

(1996) 02 P&H CK 0147

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 61 of 1987

The Punjab Dairy Development Corporation Limited

APPELLANT

Vs

Shri R.K. Dhir

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1996) 113 PLR 454

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This is defendant's appeal against the judgment and decree of the Additional District Judge affirming in appeal the judgment and decree of the trial Court whereby the suit of the plaintiff has been decreed.

2. Plaintiff filed a suit for declaration to the effect that dismissal of the plaintiff from service is illegal, arbitrary, without jurisdiction and void and so the plaintiff continues to be in the employment of the defendant corporation as well as entitled to receive full pay and allowances and in the alternative to the payment of suitable damages. The plaintiff was dismissed from service vide order dated 18.12.1978 which he challenged terming it to be wholly illegal, arbitrary and without jurisdiction.

3. The defendant appeared and filed written statement. By way of preliminary objection it was stated that the suit is not maintainable in the present form and that it has not been properly valued for the purposes of Court fee and jurisdiction. According to the defendant, the relationship between the plaintiff and defendant was that of master and servant and as such declaration as prayed for cannot be granted. It was further averred that no legal right of the plaintiff was violated by the defendant and so the present suit is not maintainable.

4. On the pleadings of the parties, following issues were framed :-

1. Whether there was relationship of master and servant in between the parties?
OPD

2. Where the plaintiff is entitled to the declaration as prayed for? OPP

3. If issues No. 2 is not proved whether plaintiff is entitled to any damages? If so to what amount? OPP.

4. Relief.

5. The trial Court under issue No. 1 considered the matter and finally came to the conclusion that the defendant-Corporation is a State within the meaning of Article 12 of the Constitution of India and the Court further held that the employees of the Corporation will be considered to be public servant as defined in Section 21 of the Indian Penal Code. Accordingly, this issue was decided in favour of the plaintiff. Under issue No. 2 it was held that the order of suspension as well as of dismissal and other penal orders could only be passed by an appointing authority. As per facts of the case, Board of Directors is the appointing authority and since the order dated 23.9.1977 placing the plaintiff under suspension was passed by the Managing Director of the Corporation the order was without jurisdiction. The Court accordingly held that subsequent dismissal of the plaintiff from service was too without jurisdiction and thus ordered to be set aside. This issue was also decided in favour of the plaintiff. Under issue No. 3 it was held that in view of the findings on issues No. 1 and 2, this issue has become redundant. Resultantly, the suit of the plaintiff was decreed as prayed for.

6. Before the appellate Court, it was argued that findings of the trial Court in respect of issue No. 1 deserves to be reversed. According to the appellant, the trial Court erred in concluding that the defendant-Corporation comes within the definition of State as per Article 12 of the Constitution of India. The appellate Court found no substance in this plea of the appellant as, according to the Court various tests laid down in case reported as *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , when applied to the present Corporation, the same bring it within the ambit of the State as defined under Article 12 of the Constitution. So the finding of the trial Court in respect of issue No. 1 was affirmed. Similarly, the lower appellate Court concurred that the view taken by the trial Court that the plaintiff has been suspended and charge-sheeted by a person other than his appointing authority. The court further came to the conclusion that in the present case the appointing authority of the plaintiff was the Board of Directors and so the order of suspension and subsequent dismissal passed by an authority other than the appointing authority was without jurisdiction and thus invalid. The appeal was consequently dismissed.

7. Almost identical pleas have been raised before this Court which did not find favour with the Courts below. Concededly, the Corporation has come into

existence by a statute of the Punjab State. Whether such a Corporation is an instrumentality or agency of the State is to be tested on the touch-stone of Article 12 of the Constitution of India. The apex Court in *Ajay Hassia's* case (supra) has laid down certain tests to determine whether Corporation is an instrumentality or an agency of the State or not? These are :-

(1) One thing is clear that if the entire share capital of the Corporation is held by government it would go a long way towards indicating that the corporation is an instrumentality or agency of government;

(2) Whether the financial assistance of the State is so much as to meet almost entire expenditure of the Corporation being impregnated with governmental character.

(3) It may also be relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) Existence of "deep and pervasive State Control" may afford an indication that the Corporation is a State agency or instrumentality.

(5) If the functions of the Corporation of public importance and closely related to Government functions it would be a relevant factor in classifying the Corporation as an instrumentality or agency of the government.

(6) Specifically if a department of Government is transferred to a Corporation, it would be a strong factor supportive of this inference of the Corporation being an instrumentality or agency of the Government."

8. The Courts below on the basis of these tests have come to the conclusion that the Corporation is an instrumentality of the State. The findings of the Courts below cannot be termed to be erroneous or unwarranted. Similarly, there is no dispute that the appointing authority of the plaintiff was the Board of Directors and so any order of suspension or subsequent order of dismissal passed by any other authority has rightly been held to be not valid. This being so, the appeal is devoid of any substance and is accordingly dismissed. No order as to costs.