
(1989) 04 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4452 of 1980

Tara Singh

APPELLANT

Vs

Punjab Film and News Corpn. Ltd.

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1989) 04 P&H CK 0001

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Sarjit Singh, with Mr. Navkiran Singh, for the Appellant; R.K. Battas, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—The Petitioner joined service of the Respondent-Corporation i.e. Punjab Film and News Corporation Ltd., a State Government Undertaking vide letter dated 26-4-1976 as Field Officer. Lateron, he was promoted to the post of Manager. On 14 6-1978, a show cause notice, copy annexure P1, was issued to him that on checking the relevant record, it has been found that he paid a sum of Rs. 105.25 to the representative of M/s. Wasan Brothers, Jullundur, for screening their film "Hira Aur Pathar". But on checking the relevant record, it was found that no representative was deputed by the Distributor and thus, he tried to cheat the office by submitting false voucher. He was, therefore, called upon to explain his position in this behalf, as to why criminal case should not be registered against him. The Petitioner sent his reply dated 21-6-1978, copy Annexure P2, wherein he stated that he had no intention of deceiving the Corporation. In any case, he will not repeat such a mistake. The bill may be returned to him so that he may take the money back from the Booking Clerk. The Petitioner was reverted as a Field Officer, vide order Annexure P3 dated 31-8-1978. According to the letter Annexure R5 dated 29-2-1980, the Petitioner was reverted due to gross negligence on his part. Lateron, vide order Annexure P4 dated 6-2-1980,

he was dismissed from service with immediate effect It was stated therein that "You were served with a notice dated 14-6-1978 to show cause why you should not be dealt with for cheating the Corporation by submitting false voucher. In reply you had admitted the payment but had alleged that you had submitted a voucher for payment to the Head Office without verifying as to whether the Agent was deputed by the Distributor or not. The transaction is, therefore, a clear case of mis-appropriation and fraud. The misconduct of dishonesty and fraud being very serious in nature. The Petitioner has challenged the aforesaid order by way of this writ petition. It has been also averred in the writ petition that the Respondent-Corporation is a State Government Undertaking and is, therefore, an "Authority" within the meaning of Article 12 of the Constitution of India.

2. In the return filed on behalf of the Respondent-Corporation, certain preliminary objections have been taken--one of them being that the petition suffers from laches as the same was filed after 10 months after passing of the impugned order dated 6-2-1980. It was denied that the Corporation comes within the purview of "Authority" as contemplated under Article 12 of the Constitution of India. On merits, it was pleaded that his reversion did not concern the earlier show cause notice, Copy Annexure P1, as the Petitioner, himself admitted that he was reverted due to some other complaint regarding his negligence in duty. The Petitioner gave a demand notice earlier which he abandoned since the Labour Court could itself mark an enquiry if it considered the one already held deficit in any manner. Even if no enquiry is held, this Court may itself hold an enquiry on analogy of Industrial law. Since the Petitioner has committed fraud and mis-appropriation, the employer was entitled to dismiss him.

3. The learned Counsel for the Petitioner submitted that in the show cause notice Annexure P-1, the Petitioner was required to explain his position as to why a criminal case should not be registered against him. At the most, if no reply was given, only criminal case could be registered against him and no other action was possible in pursuance of the said show cause notice Moreover, the reversion of the Petitioner was made vide Annexure P3 dated 31-8-1978, which was after the show cause notice and, therefore, once the said punishment was given no further action could be taken on the said show cause notice. The impugned order of dismissal contains charges of mis-appropriation and fraud. No charge sheet was ever served on the Petitioner in this behalf nor any show cause notice as such was issued. No enquiry was made and, therefore, the order on the face of it was wrong and illegal. According to the learned Counsel, it was a case of double jeopardy and on that account as well the impugned order was liable to be quashed. In support of his contention, he referred to Dr. P. Kumari, P.C.M.S. Class II v. The State of Punjab and Anr. 1982 (1) S.L.R. 241 and S.L. Kapoor Vs. Jagmohan and Others, . He also cited West Bengal Industrial Development Corporation Ltd. and Ors. v. West Bengal Industrial Development Corporation Employees Union and Anr. 1985 (1) S.L.R. 257 and Central Inland Water

Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , to contend that the Respondent-Corporation comes within the purview of "Authority" as contemplated under Article 12 of the Constitution.

4. On the other hand, learned Counsel for the Respondent submitted that the petition suffers from laches and it should be dismissed on that ground alone In support of his contention he referred to Chandra Bhushan and Another Vs. Deputy Director of Consolidation (Regional), U.P. and Others, . He further submitted that Corporation is not an authority under Article 12 of the Constitution and, therefore, the same was not amenable to writ jurisdiction In support of this, he referred to Som Prakash Rekhi v. Union of India and Anr. AIR 1981 S.C. 212.

5. After hearing the learned Counsel for the parties, I find merit in this petition. It is not disputed that the Corporation is a State Government Undertaking Once it is so found then it could not be successfully argued on behalf of the Respondent that it was not a "Authority" as contemplated under Article 12 of the Constitution of India. As regards merits, no meaningful argument could be raised on behalf of the Respondent to sustain the impugned order. Admittedly, no enquiry whatsoever was held to come to the conclusion that it was a clear case of misappropriation and fraud. In the absence of any show cause notice to this effect or any enquiry whatsoever, the Petitioner could not be dismissed on these grounds. Thus, the said impugned order, copy Annexure P. 4, is liable to be quashed. Consequently, this petition succeeds and the impugned order of dismissal, Annexure P4, is quashed with no order as to costs.