

(1965) 03 P&H CK 0050
In the Punjab And Haryana At Chandigarh

Raghunath Singh Joon

APPELLANT

Vs

Indian Red Cross Society and Another

RESPONDENT

Date of Decision : 30-03-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 409

Citation : (1966) 1 LLJ 684

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Judgement

P.D. Sharma, J.—Raghunath Singh Joon in this writ petition under Article 226 of the Constitution has prayed for

(a) quashing- the orders passed by the president, Indian Red Cross Society, district branch, Bhatinda, respondent 2 (hereinafter referred to as the society), removing him from the post of assistant secretary of the society, and

(b) declaring that notwithstanding the above orders he continued to hold his post and was entitled to all the rights and privileges in that capacity and to direct the respondents to treat him in service.

The facts alleged by him in support of his prayer are these. He was appointed as the district organizer-cum-assistant secretary in the pay-scale of Rs. 116-8-180/10-250 by the honorary secretary of the society on the recommendation of the executive committee of the society on 13 February 1959 (annexure A). He continued to perform his duties to the satisfaction of all concerned till 21 September 1963 when a notice was served on him to explain as to why a sum of Rs. 300 received by him from the gram panchayat, Bhucho, district Bhatinda, was deposited after one and a half months from its receipt. He was required to submit his reply on the same day, which he did, although with some reluctance, because the available records could not be consulted by him in the short period at his disposal (annexures D and E). He received another letter on the same day late in the evening to explain as to why he had burnt the

counterfoils of the used cheque book. He sent his reply to this letter two days later (annexures F and F-1). He was placed under suspension by respondent 2 with effect from 21 September 1963 (annexure G). Thereafter a chargesheet was served on him on 12 November 1963 according to Rule 7(2) of the Punjab Civil Services (Punishment and Appeal) Rules (annexure H). It is alleged that these rules had been adopted and made applicable to the employees of respondent 1 according to the resolution passed in accordance with the provisions of the Indian Red Cross Societies Act 15 of 1920 and the rules promulgated thereunder. The petitioner, after making some efforts for inspection of the records connected with the chargesheet, finally submitted his reply on 2 December 1963 (annexure N). Respondent 2 on receipt of this reply terminated his services on account of the embezzlement and misconduct forming the subject-matter of the chargesheet. The petitioner alleged that the said order was altogether illegal, ultra vires, without jurisdiction, mala fide, void and inoperative for the reason that he was governed by the Punjab Civil Services (Punishment and Appeal) Rules, according to which he could not have been removed from service without holding a regular enquiry. That respondent 2 was not competent to terminate his services as he had been appointed by the executive committee of the society. That the order contravened the principles of natural justice which provide that no person should be condemned unheard and that the order was mala fide.

2. The respondents in their written statement pleaded that the petitioner was not a Government servant and his case was not governed by Article 311 of the Constitution of India. That his services were terminated in accordance with the terms of the contract of service and there was no breach of any statutory rules and as such it was not a fit case for interference by this Court under Article 226 of the Constitution. They further stated that the executive committee of the society recommended the appointment of the petitioner as organizer-cum-assistant secretary for three months in the first instance and he was appointed on purely temporary basis. His services were liable to termination without assigning any reason or without notice if his work and conduct were not found satisfactory. They further stated that the petitioner was served with a chargesheet and his reply to the charges was also received and on consideration of both these documents it was found that he was guilty of misconduct and embezzlement. Therefore, it cannot be said that his services were terminated mala fide. It was also averred that the Punjab Civil Services (Punishment and Appeal) Rules were not applicable to the petitioner's case and it was by mistake that in the chargesheet a reference to these rules was made. It was further mentioned that a case u/s 409, Indian Penal Code, had been registered by the police for the alleged embezzlement of Rs. 4,000 against him.

3. The learned Counsel for the petitioner was not able to show as to how the petitioner was governed by the Punjab Civil Services (Punishment and Appeal) Rules. The mere fact that the chargesheet served on the petitioner contained a reference to these rules is not enough to bring his case within the ambit of these rules. Respondent 2 in his written statement has emphatically stated that Rule

7(2) of the Punjab Civil Services (Punishment and Appeal) Rules was mentioned in the chargesheet served on the petitioner by some mistake. The learned Counsel for the petitioner failed to substantiate that the case of the petitioner was covered by any statutory rules which enjoined the disciplinary authority to follow a particular procedure before terminating the petitioner's services. On the other hand, the petitioner's letter of appointment (annexure A) amongst other things also mentioned that his services could be terminated without assigning any reason and without notice in case his work and conduct were not found satisfactory. Respondent 2 in his written statement has explained that after receiving the petitioner's reply and going through the relevant records it was found that the petitioner had embezzled the amounts mentioned in the chargesheet (annexure H) and also committed forgeries referred to therein and that he did not deserve any leniency because in the past also his conduct had not been fully satisfactory and, therefore, his services were terminated. It is not possible in the present proceedings to determine whether the conclusions arrived at by respondent 2 in regard to the embezzlement and misconduct of the petitioner were correct or not. This Court has to accept the findings of fact arrived at by respondent 2 at their face value. It will thus be not wrong to say that the petitioner's services were terminated in accordance with the terms on which he was employed by respondent 1. The learned Counsel for the petitioner finally urged that the procedure adopted by respondent 2 in finding out whether the petitioner had embezzled the amounts and committed forgeries in question contravened the rules of natural Justice because the petitioner was not given any reasonable opportunity to substantiate his defence. In my opinion he was not correct because respondent 2 served the petitioner with a chargesheet, obtained his reply thereto and consulted the records before coming to any conclusion. This can be said to be a substantial compliance of the rules of natural justice. There is no doubt that if respondent 2 before finally determining the matter had given the petitioner an opportunity to lead evidence in support of his defence, he would have followed an ideal procedure, but his omission to do so did not vitiate the order by which the petitioner's services were terminated. Indeed he would have done better if he had not mentioned the embezzlement and forgeries said to have been committed by the petitioner in the order terminating his services because these conclusions were arrived at by him without going into the matter meticulously. He could have said that the work and conduct of the petitioner had not been satisfactory and on that account his services were being terminated. His failure to adopt the above course does not advance the petitioner's case any further because the procedure followed was not so grossly inadequate as to render the impugned order nugatory.

4. In the result the civil writ fails and is hereby dismissed. The parties are left to bear their own costs.