
(2000) 09 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10238 of 1998

Baddowal Cooperative Agricultural Service Society Ltd.

APPELLANT

Vs

Joint Registrar, Cooperative Societies, Patiala and others

RESPONDENT

Date of Decision : 11-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Punjab State Cooperative Agricultural Service Societies Rules, 1963 — Rule 14, 80

Citation : (2000) 09 P&H CK 0173

Hon'ble Judges : S.S. Sudhalkar, J;Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Satinder Khanna, for the Appellant; Mr. Anil Sharma, D.A.G. and Mr. Jasbir Singh, for the Respondent

Judgement

S.S. Sudhalkar, J.—Respondent No. 3 was working with the petitioner-Society as the Secretary. It is alleged against him that he used to consume liquor and there was complaint against him by a villager that when respondent No. 3 met him, he was under the influence of liquor. It is also alleged against respondent No. 3 that he does not attend his duties regularly.

2. On 18.7.1995 petitioner gave respondent No. 3 a memo (copy Annexure P4) vide which respondent No. 3 was suspended with immediate effect and it was alleged that he always remained under the influence of liquor and disobeyed the order of the Managing Committee and that under the influence of liquor, he abused the members of the Society and, hence, he should hand over the charge to Mr. Amar Singh, Salesman. He was also directed to give reply to the Enquiry Officer within 15 days. This memo is a short one. However, the nature and the wording of it are important and it will be proper to quote the same. It is under:

"Subject: Regarding suspension.

Memo

You are hereby informed that the Managing Committee of the Baddowal

Cooperative Society vide resolutions dated 25.8.1995 and 14.9.1995 has unanimously decided to place you under suspension with immediate effect because you generally remain absent, you do not work in the society properly and do not cooperate with the members. You always remain under the influence of liquor and you disobey the order of the Managing Committee. You, under the influence of liquor, abuse the members of the society.

You are directed that the record of the society be handed over to Amar Singh Salesman/Cashier immediately.

You are directed to reply to this to the Enquiry Officer, Bikram Singh within 15 days. If you do not reply within 15 days or if your reply is not satisfactory, then your services will be immediately terminated.

i. Copy to Assistant Registrar, Cooperative Societies, Ludhiana.

ii. Copy to Inspector Cooperative Societies, Baddowal for information."

3. It is contended by the petitioner that respondent No. 3 did not give reply to this memo. Consequently order dated 4.10.1995 (copy annexure P/5) was passed. It is an order by three members of the Enquiry Committee who conducted enquiry against respondent No. 3. They held as under:

"(1) that respondent No. 3 generally remained absent in spite of the apologies tendered by him and that he again absented himself from 23.8.1995 to 28.8.1995 and further from 15.9.1995 onwards. It is further held against him that he has taken away with him the attendance register and cash book of the Society and the entire record to the Society is with respondent No. 3 he being custodian of the record. He kept the record under lock and key and the Committee could not know the contents of the things lying in the Almirah.

(2) Because of absence of respondent No. 3, he has not done the work of the society and the members were put to difficulty;

(3) that respondent No. 3 remains under the influence of liquor and so also when he is in the office of the Society. Instead of cooperating with the members, he used to hurl abuses on them and insult them;

(4) that respondent No. 3 always used to remain under the influence of liquor;

(5) that in spite of direction given by the Committee that he should do the work of the society properly, he always disobeyed the same and despite the warning of the Committee, he did not desist from remaining absent.

(6) that he abused the members of the Society under the influence of the liquor."

4. After the above report of the Enquiry Committee, order dated 16.10.1995 was passed by the Managing Committee of the Society. By the said order, service of respondent No. 3 were terminated. The allegations in the memo Annexure P/4 and the reasons for terminating being different, we find it proper to quote the relevant part of the resolution terminating the service of respondent No. 3. It is

as under:

"Resolved that Tarlochan Singh was placed under suspension on 14.9.1995. He was given 15 days time for reply. He had received this notice on 18.9.1995. He has not submitted his reply to the Managing Committee of the Society till today. Nor he has handed over the books of the society. It is possible that he may have destroyed the record and Shamsheer Singh s/o Santa Singh Khata No. 446 has given in writing that Tarlochan Singh has taken a recovery against loan amounting to Rs. 2160/- and made an entry to this effect in his pass book. He has also signed (the pass book). He has mis-appropriated this amount. If the books are made available, many such cases can be found. He is not interested in the work of the society. The charges against him have been proved as he has not replied to the charges. The report of the enquiry committee has also been received. This matter has been considered. In the interest of the Society, it has been considered that his services be terminated. Despite notice he has not presented himself in the Society. Therefore, his services are terminated. A notice may be sent to him directing him that the books of the Society and the charge be handed immediately to Amar Singh Cashier/Salesman. A copy of this may be sent to A.R. Sahib Ludhiana so that he may get the books delivered to the Society. This is necessary so that the work of the Society may be continued. A copy of this may be sent to S.H.O. Sadar with a request that books may be got recovered from Shri Tarlochan Singh ex-Secretary."

5. Respondent No. 3 filed an appeal which was decided in his favour by the Deputy Registrar, Cooperative Societies, Ludhiana on 10.11.1997. Copy of the same has been produced at Annexure P-8. Reasons for allowing the appeal in the said orders are as under:

"After hearing both sides and after perusing the record of the Society, I have reached the conclusion that before terminating the service of the appellant, he was neither served with any show-cause nor he was given any opportunity of presenting his case. The inquiry which was got done by the society was not got done from any independent authority and as such there was a gross violation of the service rules. The enquiry committee appointed by the Managing Committee submitted its ex parte enquiry report on 4.10.1995 which was discussed in the meeting of the Managing Committee dated 16.10.1995 and the resolution terminating the service of the appellant was passed. It is thus clear that for the meeting of 16.10.1995 clear notice of 15 days was not given nor any agenda was issued for this meeting dated 16. 10.1995. Therefore, this meeting cannot be considered valid under Rule 80 of the Punjab Cooperative Societies Rule, 1963. Therefore, the Managing Committee did not adopt proper procedure for the termination of services of the appellant. Therefore, the appeal of the appellant is accepted and he is reinstated as Secretary of the Society. If the appellant does not perform his duties properly, then the Managing Committee will be at liberty to take action in accordance with law. The decision was kept reserved on 15.9.1997 and the same has been pronounced today on 10.11.1997 in the open Court after

the same was dictated. The concerned parties may be informed in writing."

6. Therefore, the appeal has been allowed on the following grounds :

1. that respondent No. 3 was not served with any show cause notice;
2. that respondent No. 3 was not given any opportunity for presenting his case;
3. that enquiry was not got done from any independent authority;
4. that notice of 15 days time was not given.

7. Regarding the meeting on 16.10.1995 in which the petitioner terminated the services of respondent No. 3, agenda of that meeting was not circulated with 15 days notice.

8. Revision petition filed by the petitioner against the order of appeal was also dismissed by the joint Registrar, Cooperative Societies, Patiala on 18.5.1998. Copy of the same is at Annexure P/9.

9. We issued notice of motion. Written statements have been filed.

10. After hearing learned counsel for the parties, we find no reason to interfere with the orders passed in appeal and revision. Respondent No. 3 was not associated in the enquiry. He was not given a chance to cross-examine. It is contended that no witness has been examined and this point has not been challenged by the petitioner. Enquiry report was not given to respondent No. 3 and no show cause notice was given to him before the impugned order of termination was passed. It was also argued by learned counsel for the respondent No. 3 that even before an opportunity was given to respondent No. 3 for giving reply to the notice against him, Enquiry Officer was appointed and, therefore, the petitioner was proceeded with bias against respondent No. 3.

11. Counsel for the petitioner has cited the case of Binpalka Co-operative Agricultural Service Society Ltd. v. Commissioner (Appeals), Jalandhar Division 1993(2) R.R.R. 1 : 1992(3) SCT 395 (P&H) (DB). It was held therein that employee of Co-operative Society, on amalgamation for all intents and purposes became an employee of the amalgamated society. Thereafter amalgamated society was bifurcated. It was held in that case that it was upto the amalgamated Cooperative Society to decide to which newly formulated society his services were to be allocated and the employee has no locus standi to challenge resolution of voluntary bifurcation. This authority is cited by the petitioner because respondent No. 3 has challenged the meeting held on 16.10.1965 as the agenda was not circulated etc.

12. Counsel for the petitioner has also cited the case of Birbal Sharma etc. v. State of Haryana etc. 1998(2) P.L.J. 507. It has been held in this case that the plea that as notice issued to Member Legislative Assembly and Member Parliament were not of 15 days, therefore, no-confidence motion being passed and subsequent election of new President being liable to be set aside, could not

be held that to be tenable as neither Member Legislative Assembly nor Member Parliament made any grievance that notices served were not sufficient to attend the meeting. There being no challenge to notices on part of Member Legislative Assembly and Member Parliament, interference was declined. No-Confidence Motion in that case was against the President of the Municipal Committee.

13. Learned counsel for the respondents has relied on the case of Union of India and others v. Mohd. Ramzan Khan 1991(1) RSJ 397 : 1991(1) SCT 111 SC. It is the judgment of the Supreme Court. In that case it has been held that there has been an inquiry officer and he has furnished a report to the disciplinary authority at the conclusion of inquiry holding the delinquent guilty, the delinquent is entitled to a copy of such report and is entitled to make representation against it, if he so desires and that non-furnishing of report would amount to violation of rules of natural justice. It has also been held therein that even though the second stage of the inquiry in Article 311(2) of the Constitution has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer that the charges or some of the charges are established and holding the delinquent guilty of such charges. It is further held that furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. Therefore, supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would be entitled to the supply of a copy thereof. In the present case neither the copy has been supplied after the enquiry report was obtained by the petitioner nor is he given any chance to explain finding against him. Moreover, it can be seen that there is a vast difference between the charges alleged against him in the memorandum of charges and the reasons given in the enquiry report. In the reasons given in the enquiry report, it is also alleged against respondent No. 3 that he has still not handed over the record to the petitioner or that it was possible that he might have destroyed the record. The allegation of destruction of the record was not in the memorandum of charges. He was only directed to hand over the record to Amar Singh. It is further held against him in the order dated 16.10.1995 (Annexure P/6) that Shamsher Singh has given in writing that Tariochan Singh (respondent No. 3) has taken a recovery against loan amounting to Rs. 2160/- and made an entry to this effect in his pass book and he was also signed the pass book. It is further held against him that he has mis-appropriated this amount and if the cash book is made available, many such cases can be found against him. This also does not appear in the memorandum of charges. The other reasons of course are regarding his absence.

14. The petitioner has handled the cases against respondent No. 3 in a very haphazard manner. Not only there is addition of grounds in the order of termination to those mentioned in the charges memo, the proper procedure regarding enquiry has also not been followed. Counsel for the petitioner has relied on the Punjab State Cooperative Agricultural Service Societies Rules

(hereinafter referred as (he "Rules"). In the Rules regarding penalties it has been provided as under : "

14. Penalties:

(1) The following penalties may, for good and sufficient reasons, be imposed on an employee by the committee for the misconduct established on his part.

i. Censure.

ii. Reduction in emoluments

iii. Removal or dismissal from service.

In addition to any one of the aforementioned penalties, the committee may order recovery from his pay of the whole or part of any pecuniary loss caused by him to the society by negligence or by any wilful act of omission or commission,

(i) No order imposing any of the penalties specified in Sub-rule (i) shall be passed except after:

(ii) Informing the employee, in writing of the charge or charges levelled against him; and

(iii) Giving the employee an opportunity to represent his case within 15 days from the receipt of notice.

15. Learned counsel for the petitioner has argued that in the Rules it is nowhere provided that the copy of the enquiry report has been given to the delinquent and that he was given a chance to explain the same. He has further argued that by notice i.e. memo Annexure P/4 15 days time for reply was given. However, that was before the enquiry started and it cannot be mixed with the opportunity that is to be given to the delinquent official after the Enquiry Officer gives the report. Principle in the case of Mohd. Ramzan Khan (supra) will directly apply to the facts and circumstances of the case. Therefore, the termination order Annexure P/6 passed by the petitioner was certainly illegal. Though it has been set aside in the appeal by the appellate authority, the authority has also given a chance to the petitioner to take action in accordance with law if respondent No. 3 does not perform his duty properly. On these grounds only, this writ petition deserves to be dismissed and we, therefore, do not consider the above mentioned other ground viz. validity of the meeting as argued by learned counsel for the petitioner.

16. This writ petition, therefore, is dismissed.

17. Petition dismissed.