



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

102

RSA-353-1993 (O&M)

Date of decision: 05.02.2026

Jagir Singh

.....Appellant

Versus

Markfed Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. G.S. Bhatia, Advocate and
Mr. J.S. Bhatia, Advocate
for the appellant.

Mr. Sandeep Vermani, Advocate and
Mr. Aditya Vermani, Advocate
for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The instant Regular Second Appeal has been filed by the appellant/plaintiff impugning the judgments and decrees dated 13.11.1990 and 02.12.1992, passed by the learned Trial Court and First Appellate Court respectively, whereby the suit of the appellant/plaintiff has been dismissed. Parties to the *lis* hereinafter shall be referred to by their original position before the learned Trial Court.

2. In brief, the plaintiff (Jagir Singh) instituted a suit against the defendant-Markfed for declaration to the effect that the order dated 22.12.1988, whereby the punishment of stoppage of two annual grade increments with cumulative effect and recovery was inflicted upon him is illegal, null and void, with further relief of permanent injunction restraining the defendants from effecting any recovery of shortage from the salary of the plaintiff on the basis of the impugned order.

2.2 The case of the plaintiff, as briefly stated, is that he joined the defendant-Markfed in the year 1978 as Salesman and he was wrongly charge-sheeted and on the basis of wrong enquiry report, was awarded the punishment of stoppage of two annual grade increments with cumulative effect as well as recovery and the reply furnished by him was discarded without any reason and the Enquiry Officer has submitted his report without adopting proper procedure and even without affording any opportunity to the plaintiff of being heard and as such, the enquiry report as well as the impugned order of punishment is based on conjectures and surmises, which is not a speaking order and is bad in the eyes of law. It has also been alleged that the punishing authority has wrongfully discarded the exact position responsible for the shortage in wheat as well as 35 B/S of wheat, as alleged in the charge sheet, because the stock in question was flood affected and in a damaged condition. It has further been pleaded that the appeal preferred by the plaintiff against the impugned order dated 22.12.1988 has also been dismissed wrongfully by the Administrator of the Markfed, vide his order dated 06.09.1989. Upon notice of the plaint, defendants filed written statement on 18.01.1990 taking preliminary objections that since no notice under Section 79 of the Punjab Cooperatives Societies Act, 1961 has been served upon the defendants and no legal notice has ever been served upon the Registrar Co-operative Societies, therefore, the suit is liable to be dismissed being not maintainable, since the Civil Courts at Sultanpur Lodhi has no jurisdiction to entertain and try the suit being barred by the provision of Section 82 of the Punjab Co-operative Societies Act, 1961. In the said suit, the following issues were

framed:-

- 1) *Whether the order dated 22.12.88 is null and void as alleged in the plaint? OPD.*
- 2) *Whether the plaintiff is entitled to declaration as prayed for? OPP.*
- 3) *Whether the suit of the plaintiff is not maintainable for want of notice u/s 79 of the Punjab Cooperative Societies Act, 1961? OPD.*
- 4) *Whether the Civil court has no jurisdiction to try the suit? OPD.*
- 5) *Whether the defendants have passed the impugned order after conducting proper enquiry? OPD.*
- 6) *Relief.*

3. Issue Nos.1 and 5 were decided against the appellant/plaintiff, whereas Issue Nos.3 and 4 were not pressed by the learned counsel for the plaintiff and, therefore, the same were held as unproved and decided against the plaintiff and in favour of the defendants. However, Issue No.2 was decided against the plaintiff on the basis of findings recorded at Issues No.1 and 5 by the Trial Court. Consequently, the suit was dismissed by the learned Sub Judge 1st Class, Sultanpur Lodhi, Kapurthala, vide judgment and decree dated 13.11.1990, which was challenged by the appellant/plaintiff by filing First Appeal before the learned First Appellate Court. The learned First Appellate Court decided Issue Nos.1 and 5 in favour of the appellant/plaintiff with the finding that the punishment has been imposed by the disciplinary authority without going through the procedure prescribed under the rules and the natural justice. However, with regard to Issue No.3, it was held that the appellant/plaintiff, being an employee of a Cooperative Society, was governed by the provisions of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to

as '1961 Act') and that, prior to filing a suit for declaration, he was bound to serve a notice under Section 79 of the 1961 Act. With respect to Issue No.4, it has been held that since the appellant/plaintiff is an employee of a Cooperative Society, therefore, in view of Section 55(1)(c) of the 1961 Act, disputes between a cooperative society and its employees, are required to be adjudicated by the arbitrator or registrar, and that the jurisdiction of the Civil Court is expressly barred under Section 82 of the 1961 Act.

4. With regard to the findings recorded under issue Nos.1 and 5, neither any appeal has been preferred nor any cross-objections in the present appeal have been preferred by the defendants.

5. With regard to issue Nos.3 and 4, learned counsel for the appellant/plaintiff submits that, firstly, the services of the appellant/plaintiff are governed by the rules known as 'Punjab State Civil Supply and Marketing Cooperation Service (Common Cadre) Rules, 1967', which have been amended in the year 1994 and not exclusively by the provisions of the 1961 Act. Section 79 of the 1961 Act, reads as under:-

“79. Notice necessary in suits.-No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.”

6. A bare perusal of the aforesaid provision shows that the bar to the institution of a suit is attracted only when the suit is in respect of an act 'touching the business of the society'.

7. Learned counsel for the appellant/plaintiff further contends that Sections 55(1)(c) and 82 of the 1961 Act also does not bar the jurisdiction of the Civil Court in matters relating to punishment imposed upon the employees. It is further submitted that the disputes concerning service conditions and punishments are not related to the business of the Society and, therefore, are not referable to arbitration under Section 55(1)(c). Therefore, the findings recorded in the judgments passed by the learned Trial Court and First Appellate Court are liable to be reversed.

8. Learned counsel for the respondents contends that the appellant/plaintiff, being an employee of a co-operative society, is governed by the provisions of the 1961 Act. It is submitted that in view of Sections 55(1)(c) and 82 of the 1961 Act, disputes between a co-operative society and its employees are required to be adjudicated by the Registrar or through arbitration and the jurisdiction of the Civil Court is expressly barred. It is further contended that the appellant/plaintiff failed to serve the mandatory notice under Section 79 of the 1961 Act prior to the institution of the suit and, therefore, the suit was not maintainable. Consequently, the judgements passed by the learned Trial Court and First Appellate Court dismissing the suit call for no interference.

9. I have heard learned counsel for the parties and perused the record.

10. The matter stands admitted on 11.11.1993. Vide orders dated 12.08.1993, the respondents were restrained from making any recovery out of the salary of the appellant during the pendency of the

appeal.

11. Admittedly, in the present case, the suit preferred by the appellant/plaintiff is against the order of punishment dated 22.12.1988, whereby the punishment of stoppage of two annual grade increments with cumulative effect and recovery was inflicted upon him by the employer. The said action pertains to disciplinary control and service conditions of an employee and the same does not, in any manner, relates to or touch the business of the Cooperative Society.

12. The question 'whether a dispute concerning services of an employee could be referred to arbitration under Section 55 of the 1961 Act' came up for consideration before a Division Bench of this Court in the case of “***Morinda Co-operative Sugar Mills Limited, Morinda v. The Morinda Co-op. Sugar Mills Workers Union Registered, 2003 (4) SCT 358***”, and in the said case, after referring to various judgments, in para 11 of the judgment, it was held that the dispute raised by the employee by filing a civil suit was not covered by the expression 'touching the business of the Society' as used in Section 55 of the 1961 Act. The matter traveled to Hon'ble the Supreme Court and the view taken by the Division Bench of this Court was upheld by the Hon'ble Apex Court in “***Morinda Cooperative Sugar Mills Ltd. v. Morinda Cooperative Sugar Mills Workers Union, 2006(3) SCT 558 (SC)***”. It is, thus, patent that under Section 55 of the 1961 Act, no dispute concerning service condition of an employee could be referred to arbitration. Further, even the provision, which excluded the jurisdiction of the Labour Court under the Industrial Disputes Act, have also been held to be *ultra vires* by the Full Benches of this Court in the

judgements titled as ***“The Sonepat Co-operative Sugar Mills Ltd., Sonepat through its Managing Director v. The Presiding Officer, Labour Court, Rohtak and another : 1986(3) SLR 255*** and ***“Ambala Central Cooperative Bank Ltd., Ambala v. State of Haryana and others : 1993(2) SCT 310”***. Therefore, merely because after inquiry the remedy of appeal or revision have been provided by the 1986 Rules, would not result into application of principles of *res judicata* by barring the jurisdiction of the Court/Tribunal to raise such a dispute because there has been no adjudication at any judicial forum.

13. Further, the scope and ambit of the above Section 79 of the 1961 Act has been examined by a Division Bench of this Court in ***The Jullundur Central Co-operative Bank Ltd. v. Gian Singh : 1973(1) ILR (Punjab) 453***, in which it has been held as under:-

“The learned counsel for the petitioner emphasises that the words “in respect of any act touching the business of the society” only refer to the words “any of its officers” and not to “co-operative society”. It is, therefore, submitted that any kind of suit against a co-operative society cannot be instituted until the expiration of three months next after the notice in writing has been delivered to the Registrar of left at his office stating the cause of Action, the name, description and place-of residence of the plaintiff and the relief which he claims, whereas a suit against any of its officers will require compliance of a notice prescribed .in section 79 only if it arises out of an Act touching the business of the society. We are unable to agree to this submission. In our opinion, the notice is required to be delivered only if the suit against a co-operative society arises out of any act touching its business and not in every suit. The Registrar has been given certain powers to supervise and control the working and business of the co-operative society in order to see that it is carried on in accordance with the principles of cooperation and according to the other provisions of the Act. He is not concerned with other activities of the co-operative society and its disputes with the strangers or its employees arising out of their service conditions. It is, therefore, not necessary to serve a notice as prescribed in

section 79 on the Registrar of Co-operative Societies as he has no jurisdiction in the matter. The Legislature only intended the delivery of notice to the Registrar in order to enable him to mediate with the co-operative society for settling the claim of the plaintiff who intended to file the suit. The power of the Registrar can be invoked for this purpose only if he has jurisdiction in the matter and he can exercise his power in that behalf to compel the co-operative society to decide the matter in certain manner. If he cannot exercise that power, then there is no point in giving a notice to him before filing any suit against the co-operative society.”

14. Therefore, in view of the aforesaid authoritative pronouncements, it is evident that no notice under Section 79 of the 1961 Act, was mandated, before filing a civil suit.

15. Another contention raised by learned counsel for the respondents is that the issue raised by the appellant/plaintiff was referable to the Arbitrator and there is express bar in entertaining the suit by the Civil Court as per provisions of Section 82 of the 1961 Act. Sections 55(1)(c) and 82 of the 1961 Act, reads as under:-

“55. Disputes which may be referred to arbitration.-

(1) xxx xxx xxx xxx

(c) *between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or*

xxx xxx xxx xxx xxx

82. Bar of jurisdiction of courts.- (1) *Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of -*

- (a) *the registration of a co-operative society or its bye-laws or of an amendment of a bye-law;*
- (b) *the removal of a committee;*
- (c) *any dispute required under section 55 to be referred to the Registrar; and*
- (d) *any matter concerning the winding up and the dissolution of a co-operative society.*

(2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act. no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever. ”

16. Section 55(1)(c) of the 1961 Act deals with the categories of disputes which may be referred to the arbitration and it has been provided that where the dispute is between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society. The said provision nowhere bars the jurisdiction of the Civil Court. The said provision only relates to the disputes which are to be referred to arbitration with regard to business touching the Society and does not deal with the disputes with regard to punishment inflicted upon the employees. Similarly, Section 82 of the 1961 Act does not deal with the disciplinary punishments awarded to the employees and, therefore, it cannot be said that the jurisdiction of the Civil Court is barred for entertaining the suits relating to the employees with regard to punishments awarded to them and the said issue has already been considered by this Court in ***The Morinda Co-operative Sugar Mills Workers Union Registered's case (supra)***.

17. Even otherwise also, besides the pleaded embargo of Sections 79, 55(1)(c) and 82 of the 1961 Act, which has been ruled away, on the merits of the facts and circumstances of the case, the First Appellate Court while deciding Issues No.1 and 5 in favour of the

plaintiff has rightly observed that in the present case, charge-sheet, the enquiry file containing all the evidence and proceedings, was in possession, power and control of the defendant-department and in the charge-sheet, there was no charge levelled against the plaintiff to the effect that the recovery of loss caused to the organization would be effected from the pay of the plaintiff and *in absentia* thereof, the order for recovery could not have been passed by the punishing authority. It was further observed that since no opportunity of being heard was afforded to the plaintiff, the order of punishment dated 22.12.1988 (impugned order) is hit by the principles of natural justice and therefore, the findings of the trial court on Issues No.1 and 5 were held patently illegal, based on incorrect appreciation of law as well as evidence and were set-aside returning the Issues No.1 and 5 against the defendant-department and in favour of the plaintiff. On the basis of findings recorded at Issues No.1 and 5 the findings of Issue No.2 were also reversed and decided in favour of the plaintiff.

18. Since the plaintiff has not been afforded opportunity of being heard and submit reply, after being charge-sheeted and submission of enquiry report, and even the First Appellate Court has also reversed the main findings recorded at Issues No.1, 2 and 5 in favour of the plaintiff, this Court is of the considered view that the gamut of procedure cannot be given a go-bye and the enquiry proceedings are required to be conducted, after giving a reasonable opportunity to the delinquent officer to lead evidence in his support as well as to rebut the case, which is not mere a formality rather a statutory requirement under the law, rules and principles of natural justice

enshrined in the Constitution of India.

19. For the foregoing reasons and in view of the law laid down in the above said judgments, it is held that the suit filed by the appellant/plaintiff before the Civil Court challenging the order dated 22.12.1988, whereby punishment of stoppage of two annual grade increments with cumulative effect along with recovery was imposed upon the appellant/plaintiff, was maintainable and there exists no bar in entertaining the said suit by the Civil Court.

20. In view of the facts and circumstances of the present case and settled proposition of law that 'nobody can be condemned unheard', the instant Regular Second Appeal is allowed. The impugned judgments and decrees passed by the learned Trial Court and the First Appellate Court are hereby set aside and the suit for declaration filed by the appellant/plaintiff is decreed, as prayed for, and consequently, the impugned order dated 22.12.1988 is hereby quashed. Decree sheet be prepared accordingly.

21. Pending applications, if any, stand disposed of.

05.02.2026

Vinay/m.k. koundal

(NAMIT KUMAR)
JUDGE

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