

(2005) 07 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10818 of 2004

Usha Rani

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab State Cooperative Milk Producers Federation Service Rules, 1985 — Rule 29, 30, 42, 42.1

Citation : (2005) 141 PLR 161

Hon'ble Judges : Nirmal Yadav, J;M.M. Kumar, J

Bench : Division Bench

Advocate : J.K. Gurna, for the Appellant; C.S. Cheema, D.A.G. and P.S. Patwalia, assisted by T.P.S. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution of India, prays for issuance of a writ of certiorari with a prayer for quashing charge sheet dated 23.3.1994 (Annexure P-3), the order of punishment stopping one increment of the petitioner with cumulative effect dated 18.4.1995 (Annexure P-7) and the appellate order dated 21.6.1995 (Annexure P-8) upholding the order of punishment. On the basis of inquiry report dated 8.2.1995, conducted at the instance of respondent No. 2, one annual grade increment of the petitioner, who is an employee of respondent No. 2 has been stopped by the order of punishment dated 18.4.1995 (Annexure P-7). The aforementioned punishment has been upheld by the appellate authority vide order dated 21.6.1995.

2. The petitioner has been working as a Clerk with respondent No. 2. On 23.3.1994, a charge sheet (Annexure P-3) was served upon her alleging that the petitioner on 18.2.1994 had misbehaved with Shri D.C. Jain, who was working as Deputy Manager (Account) by using humiliating and objectionable words against him. A show cause notice was issued to the petitioner on 22.2.1994 before

issuing the charge-sheet, the explanation of the petitioner sent on 22.2.1994, was considered and found unsatisfactory. One Shri Pawan Kumar Bansal, Assistant Admn. Milk Union, Bathinda was appointed as an Inquiry Officer for holding a regular inquiry into the charge against the petitioner. In his inquiry report, the Inquiry Officer, has recorded a categorical finding that the charge against the petitioner was proved. Shri D.C. Jain, had himself appeared before the Inquiry Officer in support of the charge and deposed about the abuses hurled on him by the petitioner apart from two other witnesses, namely, Avtar Singh (PW-3) and Rajesh Kumar (PW-1). The statements of two witnesses produced by the petitioner, have been discarded on the ground that those statements did not throw any light on the charges levelled in the charge-sheet. The Managing Director agreed with the findings of fact recorded by the Inquiry Officer and a copy of inquiry report along with a show cause notice was sent to the petitioner on 18.2.1995. On 18.4.1995 (Annexure P-7), the Managing Director-respondent No. 3 passed an order, stopping one annual grade increment of the petitioner with cumulative effect. The aforementioned order, on appeal filed by the petitioner, was upheld by the Managing Director on 21.6.1995 (Annexure P-8).

3. The petitioner filed a Civil Suit, challenging the order dated 18.4.1995 imposing the punishment of stopping of one annual grade increment along with the order of the appellate authority dated 21.6.1995 (Annexure P-8). The Civil Judge (Junior Division), Bathinda, decreed the suit of the petitioner (Annexure R-2/1) vide his judgment and decree dated 4.1.1999. Respondent No. 1 filed an appeal and the Additional District Judge, Bathinda on 9.8.2001, partially allowed the appeal by upholding the findings of the Inquiry Officer. The view of the learned Additional District Judge is discernible from para No. 11 of his judgment, which reads as under:-

"A perusal of the above referred evidence shows that full opportunity was given to the respondent to cross-examine the witnesses of the management and also lead any evidence in her defence during enquiry. This fact has also been admitted by the respondent in her cross-examination. In such type of cases it is to be seen by the Courts as to whether proper opportunities have been given to the delinquent official to defend herself in the enquiry proceedings. The Civil Courts are not to sit as a Court of appeal over and above the findings of enquiry officer. The procedures of the enquiry have been given in detail in detail in para No. 32 to 42 of the rules applicable to the parties. The learned counsel for the respondent has not been able to point out any flaw in the enquiry conducted by Shri Pawan Kumar Bansal. The learned lower court was not justified in re-appreciating the evidence recorded in the enquiry proceedings and then arrive at a different conclusion from that of the enquiry officer. As stated above, this court is not to sit as a court of appeal over the above enquiry officer."

4. The learned Additional District Judge further held that there was no substance in the submission made by the petitioner that Shri Pawan Kumar could not have been appointed as an Inquiry Officer because during the inquiry proceedings,

petitioner had never raised any objection with regard to the appointment of Shri Pawan Kumar as Inquiry Officer. The petitioner is found to have fully participated in the inquiry proceedings for more than a year without raising any objection in that regard. It has further been held that no prejudice was shown to have been suffered by the petitioner on account of Shri Pawan Kumar Bansal as Inquiry Officer.

5. However, the contention, which prevailed upon the learned Additional District Judge, was that the appeal of the petitioner should have been decided by the Board of Directors and not by the Managing Director alone, as he was not competent under Rule 42.1 of Punjab State Cooperative Milk Producers Federation Service Rules, 1985 (for brevity "the Rules") to decide the same. The view of the learned Additional District Judge in this regard reads as under:-

"However, there is merit in the contention of the learned counsel that punishing authority i.e. the Managing Director, Milkfed, Bathinda, was not competent to reject the appeal of the respondent, which she filed against the punishment order Ex.D-1. Rule 42 applicable to the parties provides as under:-"Appeal against punishment:-

42.1. An appeal against the orders of General Manager/Manager/Incharge imposing punishment under Rules 29 and 30 of the Rules shall lie to the Managing Director, Milkfed and where such orders of punishment have been passed by the Managing Director, Milkfed, the appeal shall lie to the Board of Directors of Milkfed."

14. Thus, as per this rule since the impugned order Ex.DA was passed by the Managing Director Milk Union, Bathinda, as such the appeal filed by the respondent was to be decided by the Board of Directors of Milkfed. Managing Director was not competent to decide the appeal. Since the appeal of the respondent-plaintiff has not been decided by the Board of Directors of Milkfed, as such the impugned order Ex.D-10 passed by the Managing Director is null and void order and the same is likely to be set aside."

6. Against the view taken by the learned Additional District Judge in his judgment, and decree dated 9.8.2001, the petitioner preferred a Regular Second Appeal No. 4707 of 2001, which has been dismissed on 5.9.2002 by this Court. In order words, the view of the Additional District Judge, upholding the finding of the Inquiry Officer in his inquiry report dated 8.2.1995 and the order of punishment passed by the Managing Director dated 18.4.1995 (Annexure P-7) have been upheld. However, the appeal having been found to be decided by an incompetent authority, has been directed to be decided by the Board of Directors, who is competent authority under Rule 42 of the Rules.

7. Now, the instant Writ Petition has been filed by the petitioner, again challenging the charge sheet dated 23.3.1994 (Annexure P-3), the order of punishment dated 18.4.1995 (Annexure P-7) and the appellate order dated 13.11.2003. The first objection raised by respondent No. 2-Milk Producers Union,

is that the orders, which have been made subject matter of challenge in the instant petition, have already been upheld in the Civil Suit filed by the petitioner. Her suit has been dismissed by the learned Additional District Judge, vide judgment and decree dated 9.8.2001 (Annexure R-2/2) and the order of the learned Additional District Judge, has been upheld by this Court on 5.9.2002 (Annexure R-2/3). It has further been pointed out that the Board of Directors has also dismissed the appeal of the petitioner on 13.10.2003 as conveyed to the petitioner on 13.11.2003 (Annexure P-9).

8. Having heard learned counsel for the parties, we are of the considered view that no Writ Petition challenging the charge sheet dated 23.3.1994 (Annexure P-3), the order of the punishment dated 18.4.1995 (Annexure P-7) and the appellate order dated 13.11.2003 (Annexure P-9), could be filed before this Court because there is a full fledged adjudication with regard to the charge-sheet (Annexure P-3), findings of the Inquiry Officer (Annexure P-4) and order of punishment dated 18.4.1995 (Annexure P-7) by the process of Civil Suit. The only discrepancy found by the learned Additional District Judge in his judgment and decree dated 9.8.2001 was that the appeal of the petitioner was not decided by a competent authority. The appeal was decided earlier by the order of the Managing Director on 21.6.1995 (Annexure P-8), which, in fact, was required to be decided by the Board of Directors as provided by Rule 42.1 of the Rules. The aforementioned order of the learned Additional District Judge, has been upheld by this Court in Regular Second Appeal No. 4707 of 2001 and the appeal of the petitioner was dismissed on 5.9.2002. That order has attained finality as no further appeal has been filed before the Supreme Court.

9. We are further of the view that the petitioner has, in fact, admitted in para No. 15 of the Writ Petition that she had earlier filed a Civil Suit on the wrong advice given by the counsel, whereas she should have filed a Writ Petition. The aforementioned averments clearly show that the petitioner fully realised that there were two alternative remedies, which could have been availed by her, one by filing the suit and the other by filing a Writ Petition in this Court under Article 226 of the Constitution. However, she had preferred the first one and failed upto this Court. She cannot now turn around and say that under the wrong legal advice, she had mistakenly filed the Civil Suit and now she is entitled to challenge those very orders in the writ petition.

10. It is further appropriate to mention here that nothing has been argued to point out any illegality in the order dated 13.11.2003 conveying to the petitioner the decision of the Board of Directors. The Board of Directors has taken a decision on 13.10.2003, as is evident from the details furnished by respondent No. 2 in the written statement alongwith Annexure R-2/4.

11. For the reasons stated above, the Writ Petition fails and the same is dismissed. As the petitioner has misused the process of Court, she is liable to pay costs, which is quantified at Rs. 5000/-.