

(2012) 02 P&H CK 0324

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3518 of 1986

Gurdaspur Cooperative Sugar
Mills Limited

APPELLANT

Vs

Gurdip Singh and Another

RESPONDENT

Date of Decision: Feb. 13, 2012

Acts Referred:

- Constitution of India, 1950 - Article 12, 311
- Limitation Act, 1963 - Section 14

Citation: (2012) 2 ILR (P&H) 800

Hon'ble Judges: Ajay Tewari, J

Bench: Single Bench

Advocate: Surjit Singh, with Kamaljeet Kaur, for the Appellant; A.S. Khaira, Advocate, for the Respondent

Judgement

Ajay Tewari, J.

1.This appeal was filed against the judgment and decree of the lower appellate Court reversing that of the trial Court thereby allowing the suit of the plaintiff/respondent seeking declaration to the effect that the order dated 11.2.1983 terminating his services was illegal, null and void. Brief facts are that the plaintiff/respondent had instituted the instant suit seeking declaration to the effect that the order dated 11.2.1983 terminating his services was illegal, null and void and accordingly claimed all the benefits of service including pay and allowances during the period he had remained out of service. The trial Court dismissed the suit by holding that the same was not maintainable. However, the lower appellate Court reversed the finding of the trial Court and allowed the appeal of the plaintiff/respondent by holding that the suit was maintainable and the termination of the service of the plaintiff/respondent was in violation of the staff regulations.

2. Counsel for the appellant has proposed the following questions of law:-

(1) Whether the appellant would be instrumentality of State or not ?

(2) Whether the suit for declaration would be maintainable in those cases where the body is not the instrumentality of the State ?

3. Counsel for the appellant argued that the suit for declaration was not maintainable and that the lower appellate Court did not rightly appreciate this issue. He further argued that the appellant could never be termed as instrumentality of the State in view of various judgments including that of the Hon"ble Supreme Court. He further argued that the view taken by the lower appellate Court that the appellant was instrumentality of the State cannot be upheld. Learned counsel relied upon a Division Bench judgment of this Court rendered in CWP No. 10806 of 2006, decided on 20.7.2006, wherein while relying upon the ratio of law laid down by the Hon"ble Supreme Court in [General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others](#), this Court held that the Sugar Mill was not an agency or an instrumentality of the State and was not engaged in any activity involving any public function. In Kishan Sahkari Chinni Mills Ltd. (supra), the Hon"ble Supreme Court held as follows:-

The point raised is no longer res integra as the same is concluded by decisions of this Court. In the case of [Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others](#), , a Constitution Bench of this Court, while approving the tests laid down in the case of [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), as to when a corporation can be said to be an instrumentality or agency of the government, observed at page 736 which runs thus:- (SCC para 9)

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarize the relevant tests gathered from the decision in the International Airport Authority case as follows:

(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 (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(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 Government. (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an "authority" and, therefore, "State" within the meaning of the expression in Article 12.

4. Thus, a test as to whether the body is instrumentality or agency of the Government as a society, co-operative society or company was not held decisive. The ratio of law laid down in [Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others](#), was held that real status of the body with regard to the control of the Government which is to be looked into. Reference is also made to [Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others](#), [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), and [Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other\[OVERRULED\]](#). Having referred to the ratio of law laid down in all these cases, the Hon'ble Supreme Court held as follows:-

From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or co-operative society or a company, is not decisive. The real status of the body with respect to the control of government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, Bye Laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter affidavit filed on behalf of the State and it was averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the Mill. Therefore, even if it is taken to be admitted due to non

traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has nowhere been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self-generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of Bye-Laws of the Mill would show that its membership is open to cane growers, other societies, Gram Sabha, State Government, etc. and under Bye-Law 52, a committee of management consisting of 15 members is constituted, out of whom, 5 members are required to be elected by the representatives of individual members, 3 out of cooperative society and other institutions and 2 representatives of financial institutions besides 5 members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator. Thus, the ratio of the nominees of State Government in the committee is only 1/3rd and the management of the committee is dominated by 2/3rd non-government members. Under the Bye-Laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less deep and pervasive one. The role of the Federation, which is the apex body and whose ex-officio Chairman-cum-Managing Director is Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members. The letter sent by Managing Director of the Federation on 22nd November, 1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of Mill, as such the same being neither instrumentality nor agency of government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution.

5. In view of the law laid down by the Hon'ble Supreme Court it is to be seen whether the tests as laid down in the above judgment are satisfied in this case to term the mill as instrumentality of the State or not. As already held, the share held by the Government in the mill alone would not be the decisive factor and in any case there is nothing on record to indicate that the State government owns mill entirely or substantially. Thus this test apparently is not satisfied. There is also nothing on record to show that the State used to meet any expenditure of the mill or the entire expenditure as such. The mill generally operates on the basis of self-generated finances. The bye-laws of the mill could be noticed to observe that membership is open to the cane grower and there is nothing on record to show that the mill enjoys the monopoly. Accordingly, all the tests which were taken into consideration by the Hon'ble Supreme Court to conclude that the mill could not be held to be

instrumentality of the State. On the basis of tests laid down in the case of Kishan Sahkari Chinni Mills Ltd. (supra) the appellant mill in the present case as well, cannot be termed as instrumentality of a State under Article 12 of the Constitution of India. The view taken by the First Appellate Court thus cannot be sustained. The resultant effect would be that the suit filed by the respondent-plaintiff for seeking declaration of his reinstatement would not be maintainable.

6. In support of the above proposition about the maintainability of the suit to seek reinstatement, the counsel has drawn my attention to [Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others](#), The Hon"ble Supreme Court in this case has laid down the following proposition of law:-

On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions--(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

7. It is thus to be held that the suit filed by the respondent-plaintiff seeking declaration for his reinstatement was not maintainable. The questions of law, thus, have to be answered on the basis of judgment of the Hon"ble Supreme Court. The judgment under appeal thus cannot be sustained and is set aside. The present Regular Second Appeal is allowed and the suit filed by the respondent-plaintiff shall stand dismissed. No order as to costs.

8. At this stage, counsel for respondent No. 1 has argued that in that case his client should be permitted to file a suit for damages and the delay, if any, should be condoned. In my considered opinion, no such direction can be issued. Respondent No. 1 would be at liberty to file any other appropriate proceedings and may, if so advised, seek recourse to the provisions of Section 14 of the Limitation Act, as available to him as per law.