisions of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust and others v. V.R.Rudani and others (1989) 2 SCC 691 in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of K.Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another (1997) 3 SCC 571 and VST Industries Ltd. v.VST Industries Workers' Union and another, (2001) 1 SCC 298, the same principle has been reiterated. Further, in the case of VST Industries Ltd. (supra), it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court had no jurisdiction to

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> entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked."

10. Learned counsel for the petitioner submits that there are bye-laws of the society, which have been framed hence, a writ petition is maintainable against the co-operative society.

11. Merely, a society has framed the bye-laws it does not get colour of statutory authority. The bye-laws have only been framed to guide the society as to how the various works are to be executed. The said bye-laws do not entitle the society to be treated as State within the meaning of Article 12 of the Constitution of India.

12. Even otherwise, in the present case, the petitioner is not a regular employee but is a temporary employee. A temporary employee does not have any right to hold the post as only the employee, who has lien against any post can claim right to continue against the particular post. The benefits as envisaged under Article 311 of the Constitution of India will not be applicable upon a temporary employee.

13. Even otherwise, in the present petition, an enquiry has been conducted into the allegations alleged against the petitioner and on the basis of the said enquiry report, wherein, the allegations have been proved against him vide impugned order dated 31.01.2024 (Annexure P/30) has been passed. Once, the petitioner has been given an opportunity to submit his

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stand before the Enquiry Office and the Enquiry Officer has proved that embezzlement has been done by the petitioner by forging the receipts, the petitioner cannot be allowed to say that said enquiry report should be set aside so as to set aside the impugned order of termination of his services.

14. Further, before this Court, an affidavit has been filed by the petitioner by way of CM-7711-CWP-2024 and in para 2 of the said affidavit, the petitioner has admitted the fact that there was an embezzlement of funds of the society but submits that said embezzlement was done under the coercion of the higher authorities, who are the beneficiary of the financial transaction. Once, prima facie the petitioner has conceded even before this Court that embezzlement have done and the petitioner was part of the same, though, he was forced to do so, no ground for interference by this Court is made out and the present petition is accordingly dismissed.

15. It may be noticed that funds of the society have been embezzled and prima facie, the petitioner has conceded to the said facts, which have also been proved by the Enquiry Officer and the allegations are being alleged by the petitioner against the private respondents also whereas, the private respondents are denying the said allegations but once, prima facie in the enquiry report, the embezzlement has been found through fake receipts, which has come on record, the same needs to be inquired into as to whether any provisions of the IPC has been violated or not.

16. Let the respondent-Society, if not already made a complaint, make a complaint to the police authorities and the police will investigate the matter on the said allegations under the supervision of an officer, not below

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the rank of Superintendent of Police of the said area. This Court will be informed about the investigation, which is to be done by the police by way of filing status report every six weeks till the said investigation is taken to its logical end.

May 06, 2024 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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

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