

(2011) 01 P&H CK 0418

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 7893 of 2005

Harbans Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 27, 2011**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Punjab Co-operative Societies Act, 1961 - Section 68, 69

Citation: (2011) 2 ILR (P&H) 57 : (2011) 162 PLR 93**Hon'ble Judges:** Mehinder Singh Sullar, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Mehinder Singh Sullar, J.

The contour of the facts, which requires to be noticed for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that Petitioner Harbans Singh was working as a Secretary of the Rani Majra Jadid Cooperative Agricultural Service Society Limited, Rani Majra (for brevity "the Cooperative Society") since 1.10.1978. The Cooperative Society is registered under the provisions of the Punjab Cooperative Societies Act, 1961 (hereinafter to be referred as "the Act"). There was no complaint whatsoever against his functioning, rather his work and conduct was stated to have been appreciated by the higher authorities from time to time. His conditions of service are governed by the Punjab State Cooperative Agricultural Service Societies Rules, 1997 (hereinafter to be referred as "the Service Rules").

2. The case set up by the Petitioner, in brief in so far as relevant, was that due to party faction in the Managing Committee of the Cooperative Society, a complaint was filed before the Registrar, Cooperative Societies, Punjab (Respondent No. 2), in which, the inquiry was held by the Additional Registrar. The Enquiry Officer found

the Petitioner guilty of charge Nos. 1 to 3, 6 and 7, by virtue of enquiry report dated 9.5.2003 (Annexure P2). The five members of (competent authority) Committee accepted the report of the Enquiry Officer and awarded a punishment of stoppage of four increments with cumulative effect to the Petitioner, by way of resolution/order dated 7.6.2003 (Annexure P3), while four members recorded their dissenting note.

3. Not only that, Ujagar Singh and Ors. dissenting members, filed a revision petition, challenging the resolution (Annexure P3) u/s 69 of the Act, which was accepted by the Additional Registrar, Cooperative Societies, the matter was remanded back on technical grounds, by means of order dated 24.7.2003 (Annexure P4).

4. In pursuance of the order (Annexure P4), the Managing Committee convened another meeting and passed the resolution by majority of seven members, in the presence of Inspector of the Cooperative Society, again accepted the inquiry report (Annexure P2) and imposed the penalty of stoppage of two annual increments with cumulative effect on the Petitioner, vide resolution dated 21.11.2003 (Annexure P5).

5. Again, Rattan Singh and Sant Singh, dissenting members, again filed the appeal u/s 68 of the Act for annulment of the indicated resolution, which was dismissed in default by the Joint Registrar, by virtue of order dated 27.5.2004 (Annexure P7). Similar appeal filed by them was also dismissed by the Deputy Registrar, by way of order dated 23.2.2004 (Annexure P8).

6. The matter did not rest there. In the wake of letters dated 23.8.2004 and 22.11.2004 of Assistant Registrar, the Managing Committee again twice reconsidered the matter and reiterated its earlier resolution (Annexure P5), vide resolution/orders dated 11.9.2004 and 11.12.2004 (Annexures P9 and P10) respectively.

7. Thereafter, the Administrator of the Committee was appointed and strange enough, he of his own, again re-opened the matter, decided to place the Petitioner under suspension and directed him to give the charge of the Cooperative Society to him (Administrator), vide letter dated 28.1.2005 (Annexure P11). He issued him a show cause notice (Annexure P12) in this respect and fixed the hearing on 27.4.2005. The show cause notice was stated to have been received by the Petitioner on the same day and he made request to adjourn the hearing as he could not prepare the written reply in short duration, by way of letter dated 27.4.2005 (Annexure P13). Instead of adjourning the hearing, the Administrator terminated the services of the Petitioner, by means of impugned order dated 27.4.2005 (Annexure P14).

8. The Petitioner did not feel satisfied and filed the instant writ petition, challenging the impugned order (Annexure P14), invoking the provisions of Articles 226 and 227 of the Constitution of India. That is how I am seized of the matter.

9. Assailing the impugned order, the learned Counsel for the Petitioner contended with some amount of vehemence that once the penalty of stoppage of two increments has already been imposed upon the Petitioner by the competent authority (Cooperative Society), the matter was re-considered by it, affirmed by the Appellate Authority, then subsequently, the Administrator did not have the power/jurisdiction to review the matter and take a contrary view of termination of services of the Petitioner. Thus, he urged that the impugned order deserves to be set aside.

10. On the contrary, hailing the impugned order, the learned Counsel for the contesting Respondents, submitted that the Administrator was duly competent to pass an order on behalf of the Cooperative Society and no interference is warranted in the impugned order. In this regard, he has placed reliance on the judgment of this Court in case *Jai Singh v. State of Haryana and Ors.* 2002 (1) P.L.J. 14.

11. Having heard the learned Counsel for the parties at quite some length, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted, for the reasons mentioned here-in-below.

12. As is evident from the record that the Petitioner was held guilty in respect of charge Nos. 1 to 3, 6 and 7 by the Enquiry Officer. The Inquiry report (Annexure P2) was accepted and the competent authority (Managing Committee) awarded the punishment of stoppage of four increments to the Petitioner with cumulative effect, vide resolution (Annexure P3). In the wake of appeal u/s 68 of the Act filed by Ujagar Singh etc. dissenting members, the matter was remanded on technical ground by the Additional Registrar, by means of order (Annexure P4), the operative part of which is as under:

I come to the conclusion that recording of the minutes by the secretary who was already under suspension is not fair in the eyes of law particularly so when the inquiry report against him was considered in the said meeting. Hence I rescind the resolution dated 7.6.2003 of managing committee of Ranimajra CASS. However, the society shall be at liberty to call the meeting of the Managing Committee of the Society again at a later date after due observance of provisions of Punjab Cooperative Societies Act, Rules and Bye-laws to consider the same agenda or any other agenda. However, they should refrain from allowing Sh. Harbans Singh, Secretary (under suspension), to participate in their meeting in any way till the inquiry report against him is considered and finally disposed off by the Managing Committee.

13. In pursuance of order (Annexure P4), the competent authority convened another meeting and passed the resolution by majority of seven members in the presence of Inspector of the Cooperative Society, again accepted the inquiry report (Annexure P2) and imposed the penalty of stoppage of two annual increments of the Petitioner

with cumulative effect, vide resolution (Annexure P5). Rattan Singh and Sant Singh, dissenting members again filed the appeal u/s 68 of the Act for annulment of the aforesaid resolution, which was dismissed in default by the Joint Registrar, by virtue of order (Annexure P7). Similar appeal filed by them was dismissed as well, by the Deputy Registrar, vide order (Annexure P8).

14. Not only that, thereafter, in pursuance of letters dated 23.8.2004 and 22.11.2004 of Assistant Registrar, the Managing Committee again twice reconsidered the matter and reiterated its earlier resolution (Annexure P5), vide resolution/orders dated 11.9.2004 and 11.12.2004 (Annexures P9 and P10) respectively.

15. Meaning thereby, the punishment order of stoppage of two increments of Petitioner with cumulative effect, vide resolution (Annexure P5) has become final and the same was also upheld by the Appellate Authority.

16. Such thus being the position on record, now the sole question, that arises for determination in this petition, is as to whether the Administrator of the Cooperative Society has any power/jurisdiction to review the order of punishment, which has already attained the finality or not?

17. Having regard to the rival contentions of the learned Counsel for the parties, to me, the Administrator has slipped into legal error in reviewing the final order of punishment passed by the Cooperative Society.

18. At the very outset, the argument of learned Counsel for contesting Respondents that the Administrator has the power to pass the impugned order (Annexure P14) is neither tenable nor the observations of this Court in *Jai Singhs case* (supra) are at all applicable to the facts of the present case, wherein the Daftri was retrenched by the Administrator, which was challenged. So, on the peculiar facts and in the circumstances of that case, it was observed that the Administrator exercises all the powers of the Managing Committee and empowers to take all such actions as he may consider necessary to be in the interest of the Society. Possibly, no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the contesting Respondents in the present controversy.

19. What is not disputed here is that in the instant case, the punishment order/resolution (Annexure P5) was twice re-considered, vide orders (Annexures P9 and P10), which were upheld by the Appellate Authority u/s 68 of the Act. In this manner, resolution (Annexure P5) had already attained the finality. In that eventuality, to my mind, the Administrator did not have the jurisdiction to review the earlier decision in the absence of any specific provisions in this relevant connection and the impugned order (Annexure P14) is perverse and without jurisdiction.

20. An identical question arose for consideration before the Full Bench of this Court in case *Deep Chand and Ors. v. Addl. Director, Consolidation of Holdings, Punjab and Anr.* AIR 1964 P&H 249 . Having confining the scope of power of review, it was

observed that a power of review was not inherent in any authority and the moment a right to decide is exercised, the authority becomes functus officio and judicial and quasi-judicial tribunals have no power to review the order, which attained finality in the absence of any specific provisions under the Act. The same view was again reiterated by the Hon"ble Apex Court in case [Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji](#), as under:

Held: It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government"s order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored.

21. In this manner, the law laid down in Deep Chand and Patel Narshi Thakershi"s cases (supra) "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand. Thus, the contrary arguments of the learned Counsel for contesting Respondents "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances. Therefore, to me, the impugned order (Annexure P14) cannot legally be maintained in the obtaining circumstances of the case.

22. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

23. In the light of the aforesaid reasons, the instant writ petition is accepted. Consequently, the impugned order (Annexure P14) is hereby set aside in this context.

24. Needless to mention here that the writ petition has been accepted only on technical ground of absence of power of review by the Administrator. No evidence/material, much less cogent, is forth coming on record, to prove that the Petitioner was not gainfully employed and remained un-employed after the termination of his services. Above-all, as he did not actually work on the post of Secretary of the Cooperative Society, therefore, he would not be entitled to any back wages in this relevant direction.