**(1995) 11 P&H CK 0091**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 6780 of 1995

G.S. Hundal APPELLANT

Vs

State of Punjab and Others RESPONDENT

**Date of Decision :** 22-11-1995

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (1996) 112 PLR 497

**Hon'ble Judges :** S.P. Kurdukar, C.J;V.K. Bali, J

**Bench :** Division Bench

**Advocate :** H.S. Mattewal and R.S. Riar, for the Appellant; Ajay Tawari, for the Respondent Nos. 3 and 4 and A.K. Walia, AAG for the Respondent Nos. 1, 2 and 5, for the Respondent

**Final Decision :** Dismissed

## Judgement

V.K. Bali, J.—G.S. Mundal, Retired District Manager, MARKFED, presently residing at village Verka, District Amritsar, through present petition filed by him under Article 226 of the Constitution of India, seeks writ in the nature of certiorari for quashing order dated March 27, 1995, Annexure P-4 passed by the Managing Director, MARKFED whereby his representation was rejected as also for quashing the arbitration reference insofar as it pertains to him initiated by the Managing Director, MARKFED and presented before the Registrar, Co-operative Societies, Punjab Chandigarh on March 7, 1996. As a consequential relief, the petitioner also seeks writ in the nature of mandamus directing the respondent-authorities to release his unpaid salary, retiral benefits such as gratuity, leave encashment, ex-gratia for the year 1993-94 and any other benefit to which he may be entitled with interest calculating @ Rs. 18% per annum.

2. The facts, on which the relief indicated above are endeavoured to be madeout as per the stand of the petitioner, reveal that he joined the MARKFED as an Assistant Secretary in January, 1973. He was, however, charge-sheeted on November 20, 1975 for the losses amounting to Rs. 6 lacs, caused to the

 

MARKFED. He was allowed to cross efficiency bar w.e.f. January 1, 1977 as District Manager whereby raising his pay from Rs. 590 to Rs. 620/- in the then pay scale of Rs. 350-900/-. On March 1, 1978, he was however, placed under suspension and vide orders dated September 20,1979 he was dismissed from service. The Assistant Registrar Co-operative Societies, Ludhiana, while acting on an Arbitrator, vide his award dated September 14, 1981 absolved him of the liability of the shortages amounting to Rs. 6 lacs. This order passed by the Assistant Registrar Co-op. Societies was set aside by the Appellate Authority (Additional Registrar, Co-op. Societies), Punjab and the case was remanded for raising a fresh dispute after impleading necessary parties. Being aggrieved of the order dated November 17, 1992 a revision was carried before the State Government by the petitioner through Deputy Secretary Appeals, who vide orders dated October 29, 1984 quashed the order dated November 17, 1982 as also arbitration award dated September 14, 1981. Sequel to the orders dated October 29, 1984, Annexure P-8 petitioner, was taken back in service subject to the approval to be accorded by the Board of Directors. This order was passed on July 1, 1986. Petitioner thus submitted his joining report on July 2, 1986. It is on July 23, 1986 that the board of Directors passed a resolution with regard to taking back the petitioner in service of the MARKFED. It is the case of the petitioner that he was allowed revised pay scale of Rs. 825-1580/- thereby fixing his pay at Rs. 1200/- w.e.f. January 1, 1970. Petitioner was, however, once again dismissed from service on July 20, 1987. Revision petition filed by the petitioner u/s 69 of the Punjab Co-operative Societies Act, 1961, against the orders aforesaid, was allowed by the Commissioner (Appeals), Jalandhar Division, Jalandhar, vide order dated August 16, 1989, Annexure P-16. On November 7, 1989, the petitioner was, however, granted Annual grade increment w.e.f. October 1, 1989. Even though the revision was accepted but the case was remanded to the Registrar, Co-operative Societies, Punjab, who, after getting a fresh reference of dispute against all those who were responsible for harvesting without observing the instructions and causing loss in respect of item No. 1, was to appoint an arbitrator who was to summon the parties and then pressed to decide the dispute. On August 3, 1992, one Shri S.P. Singh, Chief Manager, MARKFED was appointed as an Inquiry Officer. The case of the petitioner is that vide orders dated January 4, 1993, Annexure P-11, he was informed that he was taken back in service of the MARKFED in compliance with the orders of the Punjab Government and that while issuing orders dated April 26, 1988, it was made clear that he would not be entitled to any emoluments or arrears of pay excepting subsistence allowance. The petitioner addressed a letter dated June 14, 1993, to the respondent-MARKFED so as to know as to what was the punishment under the MARKFED Common Cadre Rules 1990, inflicted upon him thereby debarring him from claiming salary for the suspension/dismissal period to which no reply has been received. Meanwhile, the petitioner super annuated on April 30, 1994. It is thereafter also that he made representation and sent reminders and even sent notice on various dates but it is on a March 27, 1995, that his representation was rejected vide order Annexure P-4.

 

3. The basic contention raised by Mr. Mattewal, learned Senior Advocate appearing on behalf of the petitioner is that once the petitioner had been exonerated of the charges levelled against him and that his revision petition was accepted by the Government, there were no valid reasons for the respondents to with-hold his pay during the period he remained under suspension as also to disallow him other benefits for the said period as also that there could not be only any resort to fresh arbitration proceedings after a lapse of 21 years.

4. On the facts, as have been projected by the petitioner, the two fold contentions raised by learned counsel for the petitioner as noticed above, appeared to be attractive but in the context of the written statement that has been filed opposing the twin prayers there appears to be absolutely no substance in this writ petition which deserves to be dismissed in limine.

5. While opposing the petition, it has been pleaded in the preliminary objections contained in written statement filed by respondents 3 and 4 that the dues of the petitioners have been withheld for his involvement in four separate cases of having caused loss to the respondent-MARKFED. In one case, the amount involved is Rs. 1,60,560/- that has been determined after holding a regular enquiry in which petitioner participated. Other case is with regard to loss of Rs. 56,120.33/- in which case an arbitration reference is pending. The third case is with regard to loss caused by the petitioner while working as District Manager Kapurthala to the tune of Rs. 3,69,105/-. In this case, inquiry report has since been received and the same is under consideration. The fourth case relates to the loss caused by the petitioner to the tune of Rs. 3,04,021.60/-. In this case, arbitration reference is pending. While giving details, it has been averred that the petitioner, while working as General Manager in one of the fertilizer plants of the respondents, was alleged to be guilty of causing a loss of Rs. 6 lacs. However, after holding a regular departmental enquiry, the Inquiry Officer had determined a loss of Rs. 3,04,421.89/- and the petitioner was dismissed from service. Separate recovery proceedings by way of arbitration were also initiated which finally culminated in order passed by the Deputy Secretary, Co-operation (Appeals) dated October 29, 1984. In pursuance of this, fresh recovery proceedings after impleading other involved persons as party are pending before the Additional Registrar, Co-op. Sociieties, Punjab, Chandigarh. Further the petitioner was held guilty; for the release of excess payment to the Transporters for a sum of Rs. 1,60,569/- and after holding; regular departmental enquiry, where the petitioner participated, an order of recovery has been passed by the Managing Director MARKFED about the loss caused to the respondent Federation. This recovery was ordered to be made by way of adjustment of payable dues and remaining to be made by way of initiating proceedings, if any. In addition, the petitioner was also involved in two-three departmental inquiries regarding financial loss i.e. non-recovery of harvesting combine charges to the tune of Rs. 56,120.33/- while he was working as District Manager and less booking of excess in wheat while working as District Manager, Kapurthala to the tune of Rs, 3,69,105/-. It is the positive case of the respondent-MARKFED that the petitioner

 

was not fully exonerated even with regard to the loss of Rs. 6 lacs, caused to the respondent-MARKFED. Order Annexure P-4, is a detailed order and it requires to be mentioned here that the said order came into existence in pursuance of the directions issued by this Court in an earlier writ petition filed by the petitioner (C.W.P. No. 16665 of 1994) asking for the same reliefs as have been asked for in the present writ petition. The writ petition, aforesaid was disposed of with the directions to the MARKFED to consider the writ petition as a representation concerning the grievance of the petitioner and to dispose it of by passing a speaking order within three months from the date of the receipt of a copy of the said order alongwith the representation. It was established on the recorcls of the case that the petitioner was dismissed from service of the MARKFED on account of the charges where the MARKFED had suffered a loss of Rs. 3,04,421.89/-. The appeal and revision filed by the petitioner under the Common Cadre Service Rules were also dismissed. However, in pursuance of the orders of the Government, wherein it was observed that the punishment was totally out of proportion he was taken back in service. It was, however, specifically mentioned that he would not be entitled to any emoluments or arrears of pay for the period he remained out of employment of the MARKFED. This order was passed on July 1, 198(6. It is recited in the order, Annexure P-4, that keeping in view the order dated July 1, 1986 and subsequent representations made by the petitioner, a detailed order came to be passed once again on April 26, 1986 wherein it was specifically clarified that petitioner would not be entitled to any emoluments of arrears of pay as a result of fixation of pay from March 1, 1978 to July 1, 1985. Regarding suspension period, he was not to be entitled for any payment beyond the subsistence allowance. Consequent, upon this order, his pay was fixed on January 2, 1989 and subsequently on November 3, 1989. Petitioner continued drawing his pay in view of the fixation and rather requested for sanction of the annual increment due to him on October 1, 1990.

6. Even though replication has been filed in this case put these basic facts, as were culled out from the records of the case by the Managing Director, MARKFED while passing order, Annexure P-4, could not possibly be disputed. From the perusal of the facts, as have been fully detailed above, it is, thus, apparent that all these orders against the petitioner were passed way back in 1986 and 1989. He was fully aware of these orders but chose to file representations agitating and challenging the same on or about the time when he was due to superannuate and actually filed the present writ petition after his retirement. The adverse orders passed against the petitioner, reference whereof has been given above came about in appropriate proceedings, be it disciplinary or arbitration, and have assumed finality. In our considered view, the said orders can not be reopened at this stage. It is conceded position that the petitioner would be entitled to the reliefs only if the said orders are set-aside. Insofar as some arbitration proceedings, which are stated to be still pending and pendency whereof has been complained of by the petitioner, are concerned, suffice it to say that there are no fresh proceedings but it is the earlier proceedings which are still pending on

 

account of various decisions taken by the Appellate or Revisional Authorities and ultimately remand of the case for fresh arbitration. It is, thus not a case where fresh proceedings might have been initiated after a lapse of so many years as is sought to be made out by the petitioner.

7. Finding no merit in this petition, we dismiss the writ petition in limine, leaving however the parties to bear their own costs.

 