

(2000) 09 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3022 of 1986, Civil Miscellaneous No's. 5989 and 5990 of 2000

Punjab State Agricultural Marketing Board

APPELLANT

Vs

Bhagirath Lal

RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 3(12), 3(8), 42

Citation : (2000) 09 P&H CK 0022

Hon'ble Judges : R.S. Mongia, J; K.C. Gupta, J

Bench : Division Bench

Advocate : Mr. G.S. Grewal and Mr. K.C. Gill, for the Appellant; Mr. Ravi Kapur, for the Respondent

Judgement

K.C. Gupta, J.—C.Ms, are allowed as prayed for.

2. Bhagirath Lal, respondent (plaintiff) had joined service in the Punjab State Agricultural Marketing Board (hereinafter to be referred as "Board") as clerk on 17.12.1962 at Patiala. He was promoted to the rank of Secretary on 19.7.1972 and was working as such at Lohian Khas on 19.4.1980. Shri R.N. Gupta was an Administrator of the Marketing Committee, Lohian Khas, at that time. He had appointed three persons as Auction Recorders on ad hoc basis and they had to quit on his complaint and as such Sh. R.N. Gupta nursed a grudge against him. Later on, he (respondent) was charged-sheeted on the allegation of misappropriation of money belonging to Market Committee and ultimately he was dismissed from service by the Secretary of the Board vide order dated 4.6.1982. He filed a suit for declaration on 9.10.1982 to the effect that the order dated 4.6.1982 passed by Sh. Onkar Singh Bains, Secretary of the Board, whereby he was dismissed from service, was illegal, void, unlawful, unconstitutional, arbitrary, mala fide and against the provisions of law and natural rules of justice and, therefore, was not binding upon him and he continued in service as such on the grounds as taken in Para No. 9 of the plaint. The appellant and other

defendants contested the suit. They denied the allegations of the respondent and stated that since the respondent had misappropriated the money and on that score he was charge-sheeted and ultimately dismissed from service after conducting enquiry in accordance with law and principle of natural justice.

3. In view of the pleadings, the following issues were struck :

"1. Whether this Court has no territorial jurisdiction to try this suit ?OPD

2. Whether no valid and legal notice was served on the defendants ? OPD

3. Whether the order dated 4.6.1982 passed by Shri Onkar Singh Bains Secretary is illegal and void and not binding on the plaintiff on the grounds mentioned in the plaint ? OPD

4. Relief."

The Sub Judge 1st Class, Jalandhar, tried this case. He, after hearing counsel for the parties, vide his judgment dated 24.12.1984, decreed the suit of the respondent by holding under Issue No. 1 that Civil Court at Jalandhar had got jurisdiction to try the suit; under Issue No. 2, it was held that valid legal notice was served and under Issue No. 3 it was held that the powers of the Board u/s 3(12) of the Punjab Agricultural Produce Markets Act, 1961 (for short), "the Act" were never delegated to the Secretary of the Board and as such the order passed by the Secretary was illegal, void and without jurisdiction.

4. Aggrieved by the said judgment and decree, the Board filed an appeal which was heard by the Additional District Judge, Jalandhar, and the same was also dismissed vide judgment dated 22.7.1986.

5. Aggrieved further, the Board has filed the present Regular Second Appeal.

6. We have heard Sh. G.S. Grewal, Sr, Advocate alongwith Sh. K.S. Gill, counsel for the Board, Sh. Ravi Kapur, counsel for the respondent and carefully gone through the file.

7. The main dispute in this case is whether the Secretary of the Board was competent to pass the impugned order dated 4.6.1982 for the removal of the respondent from service or not ? In the interest of justice, we allowed the parties to file further documents on this issue. Vide notification dated 13.5.1977, the President of India had appointed Sh. K.S. Bains, I.A.S., Development Commissioner, Secretary to Government of Punjab, to exercise the powers of the Board. On 29.9.1977, Sh. K.S. Bains, delegated the powers as Administrator u/s 3(12) of the Act to the Secretary of the Board. On 12.5.1978, the Board was re-constituted by the Governor of Punjab vide Annexure R-1. On 15.12.1978, resolution bearing No. 13 was passed in the meeting of the Board, copy Annexure R2/T, vide which the powers u/s 3(12) of the Act were withdrawn from the Secretary and were given to the Mandi Board. Vide notification dated 18.3.1980, the State Government in exercise of the powers vested in it under sub-clause (8) of Section 3 of the Act, suspended the Board with immediate

effect. On 12.5.1980, the President of India, u/s 42 of the Act annulled the resolution No. 13 of the meeting of the Mandi Board held on 15.12.1978 and stated that the powers u/s 3(12) of the Act shall continue to be exercised by the Secretary as stated in Annexure A-1. The respondent was dismissed by the Secretary of the Board on 4.6.1982.

8. Counsel for the respondent has relied upon an authority of this Court Jathedar Jagdev Singh and Others Vs. The State of Punjab, and on the basis of this authority contended that Jathedar Jagdev Singh and others had filed Letters Patent Appeal No. 514 of 1980 which was decided on 15.7.1981 and the appeal was accepted and the suspension of the Board was set aside and after the suspension of the Board was set aside, the delegation of powers to the Secretary of Board u/s 3(12) of the Act by the Administrator had automatically come to an end and as such the dismissal of the respondent by the Secretary of the Board on 4.6.1982 was illegal. He further contended that tie facto doctrine was not applicable in the facts and circumstances of the case. He also contended that assuming but not admitting that the de facto doctrine was applicable, then the decisions/actions taken during the period 18.3.1980 to 15.7.1981 were only protected and not the order dated 4.6.1982 which has been passed by the Secretary after quashing of the notification whereby the Board was suspended and, therefore, the benefit vide facto doctrine was not available to the appellant-Board. In our opinion, the contention of the learned counsel is not tenable. It is true that this High Court in Letters Patent Appeal had quashed the notification dated 18.3.1980 on 15.7.1981, vide which the State Government, in exercise of the powers u/s 3(8) of the Act had suspended the Board. But there is no evidence that after the Board was revived, it had suspended notification dated 12.5.1980 whereby the powers were delegated u/s 3(12) of the Act, annulling resolution No. 13 of the meeting of the Mandi Board held on 15.12.1978 and the Secretary of the Board was empowered to exercise the powers u/s 3(12) of the Act. The letter Annexure A1 shows that the President of India, in exercise of the powers conferred u/s 42 of the Act, was pleased to annul the resolution No. 13 of the meeting of the Mandi Board held on 15.12.1978 and empowered the Secretary of the Board to exercise powers u/s 3(12) of the Act. Thus, it appears that at that time the Punjab State was under the President's Rule and as such the President of India had legally exercised the powers. The said notification was not challenged in the High Court. Therefore, until and unless the said notification of delegation of powers was rescinded by the Board, the Secretary continued to exercise the powers. The delegation of powers would not automatically come to an end with the revival of the Board vide judgment dated 15.7.1981 of the High Court. The de facto doctrine is not at all applicable in the present case. In such circumstances, the Secretary of the Board was competent to dismiss the respondent from service on 4.6.1982.

9. No other point has been urged before us.

The up-shot of the above discussion is that the Regular Second Appeal succeeds

and is accepted. The judgment and decree of Sub Judge 1st Class dated 14.12.1984 and that of Additional District Judge, Jalandhar, dated 22.7.1986 are set aside. Consequently, the suit of the respondent for declaration that the order dated 4.6.1982 passed by the Secretary of the Board is illegal, void and not binding upon him fails and is dismissed without any order as to costs.

10. Appeal allowed.