
(1998) 02 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4157 of 1997

Shamir Singh, District Manager, The Punjab State Cooperative Agricultural Development Bank Ltd. APPELLANT

Vs

The Punjab State Cooperative Agricultural Development Bank Ltd. and Others RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1998) 119 PLR 29

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : V.P. Sharma, for the Appellant; Rakesh Garg and Anand Chhiber, for the Respondent

Final Decision : Dismissed

Judgement

Sat Pal, J.—In this case respondents No. 2 to 5 namely Gurjit Singh, Babu Singh, Balwant Singh and Gur Bachan Singh filed writ petition Nos. 16916/1994 and 16030 of 1994 wherein promotion orders of the petitioner dated 15.12.1992 and 31.8.1994 were challenged. The aforesaid writ petitions were disposed of by a Division Bench of this Court vide judgment dated 24.1.1995. The operative portion from this judgment reads as under:-

"Since the petitioners were vitally affected they ought to have been heard. The third respondent is directed to dispose of the representation, Annexure P-15, expeditiously after hearing the petitioners and respondent No. 5 in accordance with law and preferably within three months from today. In the event the representation of petitioners, Annexure P-15 is allowed. it is needless to state that third respondent will review the orders, Annexure P-17 and P-18 and pass appropriate orders. If the representation is rejected Annexure P-17 and P-18 Will hold the field and it would be permissible for the petitioners to challenge the correctness thereof including the order to be passed on the representation,

Annexure P-15."

2. In compliance of the above mentioned judgment dated 24.1.1995, the Managing Director of the respondent bank, after hearing the parties, passed order dated 21.4.1997. By this order, the representation of the respondents No. 2 to 5 was rejected and it was held that the petitioner (Shamir Singh) has rightly been allowed the promotion as Manager from deemed date on 83.1979 and he has also been rightly promoted to the post of District Manager on 31.8.1994.

3. After the decision of the Managing Director dated 21.4.1995 rejecting the representations of respondents No. 2 to 5 was taken, the said respondents in terms of the judgment dated 24.1.1995 in Civil Writ Petition No. 16016 and 16030/1994, could challenge the correctness of the said order in the Court. But instead of challenging the said order dated 21.4.1995 in the Court, the said respondents filed review petition dated-nil before the Managing Director of the bank which was accepted by the Managing Director of the respondent bank on 2.12.1996 and in pursuance thereof, the petitioner was demoted from the post of District Manager to that of Manager vide respondent bank order dated 2.12.1996.

4. Aggrieved by the order dated 2.12.1996, the petitioner filed the suit for declaration to the effect that the order dated 2.12.1996 passed by the Managing Director of the respondent bank, reverting the plaintiff (petitioner) from the post of District Manager to the post of Manager was wholly illegal, arbitrary, null and void, non-est, malafide, without jurisdiction and without any authority of law and for grant of permanent injunction restraining the bank from giving effect to the impugned order. Alongwith the suit, the petitioner-plaintiff also filed an application Under Order 39 Rules 1 and 2 read with Section 151 CPC for issuance of a temporary injunction restraining the defendant bank from giving effect to the reversion order dated 2.12.1996. The learned trial court order dated 24.12.1996 granted ex-parte interim injunction restraining the defendant bank from giving effect to the order of reversion dated 2.12.1996 but after hearing the learned counsel of the parties, the ex-parte interim injunction was vacated by the learned trial Court vide order dated 12.6.1997. Aggrieved by the said order dated 12.6.1997, the petitioner-plaintiff filed an appeal before the learned Additional District Judge, Chandigarh and on 13.6.1997 the operation of the order dated 12.6.1997 was stayed by the learned Additional District Judge. However, the appeal filed by the petitioner-plaintiff was dismissed on 22.9.1997 by the learned Additional District Judge, Chandigarh. Against the said order dated 22.9.1997, the present petition has been filed by the petitioner-plaintiff.

5. Mr. Sharma, the learned counsel appearing on behalf of the petitioner submitted that in terms of the judgment dated 24.1.1995 passed by the Division Bench of this Court in Civil Writ Petitions No. 16016 and 16030 of 1994, after the rejection of the representation of the respondents No. 2 to 5, by the Managing Director of the respondent bank vide order dated 21.4.1995, the said respondents could challenge the decision of the Managing Director only in a Court of law and since the decision of the Managing Director rejecting the

representation of the respondents No. 2 to 5 was not challenged by the said respondents in any court of law, the said decision became final and the Managing Director had no authority to review the order dated 21.4.1995 by subsequent order dated 2.12.1996. He, therefore, contended that the petitioner had a strong prima facie case in his favour. He further contended that the petitioner shall suffer irreparable injury in case the operation of the order dated 2.12.1996 reverting to the petitioner from the post of General Manager to the post of Manager is not stayed. He also contended that the balance of convenience was also in favour of the petitioner and against the respondents.

6. Mr. Garg, the learned counsel appearing on behalf of the private respondents submitted that appeal filed by the petitioner was dismissed by the learned Additional District Judge, Chandigarh on 22.9.1997 and in pursuance of the said order the petitioner stood reverted to the post of Manager and in case the operation of the order of reversion was now stayed, it will amount to granting the complete relief in the suit. He further submitted that in a case of reversion, the court should be slow in granting interim injunction against the State. In support of his submission, the learned counsel placed reliance on a Single Bench judgment of this Court in Shiv Raj Singh Marya v. Haryana State (1987)92 P.L.R. 244 and a Division Bench judgment of this Court in Kalavati Devi v. State of Haryana (1988)118 P.L.R. 37. The learned counsel also produced the true copies of the jimni orders and submitted that the petitioner-plaintiff was delaying the trial of the suit as he has not examined even a single witness so far.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the record. In the present case the plaintiff has challenged the order dated 2.12.1996 by which he has been reversed from the post of General Manager to the post of Manager. The question as to whether the General Manager of the respondent bank had the legal authority to review its earlier order dated 21.4.1995 in view of the judgment dated 24.1.1995 in Civil Writ Petitions No. 16016 and 16030 of 1994, can be decided only in the main suit and not in these proceedings which have arisen from the application filed by the petitioner-plaintiff Under Order 39 Rules 1 and 2 read with Section 151 CPC. As held by the Division Bench of this Court in the case of Kalavati Devi (supra), the Court must not only be convinced with the three basic ingredients, namely, a strong prima facie case, the irreparable injury and the balance of convenience are in favour of the petitioner but must also feel satisfied that it is in public interest to pass interim orders. It was further observed in this case that in service matters like appointments, promotion, confirmation, seniority or retirement etc., the power to grant interim order has to be exercised with great care and circumspection because it is extremely unusual for the court to stay the operation of the government order merely because the petitioner seeks to make out a prima facie case. In the present case it can not be said that the petitioner would suffer an irreparable injury in case the operation of the order dated 2.12.1996 is not stayed as the petitioner will get the entire amount of arrears in case the suit filed by the plaintiff is decreed. Even from the

jinmi orders produced before me, I find that, no witness of the petitioner-plaintiff was present before the learned trial Court on 21.7.1997, 1.12.1997 and 21.1.1998 and case had to be adjourned at the request of the learned counsel of the petitioner.

8. In view of the above discussion, I do not find any merit in this petition. Accordingly the petition is dismissed with no order as to costs. Keeping in view the facts and circumstances of the case I, however, direct the learned trial Court to expedite the trial of the suit.