**(1995) 11 P&H CK 0089**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 1018 of 1987

The State of Punjab and Another — APPELLANT

Vs

Rikhi Dev Kumar — RESPONDENT

**Date of Decision :** 20-11-1995

**Acts Referred:**

**Citation :** (1996) 112 PLR 383

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

**Bench :** Single Bench

**Advocate :** N.S. Boparai, AAG, for the Appellant; K.B. Bhandari and Manu Bhandari, for the Respondent

**Final Decision :** Dismissed

## Judgement

N.K. Kapoor, J.—This is defendants'' regular second appeal.

2. Plaintiff filed a suit for declaration to the effect that the letter dated 10.1.1986 is illegal, null and void and mala fide. It is the case of the plaintiff that he was employed as Inspector, Co-operative Societies and in the month of June, 1980, he was sent on deputation with the Punjab State Co-operative Land Mortgage Bank Limited, Chandigarh, and was posted as Manager there. It is when he came back to the Co-operative Department that a charge sheet was issued to him pertaining to the time of his duties when he was a manager in the Primary Land Mortgage Bank, Patiala. It is this charge-sheet which is stated to be illegal and hence liable to be quashed.

3. Defendants contested the claim of the plaintiff and stated that the plaintiff committed a serious irregularity while on deputation with the Primary Land Mortgage Bank Limited and for his misconduct he is being prosecuted under the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

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

1. Whether the plaintiff is entitled to the declaration prayed for? O.P.P.

2. Whether suit is pre-mature? O.P.D.

3. Whether the suit has not been properly filed for the purpose of court fee and jurisdiction? O.P.D.

4. Relief.

5. To prove his case, the plaintiff appeared as P.W. 1 and deposed that the so called alleged misconduct in the Primary Land Mortgage Bank cannot be dealt with under Punishment and Appeal Rules, 1970, when he has come back from deputation and so the charge-sheet is illegal. No evidence was held by the defendants. Thus the precise dispute pertain to determining whether the plaintiff in the given circumstance is governed by the provisions of Punjab Co-operative Societies Act which were then applicable (when he was on deputation) or he can be suitably punished under the Punishment and Appeal Rules, 1970. The trial Court after considering the provisions of Section 54 of the Punjab Co-operative Societies Act, 1964 (for short ''the Act'') and the relevant provisions of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (for short ''Rules 1970) and by taking support from the decision of this Court in case reported as Tejinder Singh Sandhu v. State of Punjab (1973) 75 P.L.R. 587 came to the conclusion that the plaintiff who was on deputation cannot be punished under the Rules 1970 for his misconduct by the Registrar Co-operative Societies or his nominee and so decided this issue in favour of the plaintiff and against the defendants. No evidence was led by the defendants in respect of Issues Nos. 2 and 3. Resultantly, the suit of the plaintiff was decreed as prayed.

6. Before the appellate Court, once again it was urged that the plaintiff being a government servant could be appropriately proceeded for his alleged misconduct by his parent department as well. Otherwise, too, whereas u/s 54 of the Act such a person if found guilty could only be ordered to repay or restore the money or property or any part thereof with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable whereas under the relevant rules, he could be punished for his misconduct as well as for dereliction of duty. Since a person on deputation is deemed to be a government employee in terms of Clause (d) of Rule 2, Rules, 1970 are applicable and so the judgment of the trial Court deserves to be reversed. The appellate Court, however, found no substance in this contention of the counsel and so dismissed the appeal.

7. Learned counsel for the appellants once again argued the point which did not find favour with the Courts below. According to the counsel, since disciplinary inquiry/disciplinary proceedings can be initiated by either of the two authorities, namely, the parent department or where he had been put on deputation, resort to the provisions of Rules 1970 cannot be termed to be illegal and unwarranted on the facts of the present case. Relying upon the decision in case reported as State of Punjab and Ors. v. Tejbir Singh 1985(2) S.L.R. 65, argued that a government servant placed at the disposal of another authority continue to be a

 

government servant and so the government is competent to inflict penalty of stoppage of increment etc. and so the courts below erred in law in placing reliance on the decision in Tejinder Singh Sandhu''s case (supra).

8. I have heard the learned counsel, perused the impugned judgments of the courts below as well as the relevant rules ad the section referred to by the counsel during his submissions. The facts are not in dispute i.e. admittedly the present charge-sheet is with retard to dereliction of duty resulting into loss as alleged to have accrued to the defendant-appellants when the plaintiff was on deputation with the Bank. During his period of deputation, no such notice was issued to him. It is only when he was reverted back to his parent department that the Registrar chose to serve him with a charge-sheet which he challenged before the civil Court terming it to be wholly illegal and unwarranted. The crux of the matter is whether on account of such a lapse, it is the bank management or the Registrar who can initiate proceedings and if so whether under the Act or Under Rule 1970.

a. Section 54 of the Act reads as under :-

54. Surcharge : (1) if in the course of an audit inquiry, inspection or the winding up of a co-operative society it is found that any person who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has mis-appropriated or fraudulently retained any money or other property belonging to such society, the Registrar may of his own motion or on the application of the committee liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf, to inquire into the conduct of such person;

Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under Sub-section (1) the Registrar may, after giving the person concerned, an opportunity of being heard, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable."

9. Section 54 of the Act encompasses present as well as past person who has or had been managing the affairs of the society and on whose act of negligence or of mis-appropriation the society has suffered, the same can be enquired into by the Registrar at his own motion or on the application of the Committee liquidator, or any creditor provided that no enquiry is to be conducted after the expiry of six years from the date of any act or omission referred to in Sub-section (1) of Section 54 of the Act. Thus, for all purposes, for all acts of omission or commission, such person who is or who was performing one or the other job can

 

be suitably dealt with u/s 54 of the Act. Examined in the context of the present case, disciplinary proceedings or any such enquiry can be initiated only in terms of Section 54 of the Act. Even if it be taken that such a person could also be proceeded under the Rules, 1970, he being a government servant, yet the provisions of Section 54 of the Act being special in character will over-ride the general provisions applicable and so reliance can be placed by the appellants on Rules 1970 is wholly misplaced. The division Bench Judgment cited by the learned counsel for the appellants has, in fact, no applicability to the facts of the present case for the simple reason that the service of the Executive Officers had not been placed with the Panchayat Samiti who could not be stated to be having any disciplinary control over such Executive Officer and so it was held that by merely placing service of a government servant at the disposal of Samiti does not make him an employee of the Samiti. On the other hand, the decision in Tejinder Singh Sandhu''s case (supra) squarely applies to the present case where in it has been held that a government officer made ex officio member of a Board constituted under an Act, such an officer cannot be punished under Rules 1970 for remiss in discharge of his duties of the Board. Thus, finding no merit in this appeal, the same is dismissed.