

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10670-2001 (O&M)

Decided on 03.12.2025

BL Kaul

... Petitioner

VS.

HMT Ltd. & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Panwar, Advocate for the petitioner

Mr. Anand Chhibar, Sr.Advocate with
Mr. Utkarsh Khatana, Advocate and
Mr. Lalit Thakur, Advocate for respondents

Sandeep Moudgil, J.

(1). The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuing a writ of certiorari for quashing the impugned order dated 29.02.2000 (Annexure P4) vide which the punishment of reduction of two increments have been imposed; order dated 11.09.2000 (Annexure P6) as well as the order dated 09.06.2001 (Annexure P11) vide which the petitioner has been asked to deposit Rs.4,94,597/- on account of loss incurred by the petitioner to the HMT Officers Club and consequently recovery of Rs.6000/- per month has been ordered. He further seeks a direction to the respondents to grant him promotion to the post of General Manager w.e.f. the date persons junior to him were promoted with all consequential benefits.

(2). Learned counsel for the petitioner contends that the Watch Factory Officers' Club is a distinct and independent entity, duly registered under the Karnataka Co-operative Societies Act, and has never been part of, or subordinate to HMT Ltd. and the petitioner held only an Honorary post of Treasurer in this Co-operative Club, and as such, any acts done in that capacity

pertain exclusively to the affairs of the Club and not to the discharge of his official duties as Deputy General Manager of the respondent-company, and therefore, no clause of the Conduct, Discipline and Appeal Rules of HMT Ltd. can be legitimately invoked in respect of such Club-related activities, rendering the very issuance of the charge-sheet under those Rules without jurisdiction and bad in law.

(3). It is further submitted that the Enquiry Officer substantially accepted the petitioner's specific case that Rs.3,92,938/- was not missing but had actually gone towards Leasing Finance, and that the only unresolved amount was Rs.74,322/-. The account statements (Annexures P-13 and P-14) and the Enquiry Report both show that up to March 1991 Leasing Finance was shown separately, but from April 1991 onwards the same component was wrongly clubbed under "UCO Bank"; the Enquiry Officer noted that Rs.5,72,255/- was paid by the Club to Leasing Finance between April and December 1991, sought correct payroll-based allocation from JGM (Finance) but did not receive it, and therefore gave the petitioner the benefit of doubt and treated Rs.3,92,938/- as Leasing Finance payments, leaving only Rs.74,322/- as net deviation. In this backdrop, the figure of Rs.4,67,260/- is purely an accounting/heading mismatch between UCO Bank and Leasing Finance and does not represent any misappropriated amount or net loss attributable to the petitioner.

(4). Learned counsel argued that despite this limited finding of a joint deviation of Rs.74,322/- and the Enquiry Officer's suggestion that Rs.3,92,938/- could be verified by the Accounts Department if required, the respondents never carried out that verification and instead imposed two

separate penalties on the same charge-sheet firstly, by imposing reduction of pay by two increments, and later ordering recovery of Rs.4,94,597/- which is in substance double punishment for the same alleged misconduct. At the same time, they accepted only Rs.60,000/- from the Secretary against a much larger claimed liability and UCO Bank has issued a No Dues Certificate, making it clear that there is no proven net loss of Rs.4,94,597/- caused by the petitioner. In these circumstances, saddling him alone with the full enhanced recovery and continuing to withhold his remaining gratuity, leave encashment and arrears is not only unjustified but amounts to double jeopardy.

(5). On the other hand, learned counsel for the respondents asserts that the Watch Factory Officers' Club cannot be treated as a wholly detached, private venture so as to insulate the petitioner from departmental discipline inasmuch as it is a club of HMT employees, located within the respondents premises and facilities availed by its employees besides handling funds which originate from salary deductions made by HMT and routed through the company's systems for discharge of employees' loan liabilities.

(6). He submits that the diversion of loan instalments deducted from employees' salaries and failure to remit them to UCO Bank directly affects respondent-HMT's financial credibility and its employees' liabilities, and therefore squarely falls within the scope of the Conduct, Discipline and Appeal Rules, notwithstanding the co-operative registration of the Club. Reliance has been placed in **Mulchandani Electrical & Radio Industries Ltd. v. Workmen, (1975) 4 SCC 731** which squarely supports a broad construction of misconduct "within the premises or precincts of the establishment".

(7). It is then argued that there is neither arbitrariness nor discrimination, because demand notices were issued to all the persons held responsible, including the Secretary and Manager, who have in fact deposited substantial amounts, and the petitioner's grievance merely reflects his reluctance to honour the commitment he himself made to make good the loss detected in the accounts and thus, the apportionment of the remaining amount, including through monthly deductions from the petitioner's salary, is a rational managerial decision.

(8). As regards petitioner's contention regarding his promotion, learned counsel for the respondent urged that the respondents are entitled to rely on the Promotion Manual and sealed-cover procedure to justify the impact on the petitioner's promotion prospects, since company policy clearly mandates that an executive undergoing or suffering a current punishment is ineligible for promotion, and the petitioner's comparison with other officers with unblemished records is misplaced.

(9). Heard learned counsel for the parties.

(10). The respondents received anonymous complaints alleging misappropriation of funds of the HMT Watch Factory Officers' Club, Bangalore inasmuch as during the period June 1990, UCO Bank arranged loan of Rs.12,000/- each to the members of the above-said Club who were employees of respondents. The role of the petitioner was that being Treasurer of the Club during 1990 & 1991, he failed to properly maintain accounts properly and as such, 5 persons were found to have deviated the remittance to the UCO Bank Loan account to the extent of Rs.4,67,260 in the enquiry report.

(11). Notice of motion in this case was issued on 24.07.2001 and while admitting the writ petition on 21.11.2001, this Court directed release of 50% of the gratuity and leave encashment from the terminal benefits to the petitioner on 20.04.2010.

(12). Having heard learned counsel for the parties, the following issues arise for determination of this Court:-

(i) Whether, on the facts and material on record, the Watch Factory Officers' Club can be held to be an integral unit or organ of HMT Ltd., constituted and regulated under its service/establishment rules, and, if not, whether acts done by HMT employees in their capacity as office-bearers of such a separately Co-operative Club can nevertheless be treated as acts done in discharge of their official duties so as to validly attract and sustain disciplinary proceedings under the HMT Conduct, Discipline and Appeal Rules?

(ii) Whether, despite the Enquiry Officer having found only a limited joint "deviation" of Rs.74,322/- without any personal gain to the petitioner, the disciplinary authority could lawfully treat the case as one of embezzlement/misappropriation and unilaterally fasten an enhanced liability on the petitioner alone without recorded reasons or a separate opportunity of hearing.

(13). The employees of the respondent-HMT and one Horological Machines, Bangalore had formed a Club in the name and style of "Hindustan Machine Tools Watch Factory Officers' Club" registered under the provisions of the Karnataka Co-operative Societies Act with an objective to promote the

economic interest of its members. Admittedly, the respondent-HMT does not appoint or pay the Club's office-bearers, nor does it control its internal affairs. There is no rule or regulation suggesting the Club is or was part of respondent-HMT, indicating the Club operates independently.

(14). Significantly, the parties have failed to produce the governing Rules or Circular outlining the service conditions, conduct, and discipline applicable to employees, including the petitioner, thereby leaving unsubstantiated the assertion that the Club constituted an integral component of respondent-HMT. This evidentiary lacuna raises doubts as to whether actions pertaining to the Club's business or property would amount to "misconduct" justifying disciplinary action by the respondent-HMT. It thus undermines the presumption that the Club ever fell within the purview of respondent-HMT, consequently casting uncertainty on its authority to initiate disciplinary proceedings against its employees for actions wholly unrelated to the affairs of the respondent-HMT.

(15). Quiet identical issue was dealt with by the Karnataka High Court in **K. Kamalanathan v. HMT Ltd., 2004 (3) SCT 560**, wherein an HMT employee was dismissed from service on the allegation that, while acting as office-bearer (Director/Vice-President) of the "HMT Watch Factory Co-operative Society Ltd.", he collected and misused Society fund. The Karnataka High Court held that the "HMT Watch Factory Co-operative Society Limited" was an independent legal entity and that HMT had "no control whatsoever" over its management, and that alleged misappropriation by an employee as office-bearer of that Society could only be dealt with under the Karnataka Co-operative Societies Act, and not under HMT's Conduct,

Discipline and Appeal Rules. The relevant extracts of the judgment thus read as under:-

*“20. The petitioner is a member of a Co-operative Society registered under the provisions of Karnataka Co-operative Societies Act. He also happens to be the office-bearer of the Society. The employees of the respondent Company are eligible to become its members. However, the respondent-Company has no control over the affairs of the Society. The employees appointed by the Society to discharge the functions of the Society are not the employees of the respondent Company. The management of the Society is run by the directors, elected from among the members of the Society. If an employee or office-bearer of a society commits any acts of mis-appropriation of societies funds, the provisions of Karnataka Cooperative Societies Act provides innumerable remedies, including to initiate surcharge proceedings under Section 69 of the Act or to raise dispute under Section 70 of the Act for recovery of pecuniary loss caused to the Society. Therefore, **in my view for an** alleged omission as an office-bearer of a Co-operative Society, the Disciplinary Authority of the respondent- Company could not have initiated any proceedings much less domestic enquiry proceedings against the petitioner. The matter would have been different if the respondent-Company had any control over the affairs and management of the Society.*

21. Sri Samuel, learned counsel for the respondent Company however submits that since petitioner is an employee of the respondent company as envisaged under Rule 3.9 of Conduct Rules and, therefore, misconduct alleged is covered under rule 22 thereof. Rule 22 of the Conduct Rules inter alia requires that every employee shall at all times maintain absolute integrity and is forbidden from doing anything which is unbecoming of an employee of the Company. These provisions are wide enough to include not only acts done by an employee of the respondent company in discharge of his official duties but also acts done outside his employment. The argument advanced seems to be attractive but a deeper consideration of the matter, in my view, it has no merit whatsoever. This submission of the learned Counsel would have

been available to him if the Co-operative society in which petitioner is a Director is under the control of respondent company. The test in my view is whether the employee is conducting himself in a way inconsistent with the faithful discharge of his obligation undertaken by him either expressly or impliedly in accepting the service. The inconsistency may arise on account of any act of the servant either in the course of his employment or outside it, which injures or has the tendency to injure his employers business or interests or reputation. At this stage, it may be useful to notice the observations made by the Apex Court in the case of S. Govinda Menon v. Union of India, AIR 1967 Supreme Court 1274, wherein it is not necessary that the alleged act or omission which forms the basis of the disciplinary proceedings should have been committed in the discharge of his duties, as a servant of the Government. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. The test is whether the act or omission has reasonable connection with the nature and condition of his service or whether the act or omission has cast a reflection upon the reputation of the member of service for integrity or devotion to duty as a public servant. (Emphasis supplied)”

- (16). The petitioner’s role as Honorary Treasurer flows entirely from the Club’s own bye-laws, and the decisions regarding utilisation of funds for Club development were taken collectively by the President, Vice-President, Secretary, Treasurer and Manager in that co-operative capacity. These acts are thus attributable to an independent co-operative body over which respondent-HMT has no control, and not to the discharge of the petitioner’s duties as Deputy General Manager of HMT. The fact that the Club statedly functions within HMT premises and utilises its system for salary deductions

does not inherently transform it into an integral part of HMT, nor does it alter its inherent character as a distinct cooperative entity.

(17). The principle enunciated in **Kamalanathan's** case establishes that acts beyond the strict scope of duty may attract disciplinary action if they bear a reasonable nexus to the nature and conditions of service, or cast aspersions on an officer's integrity or devotion to duty. However, this broader test presupposes that the impugned conduct is of a nature that injures, or has a real tendency to injure, the employer's business, interests, or reputation. In the present case, the acts complained of pertain to the internal affairs of an independent Club, governed by its own bye-laws, and decisions taken by its Managing Committee in respect of Club funds. Given that HMT exercises "no control whatsoever" over these matters, such acts cannot, in the absence of absolute supervisor or managerial control over the Club, be deemed to have been performed "in discharge of official duties" for respondent-HMT, and thus do not fall within the purview of HMT's Conduct, Discipline and Appeal Rules. Issue No.1 is accordingly answered in the negative.

(18). Having held that the very initiation of disciplinary proceedings against the petitioner under the HMT CDA Rules in respect of his Club-related acts was without jurisdiction, this Court proceeds to examine the merits of the impugned action to demonstrate its inherent flaws.

(19). As regards, Issue No.2, the charge-sheet itself uses the expression "deviation in remittance to UCO Bank Loan Account" of Rs.4,67,260/-, and not "embezzlement". The Enquiry Officer, after examining the accounts and the petitioner's explanation, explicitly found that Rs.3,92,938/- of this amount was in fact applied towards Leasing Finance instalments, and granted petitioner

the benefit of doubt on that component for want of proper allocation data from HMT. It was found that only Rs.74,322/- remained as net 'deviation', jointly attributable to the Treasurer, Secretary, Vice-President and Manager, with the petitioner's share at Rs.14,865/-. He further records that there was no personal gain to the petitioner and treated the "deviation as negligence/lack of devotion to duty under the CDA Rules", not as defalcation. This is wholly inconsistent with a finding of embezzlement, and it fixes joint but limited responsibility.

(20). The Court have treated "misappropriation" or "embezzlement" as involving dishonest or willful deprivation of money/property, usually with an element of moral turpitude, whereas mere accounting errors, delayed remittances or 'misallocation between heads', without wrongful gain or lasting loss, are treated as 'negligence' or 'financial irregularity', but not as 'embezzlement'. Misappropriation or embezzlement of funds is only where the amount has been put to use for purposes other than that for which it was received, with dishonest intention. But where there is only delay in remittance, or the money is used for authorised purposes and later made good, it cannot and should not automatically be treated as misappropriation.

(21). The disciplinary authority could not, in law, re-characterise the matter as one of embezzlement of Rs.4,67,260/-, capitalise it with interest to Rs.9,89,194/-, and fasten half that amount (Rs.4,94,597/-) on the petitioner alone and that too without first recording specific reasons for disagreeing with the Enquiry Officer's exonerating/limiting findings on Rs.3,92,938/-. A fresh show cause notice, accompanied by those reasons and the proposed enhancement, was imperative to enable the petitioner to adequately address the same.

(22). In the instant case, there was no order passed by the respondents quantifying the loss or embezzlement of funds. In the enquiry proceedings also, there was accounting error which was ignored may be due to mismanagement or due to non-availability of full time dedicated staff for accountancy and management of funds. The petitioner was nominated as a Treasurer and was holding that position without any office of profit. That apart, the deviation of funds was later on fulfilled and NDC dated 13.09.2005 (Annexure P19) has also been issued showing that the money has ultimately reached its intended beneficiary, thereby undermining the very basis for treating the alleged “shortfall” as ‘misappropriation’ or ‘embezzlement’.

(23). Further, reliance placed on Section 4(6) of the Payment of Gratuity Act is also misconceived. That provision contemplates forfeiture of gratuity where “services have been terminated” for willful act or negligence causing loss, and only “to the extent of the damage or loss so caused”. The respondents utterly failed to demonstrate and place on record order showing that the petitioner was ever dismissed or terminated or removed from service. Albeit, the petitioner honourably superannuated w.e.f. 30.04.2008 but without any retiral benefits.

(24). Even otherwise, on 08.02.2024, during the course of hearing, learned counsel for the respondents sought time to file affidavit with respect to dues pending against the petitioner as well as to bring on record the order, if any, withholding the gratuity or leave encashment of the petitioner. In response thereto, an affidavit was filed by Md.Zahoor Ul-haq, Estate Officer, HMT Ltd. ABD, Pinjore, the relevant extracts of which are reproduced as under:-

“3. That it is submitted that the Government of India had declared the Company closed down about 7 years ago and in the process of leasing out the office buildings and machine shops, all the office records were shifted to other places where documents got destroyed due to high humidity. Therefore, no such records regarding the order passed by the authorities to withhold gratuity or leave encashment of the petitioner are traceable to the company at this stage.”

(25). It can thus be seen that the respondents have, by their own showing, neither produced nor even been able to trace any order terminating the petitioner's services, or any speaking order directing forfeiture or withholding of his gratuity and leave encashment in terms of Section 4(6) of the Payment of Gratuity Act, 1972. In the face of a clear admission that relevant records are “not traceable” due to closure of the Company and alleged destruction of documents, the respondents cannot, in the same breath, invoke Section 4(6) to justify indefinite withholding or set-off of the petitioner's statutory retiral dues, particularly when there is admittedly no order of dismissal/termination, no duly proved and quantified “loss” referable to the petitioner alone, inasmuch as the onus to establish both the fact and extent of such loss rests squarely on the employer.

(26). Likewise, the respondents' action in denying the petitioner promotion to the post of General Manager, on the strength of the very punishment and alleged “loss” which have been found to be without jurisdiction and unsustainable, also cannot sustain. In the absence of any valid subsisting penalty or legally determined loss, the non-consideration of the petitioner for promotion stands vitiated. The petitioner, having honourably superannuated on 30.04.2008, is therefore entitled not only to release of the balance 50% gratuity, leave encashment and other dues, but also to

retrospective promotion to the post of General Manager from the date his juniors were promoted, with all consequential monetary benefits reflected in the re-fixation of his pay and retiral benefits.

(27). In view of the above discussion, this writ petition is allowed and the impugned order dated 29.02.2000 (Annexure P4) vide which the punishment of reduction of two increments have been imposed; order dated 11.09.2000 (Annexure P6) as well as the order dated 09.06.2001 (Annexure P11) vide which the petitioner has been asked to deposit Rs.4,94,597/- and consequently recovery of Rs.6000/- per month has been ordered, are hereby quashed. The respondents are directed to release pending service/retiral dues to the petitioner and also grant him promotion to the post of General Manager w.e.f. the date persons junior to him were promoted with all consequential benefits from the due date.

(28). Ordered accordingly.

03.12.2025

V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?* :
2. *Whether reportable?* :

Yes/No
Yes/No