

were asked to quit. In these circumstances, it must be held that the petitioners have an undisputed right to be paid retrenchment compensation in cash and before they were asked to leave the service of the project and till it is done the petitioners would be deemed to be in the service of the project."

(18) In my view, the observations of their Lordships of the Supreme Court reproduced above, leave no room for any doubt and on the strength of the said observations, I find no escape from the conclusion that in cases falling under section 25-FFF of the Act, payment of retrenchment compensation is not a condition precedent and that retrenchment compensation has not to be paid along with the discharge notice. The observations in *Raghubir Singh's* case, on which reliance had been placed by the learned counsel for the petitioners, in my view, go contrary to the observations of their Lordships of the Supreme Court and in this situation, with respect I find that the view taken in *Raghubir Singh's* case does not lay down the correct law.

(19) For the reasons recorded above, the question referred to for our decision is answered in the negative.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mittal, JJ.

GURCHARAN SINGH—*Petitioner.*

versus

STATE OF HARYANA and others—*Respondents.*

Civil Writ No. 2207 of 1977.

July 17, 1978

Punjab Co-operative Societies Act (XXV of 1961) (as applicable in Haryana)—Section 27(1) and (1A)—Suspension of a member or a committee during the course of proceedings for supersession—Notice to show cause against the suspension—Whether imperative.

Gurcharan Singh v. State of Haryana etc. (S. S. Sandhawalia, C.J.)

held, that the plain language of section 27(1) and (1A) of the Punjab Co-operative Societies Act 1961 (as applicable in Haryana) makes it clear that the legislature in its wisdom has in express terms provided for the giving of an opportunity to show cause as regards the supersession of the Managing Committee or removal of a member thereof under sub-section (1) of section 27 of the Act. However, when sub-section (1A) was inserted in the section by way of amendment, the framers of the statute had designedly not used the earlier phraseology of reasonable opportunity to show cause being given in the context of the suspension of a Managing Committee or a member thereof. As regards suspension, the provision of a show cause notice is therefore conspicuous by its absence. It is a settled canon of construction that when the legislature uses different language and particularly in contiguous provisions it must be presumed to have done so designedly. Whereas in section 27(1) an opportunity to show cause is expressly provided for yet in sub-section (1A) it is designedly excluded and therefore, the end result cannot be the same. The only inference from this difference in terminology is plain, namely, that in the context of suspension under sub-section (1A), the legislature has by necessary implication excluded any opportunity to show cause. In other words, whilst resort to the principles of natural justice is expressly provided in the more material case of supersession and removal of the Managing Committee or its members, the same is excluded in a relatively minor and interlocutory stage of suspension of the Managing Committee or any one of its members.

(Para 5).

Shadipur Co-op. Credit Society v. The State of Haryana and others C.W. 8358 of 1976 decided on 29th January, 1977.

Angrej Singh and others v. The State of Haryana and others 1978 P.L.J. 15. BOTH OVERRULED.

Case referred by Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Bhopinder Singh Dhillon on September 13, 1977 to a larger Bench for decision of an important question of law involved in the case. The Larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice P.C. Jain and Hon'ble Mr. Justice S. C. Mital finally decided the case on 17th July, 1978.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may kindly be pleased to quash the impugned order Annexure "P-1" by which order the petitioner's managing committee has been placed under suspension by the respondents.

It is further, prayed that the operation of the impugned order Annexure "P-1" may kindly be stayed till the final decision of the

present writ petition. The costs of the writ petition may be allowed to the petitioner.

It is further prayed that the petitioner could not get the certified copies of the Annexure "P-1" and the copy attached to the petition is a true and a correct copy of the original.

It is further prayed that the Writ Jurisdiction Rules may kindly be dispensed with due to the urgency of the matter.

G. S. Sandhu, Advocate, for the Petitioner.

A. S. Nehra, Addl. A.G., Haryana, for the Respondents.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether an opportunity to show cause is imperative before suspending a member or a Committee of a Co-operative Society during the course of the proceedings for supersession under section 27 of the Punjab Co-operative Societies Act, 1961 (as applicable in Haryana) is the significant question which falls for determination in this reference to the Full Bench.

(2) The facts are not in serious dispute and a passing reference to them suffices. Gurcharan Singh petitioner is one of the five members of the Managing Committee of the Hansala Co-operative Agriculture Service Society Ltd., Hansala. The Deputy Registrar, Co-operative Societies, Kurukshetra exercising the powers of the Registrar initiated proceedings for the supersession of the aforesaid Committee. The notice, annexure P. 1 dated the 19th of July, 1977 was issued to the said Committee to show cause as to why the same be not superseded or removed and therein a number of irregularities and illegalities committed by the Managing Committee were listed seriatim. The members of the Committee were invited to show cause and given an opportunity to clear their position regarding the charges specified in the notice annexure P. 1 within a fortnight of the receipt thereof as required under section 27 of the Act. However, the authority further took the view that in view of the charges levelled against the Managing Committee it should not be allowed to function during the pendency of the proceedings for supersession and removal and acting under section 27(1A) of the Act the authority

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suspended the Managing Committee and appointed Shri Kuldip Rai Vaid, Development Officer of the Kurukshetra Central Co-operative Bank Ltd., as its Administrator meanwhile. The aforesaid suspension alone is the subject-matter of challenge in this writ petition.

(3) When the matter first came up for hearing before a Division Bench, the primary and indeed the sole ground raised on behalf of the petitioner was that the impugned action of suspension had been taken against him without giving any notice and opportunity of being heard. Reliance for this contention was wholly based on two Division Bench judgments. In *The Shadipur Co-operative Credit Society v. The State of Haryana and others* (1), the Division Bench in a short order at the stage of motion hearing observed that the vested rights of the Managing Committee to look after the affairs of the Society could not be nullified unless an enquiry in accordance with the principles of natural justice had been conducted. Consequently the Bench proceeded forthwith to quash the impugned order of suspension leaving it open to the authorities concerned to pass a fresh order in accordance with law. The same Division Bench reiterated their earlier view, even though its correctness was challenged before them again at the motion stage only in the judgment reported as *Angrej Singh and others v. The State of Haryana and others*, (2).

(4) By the order of reference the learned Judges of the Division Bench seriously doubted the view expounded in the aforesaid two decisions and therefore referred the matter for decision by a larger Bench. That is how the matter is before us.

(5) It is evident that the real and indeed the only question here is the correctness of the observations made in the *Shadipur Co-operative Credit and Service Society and Angrej Singh's cases* (supra). However, before resorting to a critical analysis of the aforesaid judgments, one must inevitably have a close look at the relevant provisions of the statute around which the controversy must necessarily revolve. Section 27 (1) and (1A) of the Punjab Co-operative Societies Act as applicable in Haryana read as follows:—

“27. *Supersession of Committee.* (1) If in the opinion of the Registrar a committee or any member thereof persistently

(1) CW 8358 of 1976 decided on 29th January, 1977.

(2) 1978 P.L.J. 15.

makes default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interests of the society or its members, the Registrar may after giving the committee or member as the case may be, an opportunity to state its or his objections, if any, by order in writing—

(a) remove the committee, and—

(i) order fresh election to the committee; or

(ii) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified in the order which period may, at the discretion of the Registrar be extended from time to time, so, however, that the aggregate period does not exceed five years;

(b) remove the member and get the remaining period of the outgoing member, according to the provisions of this Act, the rules and the bye-laws.

(1A) Where the Registrar while proceeding to take action under sub-section (1), is of the opinion that suspension of the committee or member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the committee or member, as the case may be and where the committee is suspended, make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed:

Provided, that if the committee or member so suspended is not removed, it or he shall be reinstated and the period of suspension shall count towards its or his term."

Even a bare look at the plain language of the aforequoted provisions at once brings to mind the significant fact that the legislature in its wisdom has in express terms provided for the giving of an opportunity to show cause as regards the supersession of the Managing Committee or removal of a member thereof under sub-section (1) of section 27 of the Act. However, when sub-section (1A) was inserted in the section way of amendment *vide* Haryana Act 22 of 1972, the

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framers of the statute had designedly not used the earlier phraseology of reasonable opportunity to show cause being given in the context of the suspension of the Managing Committee or a member. Therefore as regards suspension the provision of a show cause notice is conspicuous by its absence. It appears to me as a settled canon of construction that when the legislature uses different language and particularly in contiguous provisions it must be presumed to have done so designedly. It seems hardly possible to hold that whilst in section 27(1) an opportunity to show cause is expressly provided for, yet in sub-section (1A) where it is designedly excluded the end-result should still be the same. In fact the only inference from this difference in terminology appears to be plain, namely, that in the context of suspension under sub-section (1A), the legislature has by necessary implication excluded any opportunity to show cause. I am, therefore, of the view that the provisions of sub-section (1A) when viewed particularly in juxtaposition to sub-section (1) lead to a clear pointer that whilst resort to the principles of natural justice is expressly provided in the more material case of supersession and removal of the Managing Committee or its members the same is excluded in a relatively minor and interlocutory stage of the suspension of the Managing Committee or any one of its members. It deserves highlighting that suspension is only one of the intermediary steps in the course of the proceedings taken under section 27(1) for the supersession or removal of the Managing Committee or any one of its members.

(6) In the larger perspective also it is manifest that the suspension of the Managing Committee during the course of the proceedings of suspension appears to be an emergent or urgent matter which may well be necessitated upon the authority being satisfied that the same is necessary in the interest of the Co-operative Society. This indeed is provided by the statute itself in sub-section (1A) of the Act. Apparently to prevent any further mis-appropriation of the Society's funds or irreparable injury to its property and its working, the Registrar is clothed with the power to suspend the Managing Committee and make immediate alternative arrangements for the management of its affairs, if necessary. If in the context of such an urgent or emergent action, the relatively tardy requirements of principles of natural justice requiring the necessity to issue a show cause notice, affording time for the filing of a reply, the consideration of the same and perhaps to afford the opportunity to lead evidence and thereafter to decide the same were to be imported it may

well in effect lead to defeating the very purpose of an emergent provision of this nature. If that be so, it is equally well-settled that a construction which would tend to defeat rather than advance the intent of the legislature has inevitably to be avoided.

(7) Mr. A. S. Nehra, learned Additional Advocate General of the State of Haryana, also forcefully argued on the analogy of service cases in this context. It is rightly pointed out that in the whole gamut of service law the suspension of a public servant does not attract the principles of natural justice to require that even a show cause notice be given prior to the emergent act of suspension. Counsel rightly contended that the suspension of a member of a Managing Committee though not identical, is on a similar footing. It was further pointed out that the legislature has made identical provisions of supersession and suspension with regard to the Managing Committee as a body as also of an individual member. On this premises it was forcefully submitted that the provisions of a notice and an elaborate opportunity to show cause is rather incongruous in the context of the emergent and urgent nature of action visualised at the stage of suspension by the legislature.

(8) Coming now to the two judgments, the correctness of which is under consideration, it is significant to notice that these are obviously on first impression, and as has already been noticed, recorded at the motion stage only. An analysis thereof leaves no manner of doubt that the issue was very far from being seriously agitated before the Bench. In particular the observations in *Shadipur Co-operative Credit and Service Society's case* (1 supra) are apparently wholly brief and it appears that even the material provisions were not pointedly brought to the notice of their Lordships. In *Angrej Singh's case* the same Bench had only chosen to follow its earlier observation and herein again the matter does not seem to have been forcefully presented in all its aspects on behalf of the respondents. In particular, the significant difference in the terminology used in sub-section (1) in contra-distinction to sub-section (1) has not at all been noticed. The emergent or in any case the urgent nature of the provision regarding the suspension and the fact that the same is nothing but a step in the larger context of the supersession and removal of the Managing Committee in which ultimately the parties are entitled to show cause, has also not been mentioned. Reliance on *Angrej Singh's case* (supra) was placed, in passing, on *Little Gibbs Co-op. Housing Society Ltd. Bombay and another v. The State of*

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Maharashtra and others, (3). It deserves recalling that that case was one of supersession and not of suspension and significantly section 78 of the relevant statute therein provided for an opportunity to show cause. The observations in the said judgment, therefore, are of no aid to the view expounded with regard to the suspension in the two cases.

(9) The Division Bench had then attempted to distinguish the settled law in this Court under section 102 of the Gram Panchayat Act on the ground that a Sarpanch had no monetary stakes, whereas a member of the Co-operative Society or its Managing Committee had a financial interest in the management of the business of the Society. With respect, I am of the view that that consideration would not be pre-eminently relevant in the matter of the construction of a statute wherein the language, if not in *pari materia*, is at least analogous.

(10) Apart from principle and rationale, there appears also to be a plethora of authority within this Court on analogous provision. Section 102(1) of the Punjab Gram Panchayat Act similarly vests a power of suspension of a Panch, in the Deputy Commissioner during the course of an enquiry instituted against him for his removal. That the provisions are of a similar nature appears to be manifest. In interpreting the said provisions, a Division Bench of this Court in *Rajinder Singh v. The Director of Panchayats Punjab*, (4) had occasion to observe that the said section did not talk of giving any notice before passing the order of suspension and did not choose to read any principle of natural justice therein. Similar observations were made by Shamsheer Bahadur, J., in *Ratti Ram v. The Deputy Commissioner, Patiala*, (5) Koshal, J. (as the learned Chief Justice then was) in *Gurdial Singh v. The State of Punjab and others*, (6) similarly had an occasion to construe section 102(1) of the Gram Panchayat Act and that no notice of opportunity before passing an order of suspension against a Panch was required by the statute. Lastly in this context is the Division Bench judgment in

(3) A.I.R. 1972 Bom., 108.

(4) 1963 P.L.R. 1085.

(5) 1965 P.L.R. 529.

(6) 1971 P.L.J. 417.

Hari Singh v. Director of Panchayats, Punjab, (7) wherein it was observed:—

“* * * The order for the suspension of the petitioner was passed during the pendency of the enquiry which had been ordered by the Director of Panchayats under section 102(2) of the Act by means of his letter dated November 30, 1971. It was not necessary for the Deputy Commissioner to issue notice to the petitioner before passing the order of suspension to show cause against the proposed order.”

(11) It is, therefore, plain that the view expressed in both *Shadipur Co-operative Credit Society and Angrej Singh's cases* (supra) is not sustainable on a close analysis of the relevant provisions, on an examination on principle, and on the weight of authority within this Court. We are, therefore, constrained to overrule both the judgments as not laying down the law correctly.

(12) The only contention raised on behalf of the petitioners having been negatived, there is no merit in this writ petition which is consequently dismissed. However, we would leave the parties to bear their own costs.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital, D. S. Tewatia,

K. S. Tiwana and S. P. Goyal, JJ.

RAM SARUP and another, Appellants.

versus

SHER SINGH and others,—Respondents.

Execution Second Appeal No. 1306 of 1971

September 25, 1978.

Code of Civil Procedure (V of 1908)—Section 48—Indian Limitation Act (IX of 1908)—First Schedule, Article 182—Section 48 of the Code—Whether controlled by Article 182.

(7) 1974 P.L.R. 789.