(2000) 03 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 513 of 1988

The Punjab State Co-operative Supply and Marketing Federation Ltd.	APPELLANT

Vs

Mohinder Singh Cheema	RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : (2000) 126 PLR 16

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Amar Vivek, for the Appellant; Jagdeep Bains, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Mohinder Singh Cheema (hereinafter to be called as "delinquent") was working as Manager with Punjab State Cooperative Supply & Marketing Federation Limited (hereinafter to be referred as "Marked"), Chandigarh at Shri Hargobindpur Co-operative Marketing Society Ltd. He was charged sheeted as follows:-

"A wheat special was scheduled to be loaded from Shri Hargobindpur on 8.5.77. You were directed by the DMO, Gurdaspur to supervise the standardisation work at C.M.S. Shri Hargobindpur. The flying squad paid a surprise visit to the society and found the wheat hags weighing as less as 87 Kg. Further, 50% wheat bags were of unstandard weight. Thus, you in connivance with FCI, Markfed and the staff of the Society, embezzled Markfed wheat stocks to the extent the wheat bags were found short in weight than the standard weight."

2. Shri H.S. Grewal, Deputy Manager (Marketing), was appointed as inquiry officer. Inquiry Officer exonerated the plaintiff of the charge. Managing Director of the Markfed, however, did not agree with the findings of the inquiry officer. He held that even though there was no direct evidence to prove that the delinquent

had actually embezzled the stock in question but he could not be absolved of his responsibility for the shortages noticed at the time of surprise, check by the flying squad. Managing Director passed order dated 1.4.80 dismissing him from the service of the Marked. Delinquent filed appeal before the Board of Directors which was dismissed on 1.9.1982. Therefore, he filed revision before the Registrar, Cooperative Societies, Punjab, Chandigarh which was also dismissed on 10.11.83. Thereafter, he filed suit for declaration against Markfed and the Registrar Cooperative Societies, Punjab, Chandigarh to the effect that the order dated 10.11.83 passed by the Registrar, Cooperative Societies, Punjab, Chandigarh and the order dated 1.9.82 passed by the Board of Directors of the Markfed and the order dated 1.4.80 passed by the Managing Director of the Markfed dismissing him from service were illegal, null and void, ineffective, unconstitutional, against the principles of natural justice, in violation of the service rules, cryptic, non speaking, with consequential relief, that he is entitled to all benefits of service including pay and allowances since 1.4.80 as if orders dated 1.4.80/1.9.82/10.11.83 had never been passed. In the alternative for declaration to the effect that the order passed by the Managing Director of the Markfed dated 1.4.80 whereby he had been removed from service and which got merged in the appellate order dated 1.9.82 passed by the Board of Directors and which further got merged in the order dated 10.11.83 passed by the Registrar, Cooperative Societies, Punjab, Chandigarh are illegal, null and void, ineffective, in violation of service rules, cryptic, non speaking with consequential relief that he is entitled to all service benefits including pay and allowances. It was alleged in the plaint that the charge sheet issued to him was based on no evidence. It did not contain the material on which it was based. It was drawn on the basis of suspicion only. Inquiry officer had exonerated him of the charge levelled against him. No second show cause notice was served on him along with copy of the findings of the inquiry officer and no disagreement note of the Managing Director was supplied to him. Punishment was based on insinuation which was not the basis of the charge against him. It was alleged in the plaint that he was thus deprived of reasonable opportunity of defending himself. He was dismissed from services arbitrarily without there being any material and evidence on the record. There was no application of mind by the punishing authority. There was no application of mind by the appellate authority. There was no application of mind by the revisional authority he was not given personal hearing.

Defendant contested this suit of the plaintiff. It was urged that the plaintiff could not have been absolved of his responsibility for the shortages noticed at the time of surprise check by the flying squad and since he had failed to perform his duty as a manager of the society it was not; desirable to retain him in service. He was rightly dismissed from service. Limitation was also set up as barring the suit. On the pleadings of the parties, the following issues were framed:-

1. Whether the revisional order passed by defendant No. 2 dated 14.11.83 wherein appellate order dated 1.9.82 and original order dated 1.4.80 passed against the plaintiff stand merged, is illegal, null and void as mentioned in para

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No. 6 of the plaintiff? OPP

2. Whether the suit is barred by limitation? OPD

3. Whether this Court has no jurisdiction to try the present suit? OPD

4. Whether the suit is bad for want of notice u/s 79 of the Punjab Cooperative societies Act? OPP

5. Relief.

4. Subordinate Judge, 2nd Class, Batala vide order dated 20.8.1986 decreed the plaintiffs suits for declaration that the impugned orders are illegal, null and void and the plaintiff shall be deemed to have always been in the service of the Markfed with all the benefits of service like pay and allowances etc. as if he had never been dismissed from service and the impugned orders had never been passed against him, in view of his finding that the Managing Director of the Markfed could not dismiss the delinquent from service when the overall authority of the Markfed vested in the administrative committee to administer the common cadre rules and further he had been exonerated of the charge of embezzlement and had been held guilty of negli gence of duty and when the charge of embezzlement framed against him had failed and he was hot charged with negligence of duty, he could not have been punished on the charge which had not been framed against him. It was found that the suit was within time.

5. Markfed went in appeal. Appeal was dismissed by Additional District Judge, Gurdaspur vide order dated 23.9.87. Still not satisfied, Markfed has come up in further appeal to this Court.

6. I have heard the learned counsel for the parties and have gone through the record.

7. Learned counsel for the appellant submitted that Managing Director of the Markfed could pass an order of dismissal of the respondent-plaintiff from service because of the delegation of the powers by the administrative committee of the Markfed to him. In support of this submission, he drew my attention to the resolution of the administrator. Markfed exercising the powers of the administrative committee dated 25.9.1979 whereby it was resolved that in addition to the powers of the appointment and punishment in respect of posts/ incumbents of posts in the scale of Rs. 225-500 and below, the Managing Director is authorised to issue notice, charge-sheet, order of suspension, appoint inquiry officer and take any other action necessary prior to the stage of final stage for imposition of penalty in cases of categories of Markfed employees. Sd/- Administrator".

Agenda item was to consider to delegate powers to the Managing Director, Markfed for issuing notice, charge sheets, orders of suspension, appointment of inquiry officer and take any other action necessary prior to the stage of final decision for imposition of penalty. He also drew my attention to the extract from

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the proceedings dated 4.4.1970 of the meeting of the administrative committee of the Markfed. Extract of proceedings dated 4.4.1970 in regard to Item 10 "to consider to delegate certain administrative powers to the Managing Director of the Markfed" is in the following terms:-

10. The Punjab State Supply and Marketing Cooperatives Service (Common Cadre) Rules 1967 are administered by the administrative committee of the Markfed constituted by the Board of Directors under rule 1.6(a) of these rules with the introduction of these rules w. e. f. 1.10.1968 the administrative work of routine nature has immensely increased. Now when a full fledged officer has taken over as Managing Director of the Markfed, it is advisable to delegate him certain administrative powers in order to promote efficiency and guide disposal of the routine type of cases. It will certainly minimise the chances of delay in the disposal of work under rule 1.6(d) of the common cadre Rules, the administrative committee is competent to delegate any of its powers to the Chief Executive Officer of the Federation by whatever designation he may be called. The administrative committee, is therefore, requested to delegate its following powers to the Managing Director of the Markfed:-

i) Appointment of all posts excluding Asstt. Secretaries/Distt. Managers and Managers ''A'' grade and higher ranks.

ii) Full powers regarding positions, transfers, training, completion of probation period and grant of annual increments etc. in respect of the staff of all categories of the common Cadre service. However, penal action against any officer of the rank of Asstt. Secretaries and above shall be referred to the administrative committee."

8. In my opinion , this submission does not further the case of the appellant Markfed at all because vide resolution of the Administrator, Markfed exercising the powers of Administrative Committee dated 24/25.9.1979 the delegation to the Managing Director by the administrator is only in respect of issuing notices, charge-sheets, order of suspension, appointing inquiry officer, taking any other action necessary prior to the stage of final decision for imposition of penalty in case of all categories of Markfed employees. This shows that the power to impose penalty was not delegated to the Managing Director vide item No. 10 which is extracted from the proceedings dated 4.4.1970 of the meeting of the administrative committee of Markfed. Delegation in favour of the Managing Director of the Markfed is there but if penal action is to be taken against any officer of the rank of Assistant Secretary and above was required to be referred to the administrative committee. This also shows that the action of dismissal/ removal etc. was not delegated to the Managing Director. It was kept by the administrative committee with itself. Respondent plaintiff is governed by The Punjab State Supply and marketing Cooperative Service (common Cadre Rules), 1967 (hereinafter referred to as the rules), Rule 1.6. (a) makes a provision regarding the authority which is to implement these rules and is in the following terms:-

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"1.6(a) These rules shall be administered by an Administrative Committee constituted by the Board (referred to as "Administrative" committee hereinafter in these rules) consisting of the President of the Punjab State Cooperative Supply and Marketing Federation Limited, as the Chairman, two members from amongst the selected Directors of the Board of Directors of the said Federation and the Registrar or his nominee. The Administrative Committee or under its authority, the Managing Directors shall be competent to issue such instructions or directions as may be considered necessary from time to time, to give effect to or to carry out the provisions of these rules."

9. Sub-clause (d) of Rule 1.6 makes a provision for the delegation of power of the Administrative Committee and reads thus:-

"1.6(d) The Administrative Committee shall be competent to delegate any of its powers to the Chief Executive Officer of the Federation by whatever designation he may be called, subject to any control that the Administrative Committee may choose to retain. The powers already being exercised by the said Officer at the time of the commencement of these rules under delegation of the staff Sub-Committee of the Board of Directors of the Federation, shall be deemed to have been delegated to him under this rule."

Rule 2.15 specifies the authority empowered to impose penalties. Rule 80-C of the Punjab Co-operative Societies Rules, 1963 reads as under:-

"Notwithstanding anything contained in rule 80-B when a Chairman has been appointed in pursuance of provisions (a) to clause (a) of sub-section (2) of section 26 of the Punjab Co-operative Societies Act, 1961 and when such chairman is a member of Indian Administrative Service, or a Joint Registrar, or an Additional Registrar, Cooperative Societies or a non-official member of the Committee and is also working in whole time in such a capacity, all powers of the Principal Executive Officer by whatever name called of Cooperative Societies will vest, in Chairman. All other employees of the Society will exercise their powers and perform their duties under his super intendence and control. The Chairman with the prior approval of the Registrar may delegate any of his powers to any employee of the Society."

10. Rule 80-C has to be read subject to rule 80-B which is in the following terms:

"The Managing Director of a Cooperative Society shall be its Principal Executive officer and the employees of the Society shall exercise their powers and perform their duties under his superintendence and control. The Managing Director shall exercise his powers and perform his duties under the overall supervision and control of the Committee."

11. Under the aforesaid rules, the Managing Director of a Cooperative Society is its Principal Executive Officer and all the employees exercise their powers and perform their duties under his superintendence and control. The Managing Director exercises his powers and performs his duties under the overall

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supervision and control of the Committee. But when a Chairman has been appointed, then all the powers of the Principal Executive officer (i.e. the Managing Director) vest in the Chairman and all other employees exercise their powers and perform their duties under the superintendence and control of the Chairman. Under Rule 80-C, the Chairman in this limited context is the Principal Executive officer in the same sense as the Managing Director would have been, had the Government not appointed a Chairman to function as Principal Executive officer. Under Rule 80-C the provision that the Chairman with the prior approval of the Registrar may delegate any of his powers to any employee of the Society, appears to apply only to the original and inherent powers of the Principal Executive Officer as indicated in Bye-law 27 and do not extend to the power that may be delegated specifically by the Administrative Committee. Thus, the Chairman to whom the power had been delegated by the Administrative Committee acted illegally and without jurisdiction in further delegating the powers to the Managing Director. Such delegation by the Chairman did not vest the Managing Director with any authority, nor could he, on the basis of such delegation issue the order of retrenchment. Order resulting in the retrenchment of the services of the petitioners is wholly illegal and void, as the Administrative Committee, which had the jurisdiction to pass such an order, did not do. so and the Managing Director, who issued the impugned order, was not validly authorised to pass such an order.

12. It is thus clear that the power to impose punishment was not delegated to the Managing Director by the Administrator, Markfed exercising the powers of the Administrative Committee which means that Administrative Committee alone could exercise the power of imposing penalty in case of all categories of Markfed employees. Rule 2.10 of the Punjab State Supply and Marketing Co-operative Service Common Cadre Rules lays down that the services of an employee may be terminated by the Administrative Committee by giving him one month''s notice or pay in lieu thereof.

13. There was no delegation by the Administrative committee of the Markfed to the Managing Director, Markfed so far as the imposition of penalty was concerned. Learned counsel for the appellant submitted that issuance of second show cause notice was not necessary. Second show cause notice was an essential requirement in view of Rules 2.13 and 2.14 of the Common Cadre Rules, 1967, which was consider in The Punjab State Supply and Marketing Federation v. Radhe Sham and Anr. 1983(2) S.L.R. 65 where it was held that "second show cause notice was an essential requirement, when a variety in the choice of punishment was concededly there in Rule 2.13 of the Rule ranging from censure to dismissal. Second show cause notice was also essential on the observance of the principles of Audi Alteram partem. It was submitted by the learned counsel for the appellant that no second show cause notice was necessary in view of 42nd Amendment of the Constitution. Whereby with effect from December 18, 1976, even under Article 311 of the Constitution, the requirement of a second-show-cause notice has been done away with. In

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1983(2) S.LR. 65 (supra), it was held that "in" no case can the provision be read as prohibiting the issuance of a second show-cause-notice, if in the furtherance of the spirit of fair play and justice, such a show-cause-notice becomes imperative. In the growth of our constitutional law, the principle of Audi Alteram partem has gained a pedestal. It lies grafted in it with articulate skill by judicial process."

14. In this case, the Inquiry Officer was different from the Punishing Authority. Charge against the delinquent was that of embezzlement while the Inquiry officer found that the Charge of embezzlement was not proved instead negligence was proved. Show cause notice was necessary to have been served upon the delinquent calling upon him to show cause why he be not punished with this punishment or that punishment when the embezzlement was not proved against him but there was proof of negligence against him. If show cause notice had been given to him might be that he could have persuaded the Punishing Authority either that no charge of negligence was made out or the punishment imposed should be a minor punishment. In this case, the Inquiry Officer had exonerated the plaintiff of the charge. Managing Director of the Markfed did not agree with the findings of the Inquiry Officer and held that even though there was no direct evidence to prove that delinquent had actually embezzled the stock in question he could not be absolved of responsibility for the shortages noticed at the time of surprise checking by Flying Squad.

15. Learned counsel for the respondent-plaintiff submitted that the Managing Director differed with the finding of the Inquiry Officer and if he was to differ with the finding of the Inquiry Officer, he ought to have given opportunity to the delinquent so that he could show cause that the report of the Inquiry Officer be accepted and that there was no reason to differ therefrom it was held in Punjab National Bank v. Kunj Behari Misra 1998(3) S.C.T. 833 that "whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement. Also, it must give to the delinquent officer an opportunity to represent before it records it findings. The principles of natural justice require the authority to give an opportunity to the officer charged of misconduct. In this case, the Inquiry officer had observed that although the shortage in weight of the wheat bags had been established, yet Shri Cheema could not be held guilty of the charge of embezzlement. As Manager of the Society delinquent was overall incharge, yet it was not practical for him to put his double lock on all the godowns." Managing Director, Markfed did not agree with this findings of the Inquiry Officer observing that according to the wheat procurement scheme the Manager of the society is fully responsible to put his double lock with the FCI. Even otherwise as Manager of the Society it was his duty to ensure that there was no shortage in the stocks of the society. Even if there is no direct evidence to prove that Shri Cheema actually embezzled the stocks in question, he cannot be absolved of his responsibility on account of the shortage noticed at the time of surprise visit made by the Flying Squad. Learned

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counsel for the respondent submitted that before taking this view, the Managing Director should have sent a copy of the findings of the Inquiry Officer to the delinquent along with his tentative opinion, so that the delinquent could have the opportunity of demolishing the view he had tentatively formed, learned counsel for the respondent submitted that the charge against the delinquent was that of embezzlement of the stocks of the wheat belonging to the Markfed. "There was no proof of charge of embezzlement" was the finding of the Inquiry Officer though the shortage in weight of the wheat bags was established. Inquiry Officer found that though he was Manager of the Society and was over all incharge, it was not practical for him to put his double lock on all the godowns. At best, the Inquiry Officer found him negligent and that too faintly, Managing Director found that as Manager of the Society, it was his duty to ensure that there was no shortage in the stocks of the society. Even if there is no direct evidence to prove that Shri Cheema actually embezzled the stocks of wheat, he cannot be absolved of his responsibility on account of shortage noticed at the time of surprise visit by the Flying Squad. Shri Cheema miserably failed to perform his duty as Manager of the Society and the retention of such an official in the service of Markfed will not be in the interest of the organisation as he cannot be safely entrusted with any job of responsibility. Accordingly, he is dismissed from service with immediate effect." Learned counsel for the respondent submitted that delinquent was not charged with negligence. He had been charged with embezzlement. On failure of the charge of embezzlement. He should have been exonerated altogether. He could not have been convicted of negligence, when there was no charge of negligence against him. In my opinion, the punishment of dismissal from service could be imposed upon delinquent on account of negligence also but before punishing him, show cause notice ought to have been given to him setting out therein the proposed punishment, so that he could say that it was not a case of dismissal or removal from service but that of a minor punishment or complete exoneration.

16. Markfed is an authority and thus "State" within the enlarged meaning of Article 12 of the Constitution. It was so held in K.N. Chopra and Ors. v. State of Punjab and Ors., in CWP No. 3969 of 1994 decided on 26.8.86 reported in 1986(3) S.L.R. 468. It was also held that "where a society registered under the Act is in essence an instrumentality or agency of the State, it would become amenable to the writ jurisdiction under Article 226 of the Constitution in the same manner as the State itself is. Markfed is an important instrument of the Government implementing socio-economic programmes, playing a significant role in establishing market prices, integrated development of rural areas, generating employment and earning foreign exchange. u/s 26 of the Act, the State Government has the right to nominate three Directors on the Bench of Directors of the MARKFED, who are styled as government nominees. The chairman of the Board of Directors of the MARKFED is appointed by the State government. Its Managing Director is almost invariably a High State Government officer in the cadre of Indian Administrative Service. Section 26(4) of the Act provides that if

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there is a difference of opinion between the Government nominees and the other members of the Board of directors the matter shall be referred to the State Government for its decision and the decision of the government shall be final. The decision of the government so taken shall operate as if the same were the decision taken by the Board of Directors, Rule 28 of the Punjab Co-operative Societies Rules, 1963 framed under the Act vests the Registrar, respondent No. 2, with the power to lay down conditions of service of the employees of co-operative societies. The Common Cadre Rules, which govern the service conditions of the employees of the MARKFED are made and can be amended, added to or omitted from with the prior approval of the Registrar, respondent No. 2 in view of the provisions of Section 84-A of the Act." In Narinder Kumar Nanda v. Punjab State Co-operative Supply and Marketing Federation Limited 1991(3) S.L.R. 197 Markfed was held to be an instrumentality of the State within the meaning of Article 12 of the Constitution of India. Since the Markfed is an instrumentality of the state within the meaning of Article 12 of the constitution, the plaintiff could claim declaration that his dismissal was illegal, null and void and that he was entitled to be treated to have always been in the service of the Markfed with all benefits of service towards pay and other allowance etc.

18. For the reasons given above, this appeal fails and is dismissed. No order as to costs.

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