
(2011) 06 SHI CK 0075
In the High Court Of Himachal Pradesh
Case No : CWP No. 6395 of 2010

Gayatri Devi

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0075

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—Petitioner was allotted agency under the Scheme known as "Mahila Pradhan Kshetriya Bachat Yojna", launched by the Government of India under the Small Savings Scheme. She was allotted an agency vide Certificate of Authority No. 0432818, dated 29.1.1996, which was renewed from time to time and last time it was renewed upto 28.1.2011 vide Annexure P-1. This agency was allotted to the Petitioner by Respondent No. 2.

2. The Petitioner continued working and vide impugned order Annexure P-2, dated 3.3.2010, her agency was cancelled. The said order was based upon a report of the Senior Superintendent Post Offices, Respondent No. 3. The impugned order passed by the Deputy Commissioner canceling the agency of the Petitioner has been challenged by the Petitioner by way of this writ petition.

3. A notice of the petition was issued to the Respondents, who filed their replies.

4. I have heard the learned Counsel for the parties and have gone through the record of the case.

5. It is clear from a perusal of the record that the Petitioner was granted agency which was renewed from time to time and it was valid upto 28.1.2011. The impugned order reads as follows:

On the recommendation of Senior Superintendent, Post Offices Hamirpur Division Hamirpur vide letter No. F/IV-5/08-09, dated 19.7.2010, the MPKBY agency of

Smt. Gayatri Devi w/o Sh.Prem Chand VPO Mundkhar Tehsil Bhoranj, Distt. Hamirpur issued vide Certificate of Authority No. 0432818 dated 29.1.1996 is hereby cancelled with immediate effect due to misappropriation of public money.

6. A perusal of the impugned order shows that No. independent inquiry appears to have been conducted by the Deputy Commissioner before passing the impugned order. However, it has been observed that on the recommendations of the Senior Superintendent of Post Offices, he had passed the impugned order.

7. It has been pointed out that a letter was written by Respondent No. 3 to Respondent No. 2, the relevant portion of which reads as under:

It is submitted that said Smt. Gayatri Devi w/o Sh.Prem Chand VPO Mundkhar was appointed as MPKBY agent by your office vide authority No. 0432818 dated 29.1.1996. During the month of November 2008, a massive fraud to the tune of Rs. 52908/- in RD accounts committed by Sh.Rakesh Kumar GDSMP with connivance of said SAS agent came to light. Smt. Gayatri Devi MPKBY agent had handed over her MPKBY RD schedules to GDSMP in very irresponsible and unauthorized manner on 23.3.2006, 24.3.2006, 27.4.2006, 30.6.2006 and 31.7.2006. She had also made entry of deposit in Passbooks unauthorizedly. As such your office was requested to cancel the agency of said Smt. Gayatri Devi under intimation to this office. The original agency No. 0432818 dated 29.1.1996 is enclosed along with letter No. 622 dated 12.2.1996 for further action please.

The said letter of the Senior Superintendent of Post Offices was based upon an inquiry conducted by him (Annexure R-8), which inquiry was conducted against Shri Rakesh Kumar. In concluding the said report, some observations were also made as against the present Petitioner under para 9.1 "SUBSIDIARY OFFENDERS". The said report has not been relied upon by the Deputy Commissioner but he has based his findings on the above letter written by the Senior Superintendent of Post Offices in pursuance of the inquiry conducted by him against Rakesh Kumar, an employee of the Post Office. It is, therefore, clear that No. independent inquiry has been conducted against the Petitioner before passing the impugned order. The letter of the Senior Superintendent of Post Offices was based upon the indictment made by him in an inquiry conducted by him in which he had made certain observations but even those have not been referred to by the Deputy Commissioner in the impugned order.

8. From the above discussion, it is clear that the Deputy Commissioner based the impugned order only on the letter of the Senior Superintendent of Post Offices, which letter was based upon certain observations made in the inquiry conducted by the Senior Superintendent of Post Offices as against Rakesh Kumar. No. opportunity seems to have been given to the Petitioner at any point of time to explain the irregularities or the misappropriation conducted by her.

9. My attention has also been drawn to the terms of the agreement executed in between the parties, Clause 4 of which reads as under:

The agency would be liable to be terminated by the "Appointing Authority" without notice, if the work or conduct of the Agent/Agent-Organization is adversely commented upon by the supervising authorities or if she/it, in the opinion of the "Appointing Authority" which shall be final and binding, guilty of breach of any provision of this Agreement, or if she/it becomes insolvent, or runs into liquidation or it is discovered that a part or the whole of the business was secured by her/it with the help or connivance of an official of the Posts and Telegraphs Department or National Savings Organization; the commission earned on such business would also be liable to forfeiture and if the commission on such business has already been paid, the Agent/Agent Organization must refund it to the Government, failing which the Government shall have the right to recover the amount of such commission paid, from the Agent/Agent Organization as an arrears of land revenue.

10. The learned Counsel for the Respondents have submitted that on the basis of Clause 4 of the Agreement, the Appointing Authority was competent to terminate the agency without conducting an inquiry. However, the rules of natural justice require that a show cause notice should have been issued to the Petitioner seeking her explanation to the evidence as against her or conclusions drawn by the Senior Superintendent of Post Offices in regard to the irregularities committed by the Petitioner in discharge of her duties as an agent. It is true that No. regular inquiry was required to be conducted since the Petitioner is not an employee of Respondent No. 3 but the ends of natural justice require that No. person should be condemned unheard and that an opportunity should have been given to the Petitioner to explain her conduct in regard to the irregularities allegedly committed by her. Therefore, the impugned order is not sustainable in the eye of law.

11. During the course of arguments, the learned Counsel for Respondent No. 3 pointed out to the statement made by the Petitioner before the Senior Superintendent of Post Offices in the inquiry conducted against Rakesh Kumar, an employee of the Post Office. In that statement, some admissions were allegedly made by the Petitioner and she also deposited some amount, may be under protest or so, as admitted by her. This fact may also be mentioned in the notice to be issued to the Petitioner by the Senior Superintendent of Post Offices, who may seek her explanation in that regard also.

12. However, I may clarify that No. regular inquiry is required to be conducted and only a preliminary inquiry shall be conducted by Respondent No. 3 in regard to the alleged irregularities committed by the Petitioner in discharge of her duties and she shall be given an opportunity to explain her conduct and if the same is not found in accordance with the Rules or she has committed some misappropriation, which stands proved from the record, the recommendations accordingly shall be made by the Senior Superintendent of Post Offices based upon the explanation and the facts brought on record. No. opportunity shall be given to the parties to lead evidence and the inquiry shall be based upon the

documentary proof which shall be referred to by the Senior Superintendent of Post Offices in concluding his report. It shall be clearly concluded by the Senior Superintendent of Post Offices as to whether the Petitioner has committed some irregularity or misappropriation which cannot be condoned. Once he forms an opinion that such a conduct of the Petitioner is not according to the rules, he may recommend to the Deputy Commissioner accordingly for appropriate action. In case attempts are made by the Petitioner to delay the inquiry, the Senior Superintendent of Post Offices shall only give reasonable opportunity to the Petitioner and conclude the inquiry within three months of the date of the receipt of the copy of this judgment. 15 days notice shall be issued to the Petitioner leveling allegations as against her and calling her explanation and after considering the record, which may be produced by the Post Office Department in support of such allegations, the report shall be submitted by the Senior Superintendent of Post Offices to the Deputy Commissioner within the aforesaid period. Needless to say, the Deputy Commissioner shall pass a speaking order keeping in view the report of the Senior Superintendent of Post Offices. However, it is further clarified that the Petitioner shall not get any benefit of this order which is not being quashed but the said order shall be kept in abeyance. No. benefit shall accrue to the Petitioner since she has not been working as an agent. The question of renewal of the agency of the Petitioner after 28.1.2011 shall be considered and decided by the Deputy Commissioner after considering the inquiry report and as to whether the Petitioner is fit to be continued to work as an agent or not. A copy of this judgment be communicated to Respondent No. 3 by the learned Counsel representing him.

13. The petition stands disposed of accordingly.