
(1993) 10 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 9745 of 1990

Raghubir Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1994) 106 PLR 133

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

Bench : Single Bench

Advocate : Ravi Kapur and Vimal Kumar, for the Appellant; Jagdev Sharma, Addl. A.G. and Suresh Monga, DAG for Respondent No. 1 and S.P. Laler, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Raghubir Singh through present petition filed by him under Article 226 of the Constitution of India, seeks issuance of a writ in the nature of certiorari so as to quash order, Annexure P-3 vide which his services were terminated.

2. Brief facts of the case reveal that petitioner was appointed as driver on adhoc basic with Kurukshetra Central Cooperative Consumers Store Limited, Kurukshetra on December 3, 1976. As his work and conduct was excellent, he was regularised in service vide order dated April 1, 1977. The fact that he had been admirably working and his conduct had been excellent through-out, would be manifest from the certificate issued to him on May 9, 1989. However, to his misfortune, when he had put in 14 years" service, he was shown the door vide order, Annexure P-3, dated July 13, 1990, which reads thus :-

"Yours services are no more required in this store. Hence your services are hereby retrenched with immediate effect (13.7.1990) as per decision of the B.O.A. in its meeting held on 12.6.1990 and a cheque No. 069323 dated

13.7.1990 amounting to Rs. 1437.50 Ps. is enclosed herewith (ONE MONTH NOTICE PERIOD)."

3. Mr. Kapoor, learned counsel for the petitioner has raised number of points but all that requires to be noticed is that order, Annexure P-3, was passed without giving show cause to petitioner for hearing in the matter as also that even as per the rules relied upon by respondents i.e. Staff Service Rules of the Haryana State Federation of Consumers' Cooperative Wholesale Stores Limited, a regular employee was entitled to at least three months pay in lieu of notice whereas in the present case only one month's pay was given to him.

4. The matter has, however, been opposed and in the written statement that has been filed by respondents, it has been primarily pleaded that respondent is not an instrumentality of State within the meaning of Article 12 of the Constitution of India as also that the Cooperative Society was running in losses and there was no need of driver on which post petitioner was appointed and since the post itself was abolished there was no need at all to hear him in the matter.

5. After hearing learned counsel for the parties and going through the records of the case, I am of the considered view that the points raised by Mr. Kapoor have merit and, therefore, this writ must succeed. As noticed above, petitioner, even though employed on ad-hoc basis in the first instance, was regularised in service w.e.f. April 1, 1977. He had thus put in service of 14 years and was not admittedly heard before dispensing with his service. Even though it is the plea of respondent-Cooperative Society that it was on account of losses suffered by it that a decision was taken by the Board of Directors in its meeting held on June 12, 1990 to ask petitioner to quit, yet no order abolishing the post as such has been placed on records of this case. That apart, the order impugned in the writ could not be issued without prior approval of the Registrar, Cooperative Societies, Haryana. Rule 5 of the Rules aforesaid, which deals with creation of staff strength, in term provides that the Board may add or delete any category of post or add or delete posts in any category with the prior approval of the Registrar. Coop-Societies provided no post held by a permanent employed will be deleted without providing him an equivalent post of equal cadre. As the facts of the present case reveal, approval of the Registrar was not taken in the matter and even if there had been an order of abolishing the post as such, said order would have been against the provisions of rule quoted above. This court in *Ravinder Kumar and Ors. v. State of Haryana and Ors.* 1990(1) S.L.R. 805 while dealing with the same very rule in case of abolition of post, held, "Apart from this, the impugned orders have been challenged and, in my opinion, successfully, on the ground that the impugned orders of abolition of posts held by the petitioners could not be issued without the approval of the Registrar, Cooperative Societies. This provision is a salutary one as it provides a check to control the arbitrary actions of the Cooperative Societies and in process to safeguard the interests of the employees. There is no specific approval of the Registrar, Cooperative Societies, to the abolition of the posts. This has rendered the impugned orders

without jurisdiction."

6. The matter does not end there as it would be seen that petitioner was not offered an equivalent job and it is nowhere pleaded in the written statement that no equivalent job was available with the Society that could be possibly offered to him. It may be mentioned here that in the replication filed, it has been specifically pleaded that other posts were available with the society at that time. Insofar as preliminary objection with regard to maintainability of writ is concerned, suffice it to say that it has been specifically pleaded in the petition that the Kurukshetra Central Cooperative Consumers' Store Limited was established by the State of Haryana with the main object to co-ordinate activities of essential commodities to be consumed by public at subsidised rates and to avoid exploitation and bargaining by other private dealers. Deputy Commissioner is stated to be the Chairman of the said Store. Other members are stated to be District Food & Supplies Officer and Assistant Registrar, Cooperative Societies, Kurukshetra. The said Store had been formulated under the scheme of National Cooperative Consumers' Federation. The store was receiving the main grant from the Central Government and State Government and the Registrar, Cooperative Societies was having overall control in the affairs of the said Store. The State Government exercised full control over the affairs of the Store and, thus, is stated to be an agency or instrumentality of State. Mr. Kapoor, learned counsel for petitioner on the basis of balance sheet shown to the Court during the course of arguments, submits that approximately 87% of share capital of respondent Society is contributed by the Government. In reply, the array of facts, as have been noticed above, have simply been denied without giving any details of the matter or without specifically denying the positive averments made in the petition. The facts that have been noticed above, would certainly make the respondent-Store an instrumentality of State within the meaning of Article 12 of the Constitution of India. Mr. Laler, Learned counsel for the respondents, however, relies upon Division Bench judgment of this Court in *Rajbir v. The Managing Director, Gurgaon Central Cooperative Bank Ltd.* Gurgaon 1993 ISJ 589. The Division Bench relied upon the decision rendered by this court in *Satya Pal Singh v. The Registrar, Cooperative Societies, Haryana* and Ors. 1990 P.L.J. 327 to opine that the respondent society, in that case, was not an instrumentality of State within the meaning of Article 12 of the Constitution of India. The operative part relied upon by the Division Bench from *Satya Pal Singh's* case (Supra) runs thus:-

"Consequently the society can not be said to be an authority within the meaning of Article 12 of the Constitution of India, and as such, is not amenable to writ jurisdiction of this Court. In the modern developing society mere holding of some shares by the State in an ordinary business venture would not convert the Cooperative Society running such a venture into an instrumentality of State or other authority within the meaning of Article 12."

7. Whether a Cooperative Society is a State or instrumentality of the State within

the meaning of Article 12 would depend upon the facts of each case. The facts of the case in hand reveal that the Government has persuasive control over the respondent-society. The facts with regard to another Cooperative Society, whereby on the strength of such facts it would have been held otherwise can not be cited as binding precedent.

8. For the reasons stated above, this petition is allowed. Order, Annexure P-3, is set-aside and a direction is issued to the respondents to take petitioner back in service. Petitioner shall be deemed to have been in continuous service ever since he was employed. The respondents are also directed to release all arrears of pay etc. Within a period of two months from today. There shall, however be no order as to costs.