

As per this definition, it is to be held that this land was being used for common purpose. Therefore, by virtue of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961, this land became vested in the Gram Panchayat. It has recently been held by this Court in *Sadhu Singh versus State of Punjab and others* (11), that such a land cannot be partitioned amongst the proprietors of the village. In such a situation, this land could not have been allotted to respondents No. 2 and 3 for making up deficiency in the value of the land to be allotted to them at the time of consolidation. On that ground also, the impugned orders are liable to be set aside.

(15) The writ petition is accepted accordingly. The impugned orders are hereby set aside. No order as to costs.

A. AGG

Before K. Kannan, J.

JASMINDER SINGH,—Petitioner

versus

**ADDL. REGISTRAR(I), COOP. SOCIETIES, PUNJAB
& ANOTHER,—Respondents**

CWP No.10820 of 1990

6th May, 2011

Constitution of India, 1950 -Art. 226/227 - Punjab State Cooperative Financing Institutions Service(Common Cadre) Rules, 1970-71 - Financing Institutions Service Rule, 1958 - Reversion made from Senior Accountant to Junior Accountant - Reversion order of M.D. quashed by Addl. Registrar Coop. Societies - Case remanded for consideration afresh in all respect by Administrative Committee under Common Cadre Rules - Subsequently amendment made to Common Cadre Rules empowering Managing Director along with General Manager of Apex Bank and Addl. Registrar of Coop. Societies to use such powers which the Administrative Committee

(11) 2010 (2) RCR (Civil) 761

could have - Show Cause Notice issued subsequent to order of Addl. Registrar by M.D. with the approval of the Administrative Committee - Held - Action must have commenced at the state of constituting an enquiry in first place by Administrative Committee or in its absence by three persons named through amendment - Show Cause Notice as well as punishment imposed incompetent and proceedings are vitiated - Petition allowed.

Held, That the petitioner has retired from service. Consequent of allowing the writ petition, the respondents are bound to treat the order of reversion as non est and grant to the petitioner all the consequential financial benefits and which shall be computed and given to the petitioner within a period of 12 weeks from the date of passing of this order. It is contended on behalf of the respondents that the remedy by means of a writ petition was incompetent and the proper remedy would have been only to prefer an appeal against the order of the Administrative Committee. If the case had been taken up immediately in the year 1990, it could have become possible to direct the parties to resort the alternative remedy which was efficacious. Since I have taken the view that the notice dated 24.11.1989 was erroneous, it would be unnecessary to direct the party to seek for adjudication elsewhere.

(Para 10)

H.S.Bedi, Advocate, and Mr. M.S.Bedi, Advocate, *for the petitioner.*

Jai Shree Thakur, Advocate, *for the respondents.*

K.KANNAN, J. (ORAL)

(1) The writ petitioner challenges the order of reversion made by the Managing Director of the Punjab State Cooperative Bank Limited from the post of Senior Accountant to Junior Accountant. This order was pursuant to a show cause notice issued on 24.11.1989 to explain why the petitioner shall not be inflicted with reduction in rank for charges alleged to have been established against him.

(2) The challenge to the proceedings was mounted by the petitioner on a plea that, (i) the Managing Director was not competent to pass the order of reduction in rank since he was taking an action on a purported proof of change which had not been properly initiated in the first place. According to him, if, as a Senior Accountant, he was governed by the Punjab State Cooperative Financing Institutions Service (Common Cadre) Rules, 1970-71, the competent authority to impose the punishment could have been only the Administrative Committee. Admittedly, the action of constituting an enquiry issuing the chargesheet and receiving the findings of the enquiry were all done at a time when the Administrative Committee was not in place and they had all been initiated by the Managing Director, who was not the competent to initiate proceedings for punishment in terms of Annexure-6 dealing with Rules regarding discipline, punishment and appeal of the Common Cadre Rules.

(3) The incompetency of the Managing Director to take disciplinary action and impose punishment was recognized by the order of the Additional Registrar, Cooperative Societies, by his order dated 27.06.1989 when he had passed an order as follows:-

“.....In view of the above, I agree with the contention of the learned counsel for the appellant that the orders passed by the Managing Director demoting the appellant to the rank of Junior Accountant were without jurisdiction. I, therefore, quash the Managing Director's orders dated 8.4.1989 reverting the appellant. However, in view of the serious nature of the allegations against the appellant which have not been denied the case is remanded for consideration afresh in all respects by the Administrative Committee or any other authority declared competent under the Common Cadre Rules, 1970-71.”

(4) The learned counsel would contend that when the authority was directing the matter for consideration afresh in all respects, it must have been understood that the whole proceedings must have been initiated by issuing a fresh charge-sheet by the Administrative Committee and a punishment could have been imposed by the Administrative Committee. However, when

the Administrative Committee issued a show cause notice after this order which was done on 24.11.1989, it took the findings brought through the enquiry constituted by the incompetent Managing Director as established. The show cause notice itself was, therefore, defective, for, it was in some sense pre-judging an issue of charge as having been established which was brought about at the instance of an enquiry constituted by an incompetent officer.

(5) The second line of argument which was taken was that by virtue of the order of the Managing Director passed on 08.04.1989, he had been demoted from the post of Senior Account to Junior Accountant and he was kept in that post at the time when proceedings were initiated again after the order passed by the Additional Registrar. The contention was that if he was only a Junior Accountant at that time, the proceedings could not have been continued under the Common Cadre Rules since the Common Cadre Rules were applicable only to officers in the post of Senior Accountant and above. The Junior Accountant himself was governed only by the Financing Institutions Service Rules, 1958.

(6) I will take the second objection first to immediately reject it only because this contention is self contradictory and flies in the face of his contention that the order of demotion itself was incompetent in the first place. He was successful in such a contention and when the Additional Registrar directed the Administrative Committee or a person, who is competent or any authority who is competent to take action, the petitioner was riding on the benefit of a finding that the demotion was illegal and incompetent. The fact that he was demoted as such by the order of the Managing Director must be seen in the context of the same having been set aside and hence, he cannot become a Junior Accountant and, therefore, his contention that the Common Cadre Rules would not apply has no merit.

(7) I will only examine the case of whether the order that was ultimately passed by the Administrative Committee imposing a fresh punishment was justified in terms of the findings of the Additional Registrar by his order dated 27.06.1989. The learned counsel for the respondents

would contend that the Common Cadre Rules were amended subsequent to the order passed by the Additional Registrar. An amendment was said to have been made on 25.10.1989 that brought out the following :-

Existing	Amended
<p>The Administrative Committee once constituted shall remain in office for a period of one year from the date of constitution. Any vacancy occurring during the tenure of the Committee shall be filled in the manner prescribed in clause (a) above and shall be for the unexpired period only.</p>	<p>The Administrative Committee, once constituted, shall remain in office for a period of one year from the date of constitution. Any vacancy occurring during the tenure of the Committee shall be filled in the clause (a) above and shall be for the unexpired period only.</p> <p style="padding-left: 2em;">Provided further that in case there is no Administrative Committee, on account of any reasons whatsoever Managing Director, General Manager of Apex Bank and the Additional Registrar Cooperative Societies (Credit) jointly exercise all powers vested in the discharge of all duties cast on the Administrative Committee as mentioned in the Punjab State Cooperative Financing Institution Service (Common Cadre) Rules, 1970-71.</p>

(8) The change that was said to be brought out through the amendment was to empower the Managing Director along with the General Manager of the Apex Bank and the Additional Registrar of the Cooperative Societies to use such powers which the Administrative Committee could have done. The attempt of the respondents was, therefore, to show that by this act, the incompetency of the Managing Director to constitute the enquiry was removed.

(9) The show cause notice which was issued subsequent to the order of the Additional Registrar had been issued on 24.11.1989 by the Managing Director with the approval of the Administrative Committee. The show cause notice could be seen to be an action pursuant to a proof of the charges against the petitioner. If the order of the Additional Registrar must be understood as voiding the action taken already by the Managing Director as incompetent, then the action must have commenced at the stage of constituting an enquiry in the first place by an Administrative Committee or in its absence by three persons named through the amendment. The Administrative Committee could not have merely taken the result of the enquiry as fully established to commence the issue of merely adjudication on the punishment that could be imposed. This action which was sought to be done through the show cause notice on 24.11.1989, in my view, conflicts with the position obtaining through the order of the Additional Registrar dated 27.06.1989. The show cause notice as well as the punishment imposed was incompetent and the proceedings are vitiated.

(10) It is informed that the petitioner has retired from service. Consequent of allowing the writ petition, the respondents are bound to treat the order of reversion as non est and grant to the petitioner all the consequential financial benefits and which shall be computed and given to the petitioner within a period of 12 weeks from the date of passing of this order. It is contended on behalf of the respondents that the remedy by means of a writ petition was incompetent and the proper remedy would have been only to prefer an appeal against the order of the Administrative Committee. If the case had been taken up immediately in the year 1990, it could have become possible to direct the parties to resort the alternative remedy which was efficacious. Since I have taken the view that the notice dated 24.11.1989 was erroneous, it would be unnecessary to direct the party to seek for an adjudication elsewhere.

(11) The impugned proceedings are quashed and the writ petition is allowed.

A. AGG