

(1994) 09 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4573 of 1979

Madan Lal

APPELLANT

Vs

The Registrar, Cooperative Societies and Others

RESPONDENT

Date of Decision : 03-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 2 ILR (P&H) 458 : (1995) 109 PLR 59

Hon'ble Judges : V.K. Jhanji, J; Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : B.S. Khoji, for the Appellant; D.S. Dhillon, AAG, for the Respondent Nos. 1 to 4 and 6 and Arun Nehra, for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioners in these two writ petitions were employed with the Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh (for short the Markfed). They were dismissed from service. The appeals filed by them also failed. They have, thus, approached this Court through these petitions viz. Civil Writ Petitions Nos. 4573 of 1979 and 31 of 1980. Since the questions involved in both the cases are identical, these petitions can be disposed of by one order. Learned counsel for the parties have referred to the facts in Civil Writ Petition No. 31 of 1980. These may be briefly noticed.

2. The petitioner was appointed as an Accountant "C Grade by the Markfed, in the year 1972, he was posted as an Accountant at Dhuri. On February 10, 1977 a charge sheet was issued to him. It was inter alia alleged that he had made an overpayment of Rs.24016.19 to the contractor "either with malafide intention or through sheer carelessness". During the enquiry, the charge was held to have been proved. Vide order dated October 18, 1978, a copy of which has been produced as Annexure P-3 with the petition, the petitioner was ordered to be dismissed from service. He filed an appeal under Rule 2.17 of the Common Cadre Rules, 1967. Vide order dated November 5, 1979, Mr. I.S. Bindra, IAS, who was

at that time working as the Administrator, dismissed the appeal. A copy of this order has been produced as Annexure P-5 with the petition. Aggrieved by these orders, the petitioner has approached this Court through the present writ petition. The impugned orders have been challenged as being wholly without jurisdiction. It is the petitioner's case that the power to appoint an Accountant "C Grade or to take disciplinary action against him vested only in the Administrative Committee. Since, the proceedings had been initiated and the order of dismissal had been passed by the Managing Director, the order was wholly without jurisdiction. It has been further stated that Mr. I.S. Bindra, IAS, was working as the Registrar of Cooperative Societies at the relevant time. He had been appointed as Administrator of the Markfed by Mr. A.S. Sodhi, Additional Registrar, Cooperative Societies. This appointment, according to the petitioner, was wholly illegal and as such, he had no jurisdiction to dismiss the appeal filed by the petitioner. On these premises, it has been prayed that the orders appointing Mr. I.S. Bindra as the Administrator of the Markfed passed in February 1979 as also the orders of the dismissal of the petitioner from the service of the Markfed passed by the then Managing Director and the dismissal of his appeal, be set aside.

3. A written statement on behalf of the respondents has been filed by Mr. A.S. Sodhi, Additional Registrar, Cooperative Societies. It has been inter alia stated that the Additional Registrar had appointed Mr. I.S. Bindra as the Administrator of the Markfed "in exercise of the powers of the Registrar u/s 26 of the Act which were conferred upon him vide Punjab Government Notification No. 1669-CIV-78/6450 dated 21.3.1978". According to the respondents, any "Government servant can be appointed as an Administrator of a Cooperative Society u/s 26 (ID) of the Act. Since Sh. I.S. Bindra is a Government Servant, his appointment as Administrator of the Markfed was legal and in accordance with the provisions of the Act." Rest of the pleas have also been controverted. Accordingly, it is claimed that the writ petition has no merit and may be dismissed.

4. The factual and legal issues raised in the other writ petition No. 4573 of 1979 are identical to those as noticed above. The only fact which deserves notice is that the petitioner Madan Lal was working as a Field Sub Inspector.

5. These two petitions had initially come up for hearing before a learned Single Judge of this Court. Vide order dated November 21, 1988 his Lordship was pleased to refer the points as arising in this case to a larger Bench. The matter was then placed before the Division Bench. Vide order dated July 15, 1991, the Bench held that the order of dismissal was violative of the rule enunciated by their Lordships of the Supreme Court in *Union of India and Ors. v. Mohd. Ramzan Khan*. 1991(1) SLR 159. Accordingly, the writ petitions were allowed. The Markfed challenged this order by filing an appeal. Vide order dated April 16, 1993, the decision of the Division Bench was set aside by Hon'ble the Supreme Court in view of the fact that the order of penalty had been passed prior to the decision in *Mohd. Ramzan Khan's* case. Accordingly, the case was remanded to

this court for decision on the remaining points. Consequently, the petitions have come up for hearing before this Bench.

6. Mr. B.S. Khoji, learned counsel for the petitioners in these cases has contended that the employees of the Corporation were at the relevant time governed by the provisions of the Punjab State Supply and Marketing Cooperative Services (Common Cadre) Rules, 1967 (hereinafter referred to as the Rules). Under Rule 1.6, the power to manage the affairs of the Society was entrusted to the Administrative Committee. As such an action could be taken against the employees only by the Administrative Committee and none else. The order passed by the Managing Director, was, according to the learned counsel, wholly without jurisdiction. He has further submitted that at the relevant time, Mr. I.S. Bindra was working as the Registrar of the Cooperative Societies, Mr. A.S. Sodhi was the Additional Registrar. Mr. Sodhi was, thus, subordinate to Mr. Bindra. In spite of this, Mr. Sodhi had passed an order appointing Mr. Bindra as the Administrator of the Markfed. According to the learned counsel, a subordinate officer could not order the appointment of an officer senior to him as the Administrator of a Society. In view of this position, the counsel submits that the appointment of Mr. Bindra as the Administrator was illegal and as such, he had no jurisdiction to dismiss the appeals filed by the petitioners. The claim made on behalf of the petitioners has been controverted by learned counsel for the respondents.

The two questions that arise for consideration are :-

- i) Was the Managing Director competent to order the dismissal of the petitioners?
- ii) Was the appointment of Mr. I.S. Bindra as the Administrator of the Markfed contrary to the provisions of the Act and are the orders passed by him vitiated?

Re: Q. No.(i) :

The markfed had framed the 1967 Rules which were approved by the Registrar in the year 1968. Even though in the year 1990, new rules have been framed, it is the admitted position that so far as these cases are concerned, only the provisions contained in the 1967 Rules are applicable. Consequently it is in the light of these rules that the contention raised by the learned counsel has to be examined.

8. Rule 1.6 inter alia provided that "these rules shall be administered by an Administrative Committee constituted by the Board..." It further authorises the Administrative committee to "delegate any of its powers to the Chief Executive Officer of the Federation by whatever designation he may be called, subject to any control that the Administrative Committee may choose to retain." Under Rule 2.1, the authority to make appointments to the various posts in the service had been vested in the Administrative Committee. According to Rule 2.14, "no penalty shall be imposed on any employee unless the charge or charges on which it is proposed to take disciplinary action against him have been communicated to

him in writing and he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him." Rule 2.15 specifies the authorities competent to impose various penalties. The power to dismiss an employee has been vested in the Administrative Committee. Rule 2.17 provides for the remedy of appeal. Against the order of the Administrative Committee, the appeal "shall be to the Board of Directors of the Federation". What is the position in the present case ?

9. It is undisputed that under Rule 1.6(d), the Administrative Committee is competent to delegate any of its powers. It is also not disputed that a meeting of the Administrative Committee had taken place on April 4, 1970. The proceedings of this meeting have been produced as Annexure P-10 with the writ petition. The committee considered the question of delegation of administrative powers to the Managing Director. It was pointed out that the work of routine nature had "immensely increased" and that a full-fledged officer had taken over as Managing Director of the Markfed. In this situation, it was considered advisable to delegate "certain administrative powers in order to promote efficiency and quick disposal of the routine type of cases" to him. After consideration of the matter, the Administrative Committee "approved" the following proposal for delegation of powers to the Managing Director :-

"Full powers regarding posting, transfer, training, completion of probation period, grant of annual increments, etc. in respect of the staff of all categories of the Common Cadre Service. However, penal action against any official of the rank of Asstt. Secretaries and above shall be referred to the Administrative Committee...".

10. According to Mr. Khoji, the power to take penal action against an Accountant or a Field Sub Inspector, the posts which are admittedly lower to the rank of Assistant Secretary, has not been delegated to the Managing Director. Is it so ?

11. A perusal of the resolution shows that full powers regarding posting, transfer, training, completion of probation period, grant of annual increments etc. in respect of the staff of all categories of the "Common Cadre Service had been delegated to the Managing Director. Furthermore, the Administrative Committee only reserved the power to take penal action "against any official of the rank of Assistant Secretary and above". As we read this resolution, it is implicit in it that the power to take penal action against any official below the rank of Assistant Secretary was delegated to the Managing Director. If this were not so, it was not necessary to mention that the case regarding penal action against officials of the rank of Assistant Secretaries and above shall be referred to the Administrative Committee. Accordingly, we are unable to accept the contention that the power had not been delegated to the Managing Director vide resolution dated April 4.

12. Faced with this situation, Mr. Khoji contended that this "delegation" was co-terminus with the tenure of the Administrative Committee and that as soon as the term of the committee expired, even the delegation of power stood

automatically rescinded. In support of this contention, he has placed reliance on a decision of this Court in *Ram Singh and Ors. v. S.L. Kapoor Registrar, Cooperative Society* 1974 PLJ 568. This decision was affirmed by a Division Bench of this Court. We are unable to accept this contention.

13. The provision in Rule 1.6(d) specifically authorises the committee to delegate its powers. This power had been exercised. The Administrative Committee had delegated its power to the Managing Director. The resolution has not been rescinded till today. Nothing has been produced on the record to show that the matter was ever reconsidered. On the contrary, it has been conceded that the Managing Director has continued to exercise the powers delegated to him vide resolution dated April 4, 1970. In view of this factual position, we are unable to hold that the order of delegation ceased to be operative on the expiry of the term of the Administrative Committee. Nor can the learned counsel for the petitioners draw any assistance from the decision in *Ram Singh's* case (Supra). In this case, Mr. Hardayal Singh Brar had been appointed as the Administrator of the Society. When his term was about to expire, he had constituted a committee to exercise his functions even after the expiry of his tenure. This decision was quashed. It was held that there was a statutory limit on the tenure of the Administrator which could not be extended by adopting an indirect method of constitution a committee. Such is not the position in the present case.

14. Consequently, we answer the first question in the affirmative and hold that the Managing Director was competent to order the dismissal of the petitioners.

Re. Q.No.(ii):

15. As for the second question, it is the admitted position that Mr. A.S. Sodhi was the additional Registrar while Mr. I.S. Bindra was working as Registrar of Cooperative Societies. It is also not disputed that vide Notification dated March 21, 1978, a copy of which has been produced as Annexure P-9 with C.W.P. No. 4573 of 1979, all powers under the Act including those u/s 26 (ID) had been delegated to the Additional Registrars working in the State. In view of this order, Mr. A.S. Sodhi was competent to exercise the powers of the Registrar under the Act. u/s 26 (ID), the Registrar can "by an order in writing appoint a Government employee as an Administrator...". Similarly, even u/s 27, the Registrar is competent to remove a committee and "appoint a Government servant as an Administrator to manage the affairs of a Society..." In view of these provisions, Mr. A.S. Sodhi was competent to exercise the powers of the Registrar and appoint a Government servant as the Administrator of the Markfed. Furthermore, a perusal of the provisions of the Act clearly shows that a Government employee alone can be appointed as the Administrator of a Society. Mr. I.S. Bindra admittedly fulfilled this qualification. He was, thus, eligible to be appointed. In this situation, we are of the view that the action of Mr. Sodhi in appointing Mr. Bindra as the Administrator of the Markfed was in strict conformity with the provisions of the Act.

16. It is true that by virtue of the provisions of Section 3, an Additional Registrar has to exercise his powers subject to the general superintendence and control of the Registrar. It is also true that u/s 27(3) of the Act, the Administrator of a Committee has to function "subject to the control of the Registrar and to such instructions as he may from time to time give". However, we do not find that the provisions of Sections 3 and 27 create a bar to the appointment of a senior officer as the Administrator of a Committee. In a given case, the Registrar may order the appointment of a person senior to him as the Administrator. It is for the person who is offered the appointment as an Administrator to make a decision. He may accept the appointment or he may reject it. However, the mere fact that the person appointed as "Administrator" is senior to the officer issuing the order does not taint the appointment with an illegality. Mr. Bindra was undoubtedly senior to Mr. Sodhi. However, as an Administrator, he was working in a different capacity. As the Administrator, he was bound by the provisions of law and to act in conformity with the directions of the Registrar. This cannot mean that the order appointing Mr. Bindra as the Administrator of the Markfed was illegal. Mr. Arun Nehra, learned counsel appearing for the Markfed pointed out that such a course of action has already been approved by this Court in *Ajmer Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others*, . We are in agreement with the view expressed by the learned Judge.

17. Admittedly, the Administrator discharges the functions of the Board of Directors. Under Rule 2.17, an appeal against the order of the Administrative Committee was to be considered by the Board of Directors. Since the powers of the Board of Directors were now vested in the Administrator, an appeal against the order passed by the Managing Director had to be heard and decided by the Administrator. Mr. Bindra was, thus, competent to hear and decide the appeals filed by the petitioners. The orders passed by him were, thus, legal and valid.

18. Accordingly, we answer the second question in the negative and hold that the appointment of Mr. Bindra was not contrary to the provisions of the Act and the orders passed by him are not vitiated.

19. Even if we were to assume for the sake of argument that there was some defect in the appointment of Mr. Bindra as the Administrator of the Markfed, we are of the view that the orders passed by him would be governed by the De-facto doctrine. The functions performed by him were within the scope of his official authority and in the interest of the public. These were not for his own benefit. Consequently, these orders are valid and binding.

20. Accordingly, we find no merit in these petitions, which are dismissed. However, in the circumstances of these cases, the parties are left to bear their own costs.