(2000) 08 P&H CK 0235

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7901 of 2000

Punjab Markfed Field Employees Union APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Common Cadre Service Rules — Rule 5.4, 5.7
Constitution of India, 1950 — Article 226

Citation : (2001) 2 LLJ 31

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

Bench : Division Bench

Advocate : Ms. Jagdeep Bains, for the Appellant; Anil Sharma, Dy. A.G. and Mr. R.S. Rai, Addl. A.G., for the Respondent

Judgement

Mehtab S. Gill, J.—This order shall dispose of two Civil Writ Petition Nos. 7587 and 7901 of 2000, as common questions of law and fact are involved therein. The facts have, however, been extracted from Civil Writ Petition No. 7901 of 2000.

2. The petitioner-Union has filed a writ to give directions against the appointments of respondents 4 to 11 as Enquiry Officers, this being violative of Rules of the Punjab State Cooperative Supply & Marketing Federation Ltd. (for short ''MARKFED'') and notification of the Punjab Government dated August 31,1981.

3. The petitioner has alleged that the Punjab Markeft Field Employee Union (Regd.) (hereinafter referred to as ''Union'') has been formed by the employees of the MARKFED. It is alleged that Shri Bhupinder Singh was elected President vide resolution dated May 20, 2000. It has furthers been alleged that the Federation is governed by the provisions of the Punjab Cooperative Societies Act, 1961 and the Punjab Cooperative Societies Rules, 1963 and the Common Cadre Rules of 1990 framed thereunder. The MARKFED is controlled by the Punjab Government and its Managing Director is a Senior I.A.S. Officer.

4. Departmental enquiries were initiated against some of the employees who are members of the Union. Enquiries were being conducted by the persons appointed as Enquiry Officers from within the department. During the period from January 2 to May, 2000, orders were issued transferring enquiries from MARKFED Officers to certain I.A.S. Officers (retired), who have been arrayed as respondents 4 to 11. It has been alleged that these Enquiry Officers were outsiders and were appointed on contractual basis. It has further been alleged that these Enquiry Officers would not conduct their enquiries honestly and diligently and the enquiry proceedings would be vitiated by bias as the element of pecuniary benefits would come in as they were to be paid for conducting of the enquiries by the MARKFED authorities.

5. Several employees against whom these enquiries were pending made representation \\o transfer the cases back from these I.A.S. Officers (retired) to MARK-FED Officers.

6. Notice of motion was issued to the Slate of Punjab and the oilier respondents.

7. Written statement was filed by the State and also the additional affidavit dated July 17, 2000 was filed by the Managing Director of MARKFED.

8. We have heard the learned counsel for the State and for the respondents.

9. Learned counsel for the petitioners drew our attentions to Procedure 10(c), (d) and (e) of the Punjab Stale Cooperative Supply and Marketing Federation Employees (Punishment and Appeal) Rules, 1990. Clauses 10(e) and (d) are reproduced as under :-

"(c) If the written statement of defence is not received within the specified period or if the articles of charges are not admitted, the Punishing Authority may itself enquire or approach an Inquiring Authority for the purpose. In case where all articles of charges are admitted the Punishing Authority shall record its findings on each of the charges after taking such evidence as it may think fit."

"(d) Where the Punishing Authority itself enquires into the articles of charges or appoints an Inquiring Authority for holding an enquiry into such charges, it may, be an order appoint an employee to be known as Presenting Officer to present on its behalf the case in support of the articles of change."

She has further drawn our attention to Rule 5.4 of the Common Cadre Service Rules, 1990 governing the conditions of service of the employees of the Federation which is reproduced as under :-

"5.4: Employee of the Federation governed under the Rules will be subject to any disciplinary action as per provisions of the Punjab State Cooperative Supply and Marketing Federation Employees (Punishment and Appeal) Rules, 1990."

She has further drawn our attention to Note 5.7 in the said Rules, which is further reproduced as under :-

"If these rules are silent on any issue or no provision has been made on any specific point, the Punjab Government Rules/Instructions on that issue will apply."

Learned counsel for the petitioners has laid a tot of stress during her arguments by contending that if the rules are silent on any issue or on any specific point, then the Punjab Government Rules/Instructions will be applicable.

10. On August 31, 1981 the Punjab Government issued instructions/policy/ guidelines under the Punishment and Appeal Rules for conducting enquiries against the employees of the Corporation/Boards and clauses (i) and (ii) thereof read as under :-

".....that the question of framing a uniform policy/guidelines for appointing of Enquiry Officer for conducting enquiries against the employees below the rank of the Managing Directors of various Corporations/Boards have been engaging attention of the Government for some time past. After careful consideration of the matter, it has been decided as under :-

(i) As far as possible inquiries against employees of the Punjab Undertakings should be done by the officers of the concerned Corporation/Board."

(ii) Where, in exceptional circumstances, it may be necessary to entrust the enquiry to an officer of State Government, the Chief Secretary in IAS or PCS Branches or in Establishment-I Branch should be consulted with regard to appointment of an officer of the IAS/PCS/PSS Cadre, respectively and the inquiry be entrusted to the officer so nominated by the Chief Secretary. While placing requisition for the appointment of an Enquiry Officer the quantum of honorarium admissible should also be indicated."

After going through these relevant provisions and going through the Punjab Government Circular Letter dated August 31, 1981, it is clear that the Enquiry Officers can be appointed from outside the organization of MARKFED and the only requirement is that as far as possible the Enquiry Officer be appointed from the undertakings but there is no statutory bar.

11. We do not also agree with the argument put forward by the petitioners'' counsel that it has come in procedure 10(c) and (d) ibid that only the employees of MARKFED can be appointed as Enquiry Officers.

12. A bare reading of Procedure 10(c) and (d) (supra) makes it clear that the Punishing Authority can enquire into the complaint against an employee or appoint an Inquiring Authority for holding an enquiry into these charges but the Punishing Authority is bound by this rule to appoint an employee, who is to be titled as the Presenting Officer. This provision has been made so that if an Enquiry Officer has been appointed from outside the MARKFED Organisation, the Presenting Officer, who is an employee of MARKFED will be in a position to explain the technicalities and other questions regarding MARKFED which may come into the mind of the Enquiry Officer. The Managing Director of MARKFED filed an affidavit dated July 17, 2000 along with Annexure ''C'' in which he has

given the names of the Enquiry Officers, who are employees of the MARKFED and have been appointed to look into various complaints. A number of enquiries are pending before these officers and employees which are to the tune of 52.

13. Learned counsel for the MARKFED has stated at the Bar that these officers are enquiring into the complaints, which totalled to an amount of more than Rs. 40 crores. Another list of retired I.A.S. Officers has been given, who are on the panel of MARKFED as on July 11, 2000. These officers all are retired I.A.S. officers and the number of enquiries pending before them are 50. Learned counsel for the MARKFED has stated at the Bar that the amount involved in these enquiries is again more than Rs. 40 crores. Annexure ''B'' attached with the affidavit of the Managing Director states that the I.A.S. Officers (retired) who have been marked these enquiries, will get a consolidated amount of Rs. 3000/- per enquiry.

14. Learned counsel for the petitioners when asked repeatedly as to what grievance do they have against any of these retired I.A.S. officers, she could not give us any grievance by any employee who is being enquired into to show bias by these officers. Further, the remuneration given is not a big amount that the outside officers are being paid. It is only a consolidated amount of Rs. 3000/- per enquiry. So, this assertion being made by the petitioners'' counsel that they will give verdicts in favour of the MARKFED because of pecuniary benefits does not cut much ice.

15. The petitioners have not shown to us any rule or guidelines by which it is required that the Enquiry Officer should be an officer of MARKFED. Clause II of Punjab Government Instructions/Policy/Guidelines dated August 31, 1981 also stated that as far as possible the enquiries should be done by the concerned Corporation/Board but do not say that they cannot be entrusted to a person who is not an officer of the Board. Clause II of the Instructions/Policy/Guidelines only suggests that if officer of the State Government is to be appointed as an Enquiry Officer, the Chief Secretary, in IAS or PCS Branches or in Establishment-I Branch should be consulted with regard to appointment of an officer. However, the provision of sub-clause (ii) has to be followed only if officer from the State Government is appointed as an Enquiry Officer.

16. Similar question arose in the case of Central Bank of India v. C. Bernard 1991(2) S.C.T. 105 (SC). In that case, one U.B. Menon who was on the verge of retirement, was appointed as an Enquiry Officer. Mr. U.B. Menon retired from service on January 31, 1979. However, he continued to function as an Enquiry Officer and concluded the enquiry against the employee by the end of 1979. He then gave an opportunity to the employee to be heard on the question of punishment and then passed order of discharge on January 14, 1980. Mr. U.B. Menon had, therefore, acted as an Enquiry Officer and also as a disciplinary authority. The Supreme Court observed in that case as under:

"....Shri Shetty is right when he contends that an Enquiry Officer need not be an officer of bank; even a third party can be appointed as an Enquiry Officer to enquire into the conduct of an employee. See : Sarnam Motors (P) Ltd. v. Wishwanath (1964) II LLJ 139. But there can be no doubt that a non- official cannot act as a Disciplinary Authority and pass an order of punishment against the delinquent employee."

It is, therefore, clear that unless there is a specific provision it cannot be held that the Enquiry Officer has to be the employee of the department.

17. With the above mentioned observations, both these petitions are dismissed. However, parties are left to bear their own costs.

18. Petitions dismissed.

