

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.26817 of 2015

Reserved on : January 30, 2024

Pronounced on : February 21, 2024

Punjab State Cooperative Supply & Marketing Federation (MARKFED).

..... Petitioner

Versus

Prem Kumar (deceased) through LRs and another

..... Respondents

CWP No.19853 of 2015

Prem Kumar Sharma (deceased) through LRs.

..... Petitioners

Versus

Financial Commissioner Cooperation, Govt. of Punjab and others.

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: None for the petitioner in CWP-19853-2015.

Mr. Sumit Jain, Advocate with
Mr. Abhishk Arora, Advocate
for the petitioner in CWP-26817-2015

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. Kartikeya Swaroop, Advocate with
Mr. B.K. Mehta, Advocate
for respondents No.3 to 5 in CWP-19853-2015.

NAMIT KUMAR, J. (Oral)

1. This Judgement shall dispose of CWP Nos.26817 & 19853 of 2015 as common question of facts and law are involved therein and for the sake of convenience, firstly the facts of CWP No.26817 of 2015, have been narrated/discussed here-in-below:-

2. The petitioner - Punjab State Cooperative Supply & Marketing Federation (for short 'MARKFED') has approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India seeking writ in the nature of *Certiorari* impugning the order dated 12.05.2015 (Annexure P-4) passed by Respondent No.2 – Additional Registrar, Cooperative Societies, Punjab, whereby by accepting the revision petition, Respondent No.1 – Prem Kumar has been exonerated from all the charges and the order of recovery passed against him has been set aside. Further seeking a writ in the nature of mandamus directing respondent No.1 to deposit the 50% amount i.e. 1,11,01,076/- to the petitioner due to the loss caused to the petitioners by respondent No.1, while failing to execute his official duties due to the negligence of respondent No.1, whereby the stock for the year 1998-99, 1999-2000 and 2000-2001 was damaged.

3. The brief facts leading to the filing of the present petition, as have been pleaded in the writ petition, are that Respondent No.1 – Prem Kumar was appointed as Field Officer and while he was in service, the petitioner – MARKFED suffered huge loss to the tune of Rs.2,22,02,152/- in the Financial Year 1998-1999, 1999-2000 and 2000-2001 and to ascertain the loss, inquiry proceedings were initiated against Respondent No.1- Prem Kumar and vide Memo dated 16.11.2005 (Annexure P-1), he was charge-sheeted under Rule 6 (B) and Rule 10 of the 'Punjab State Cooperative and Marketing Federation Employees (Punishment and Appeal), Rules, 1990' wherein charges were levelled against him that he is guilty for causing loss of Rs.2,22,02,152/- on account of shortages and quality loss occurred due to sale of stocks through tender on low rate against the actual sale rate to FCI relating to wheat crop in the Financial Year 1998-1999, 1999-2000 and 2000-2001, in connivance with one Kuldeep Singh, Field Officer (Retd.).

4. Thereafter, departmental inquiry was conducted against Respondent No.1- Prem Kumar and ultimately vide order dated 18.04.2013 (Annexure P-2) passed by Addl. Managing Director (G), MARKFED he was inflicted the punishment of recovery of 50% of the loss of Rs.2,22,02,152/- alongwith interest and he was further ordered to be brought down by three stages in his time scale of pay for calculating his retiral dues. Thereafter, Respondent No.1 filed statutory appeal before the next higher authority i.e. Managing Director, MARKFED (Appellate Authority), which was considered and dismissed by the said authority vide order dated 27.08.2013 (Annexure P-3). Although the order passed in the said appeal, could have been impugned by him by filing revision petition before the Board of Directors, MARKFED, however, instead of filing revision before the Board of Directors, MARKFED, which is the competent Revisional Authority, he preferred to file the revision before the Additional Registrar (M) Cooperative Societies, Punjab, Chandigarh and the said Authority, vide order dated 12.05.2015 (Annexure P-4) has allowed the revision petition and set aside the order of punishment dated 18.04.2013 (Annexure P-2), as well as order dated 27.08.2013, passed by the Appellate Authority and exonerated Respondent No.1- Prem Kumar from the charges levelled against him. The said order dated 12.05.2015 (Annexure P-4), passed by Additional Registrar (M) Cooperative Societies, Punjab, Chandigarh, has been impugned in the present writ petition by the petitioner-MARKFED.

5. The facts of the second petition i.e. CWP No.19853 of 2015, which has been preferred by the petitioner-Prem Kumar, have been narrated/discussed here-in-below:-

By way of filing this writ petition i.e. CWP No.19853 of 2015, the petitioner- Prem Kumar has approached this Court for quashing the impugned

order dated 18.09.2014 passed by Respondent No-1-the Financial Commissioner, Cooperation, Government of Punjab, vide which the Revision Petition filed by him has been dismissed by upholding the order dated 30.05.2012 passed by Respondent No.2 -The Additional Registrar (HQ), Cooperative Societies, Punjab; impugned order dated 01/06.07.2009, passed by Respondent No.4 – The Managing Director, MARKFED, vide which appeal of the petitioner filed under the Service Rules has been dismissed and also the impugned order dated 28.06.2006 / 05.07.2006 passed by Respondent No.5 – the Additional Managing Director (F), MARKFED, vide which the petitioner has been imposed punishment of stoppage of two annual grade increments, with cumulative effect and in case the loss is not recovered from the miller through arbitration/legal proceedings, then the same would be recovered from him and another employee along with interest in equal proportion.

6. Learned counsel for the petitioner (MARKFED) in CWP No.26817 of 2015 submitted that the impugned order dated 12.05.2015 (Annexure P-4) passed by Respondent No.2 – Additional Registrar, Cooperative Societies, Punjab, whereby by accepting the revision petition filed by Prem Kumar, he has been exonerated from all the charges and the order of recovery passed against him has been set aside, is legally invalid and the revision petition filed by Prem Kumar under Section 69 of the Punjab State Cooperative Societies Act, 1961 read with Rule 14 (D) of the Markfed Common Cadre Rules, 1990 before Respondent No.1, who is otherwise not competent to entertain such Revision Petition, has erroneously allowed the same, and therefore, the same is liable to be set aside.

7. The question, which arises for determination of this Court is that who is the Revisional Authority for the post of Field Officer, which is a Group-C post in the respondent-MARKFED. The services of Respondent No.1 are governed by

the 'Punjab State Cooperative and Marketing Federation Employees (Punishment and Appeal), Rules, 1990', which have been amended vide letter dated 19.07.2006 and the said amendment reads as under:-

xxx xxx xxx xxx

“Subject:- Amendment in Rule 13 (e) and Rule 14 of The Punjab State Cooperative Supply and Marketing Federation Employees (Punishment & Appeal Conduct) Rules, 1990.

Dear Sirs,

The Registrar, Cooperative, Societes, Punjab, vide his No.RCS/Mkg/MS-1/55-B/ 9202 dated 14.07.2006 has conveyed the approval to amend Rules 13 (e) and Rule 14 of The Punjab State Cooperative Supply and Marketing Federation Employees (Punishment & Appeal & Conduct) Rules, 1990 with a change in the Punishing Authority competent to impose penalty for Group 'A – 1' to Group 'D' as resolved by the Board of Directors of Markfed in its meeting held on 26.06.2006 vide Supplementary Agenda item no.3 as detailed below:-

EXISTING				AMENDED		
Sr. No.	Description of employees	Punishing authority competent to impose penalty	Name of the Penalties	Description of employees	Punishing authority competent to impose penalty	Name of the Penalties
1	Group 'A' employee	Managing Director	Penalties specified in these rules	Group 'A' employee	Managing Director	Penalties specified in these rules
2	Group 'A-1' employee	Addl. Managing Director (G)	-do-	Group 'A-1' employee	-do-	-do-
3	Group 'B' employee	Addl. Managing Director (G)	-do-	Group 'B' employee	-do-	-do-
4	Group 'C' employee	Addl. Managing Director (G)	Penalties specified in these rules	Group 'C' employee	Addl. Managing Director (G)	Penalties specified in these rules
5	Group 'C' employee	Chief Manager Personnel	The minor Penalties specified in these rules	Group 'D' employee	Chief Manager Personnel)	Penalties specified in these rules
6	Group 'D' employee	Chief Manager Personnel	Penalties specified in these rules			

Rule 14 An appeal in the case of an employee against the penalty or penalties imposed, may be detailed below:

EXISTING		AMENDED
1.	Against the decision of MD / AMD (G) to the Board of Director	Against the decision of MD to the Board of Director.
2.	Deleted	Against the decision of Addl. Managing Director to the Managing Director.
3.	Against the decision of Chief Manager (Personnel) to the Addl./Managing Director (G)	Against the decision of Chief Manager (Personnel) to the Additional Managing Director.

The above mentioned amendments may kindly be brought ot the notice of all the employees.

Thanking you.

Yours Faithfully,

*Sd/-
(MADHVI KATARIA)
CHIEF MANAGER (PERSONEL) ”*

xxx xxx xxx xxx

8. As per these Rules, the Field Officer is a Group-C post and the Punishing Authority competent to impose penalty for Group – C post is the Additional Managing Director, MARKFED and the Appellate Authority is the Managing Director, and where the Appellate Authority is Managing Director, MARKFED, the Revisional Authority is the Board of Directors, MARKFED.

9. A bare perusal of the impugned order dated 12.05.2015 (Annexure P-4) passed by the Revisional Authority i.e. Additional Registrar (Cooperative Societies) would show that a specific objection was taken by the petitioner– MARKFED with regard to the maintainability of the revision petition preferred by Respondent No.1, however, without recording any finding with regard to the

maintainability of the revision petition, the punishment order has been set aside, without going to the root of said aspect, as per the Punjab State Cooperative and Marketing Federation Employees (Punishment and Appeal), Rules, 1990, which have been amended vide letter dated 19.07.2006, and it is crystal clear that the Revisional Authority is the Board of Directors, MARKFED, therefore, the order dated 12.05.2015 (Annexure P-4), passed by Additional Registrar (M) Cooperative Societies, Punjab, Chandigarh is without jurisdiction, *nonest* and void *ab initio*.

10. Since, the order of punishment dated 18.04.2013 (Annexure P-2) was passed by the Addl. Managing Director (G), MARKFED, Respondent No.1 - Prem Kumar has rightly filed the appeal before the Appellate Authority i.e. Managing Director, MARKFED, which was considered and dismissed by the said authority vide order dated 27.08.2013 (Annexure P-3). Respondent No.1 - Prem Kumar, however, instead of filing the appeal/revision before the Board of Directors, MARKFED, as per the Rules referred to above, filed the revision before the Additional Registrar (M) Cooperative Societies, Punjab, Chandigarh, which is not the competent authority to hear and decide the appeal/revision.

11. Since, the order dated 12.05.2015 (Annexure P-4), passed by the Revisional Authority i.e. Additional Registrar (M) Cooperative Societies, Punjab, Chandigarh is without jurisdiction, *nonest void abinitio* and violative of Rule 14, therefore, the same is hereby set aside and accordingly, CWP No.26817 of 2015 is allowed.

12. Interestingly in CWP No.19853 of 2015, wherein the petitioner – Prem Kumar Sharma has preferred revision petition before the same authority i.e. Additional Registrar (M) Cooperative Societies, Punjab, and said authority has rightly held that the revision petition is not maintainable, therefore, no ground is

made out to interfere in the impugned order in view of the findings as recorded above and petition i.e. CWP No.19853 of 2015 is hereby dismissed with no orders as to costs and respondent No.1-Prem Kumar Sharma, who is petitioner in CWP No.19853 of 2015 and Respondent No.1 in other case, is at liberty to approach the competent authority i.e. the Board of Directors, MARKFED, if he wants to avail the remedy of revision in accordance with law.

February 21, 2024
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(NAMIT KUMAR)
JUDGE

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