

Before Hemant Gupta & Rajiv Narain Raina, JJ.

SURESH KUMAR BHATIA—Petitioner

versus

**THE HARYANA CO-OPERATIVE SUGAR MILLS LTD, BHALI
ANANDPUR, ROHTAK AND OTHERS—Respondents**

CWP No. 12264 of 2012

31st July, 2012

Constitution of India, 1950 - Art. 226 - Service Rules for employees of Co-operative Sugar Mills in the State of Haryana - Rule 13(ii) (b) condition of service - Petitioner confirmed to the vires of the said Rule - Petitioner confirmed as a permanent employee of Sugar Mill at Rohtak - Removed from service without holding enquiry

by invoking Rule 13(ii)(b) - Held that Petitioner confirmed as permanent employee could not have been terminated without holding enquiry - Rule 13(ii) (b) deserved to be declared ultra virus.

Held, That we are of the considered view that Rule 13 (ii) (b) cannot stand judicial scrutiny for the reasons which led the Supreme Court in striking down Rule 9(b) (supra) in the Delhi Transport case. The petitioner was a confirmed and permanent employee of the Mill and could not have been removed from service without holding enquiry in matter set out in the exchange of correspondence between the Managing Director and the petitioner resulting from an explanation call. We do not find any necessity to go into the intricacies of the reasons which led to the explanation call or reply thereto and explanation given nor do we express any opinion thereon since we are convinced that Rule 13 (ii) (b) deserves to be declared ultra vires the Constitution, arbitrary, unreasonable and violative of the sacrosanct principles of natural justice which have to be read inherent in every rule.

(Para 8)

R.K. Malik, Sr. Advocate, with Mr. Mohan Singla, Advocate, *for the petitioner.*

J.P. Bhatt, Advocate, *for the respondents.*

RAJIV NARAIN RAINA, J.

(1) This order will dispose of CWP No.12264 of 2012 titled as Suresh Kumar Bhatia vs. The Haryana Co-operative Sugar Mills Ltd. Bhali Anandpur, Rohtak and others and CWP No.12269 of 2012 titled as Manoj Kumar Singh vs. The Haryana Co-operative Sugar Mills Ltd. Bhali Anandpur, Rohtak and others as common questions of law and fact are involved in both the petitions. For convenience, the facts are taken from CWP No.12264 of 2012.

(2) The principal challenge in this petition is to the order dated 15.06.2012 (P-15) terminating the services of the petitioner as Chief Chemist at the Haryana Co-operative Sugar Mills Ltd. Bhali Anandpur, Rohtak. The termination order has been passed as a consequence of a decision taken by the Board of Directors in its meeting held on 11.06.2012 while considering

agenda item No.7 relating to the petitioner. The termination order has been passed on the basis of the petitioner's "worked (*sic*) performance". It appears that the petitioner was called for personal hearing by the Board to explain and clarify with respect to his performance for the last three years. The impugned order conveyed records that the petitioner could not give any satisfactory reply to the explanation sought and, therefore, it was decided to terminate the services of the petitioner with immediate effect as per terms and conditions of the promotion order dated 02.09.2002. The petitioner was ordered to be paid three months' salary in lieu of three months' notice period and other dues etc. if any. The order has been signed by the Managing Director for the Board of Directors. Since the promotion order dated 02.09.2002 has been cited in the termination order as reason justifying action taken, it would be appropriate to reproduce that order in extenso so as to appreciate the controversy raised in the present case:-

"ORDER

Shri Suresh Kumar Bhatia, Dy. Chief Chemist is promoted to the post of Chief Chemist from 1.9.2002 against vacant post as approved by the Board of Directors in their meeting, dated 5.7.2002 in the Govt. grade i.e. Rs.3000-100-3500-125-5000. His basic salary has been fixed at Rs.3000/- plus allowance/benefits as admissible under the rules in the above grade.

Shri Suresh Kumar Bhatia will be on probation for a period of one year on the post of Chief Chemist. Notwithstanding any of the clause of this letter of promotion, the Management reserves the right to revert this promotion without giving any notice or assigning any reason, whatsoever, during his probation period. During probation period if he intends to leave the service he has to give three months' notice or pay the salary for the equivalent period thereof. After confirmation in writing, on successful completion of his probation period his services shall be liable for termination on giving him 3 months notice or wages in lieu thereof without assigning any reason. Similarly, he will be at liberty to resign from the services of the mills after

giving 3 months' notice in writing or on payment of wages for the unexpired period of notice during off-season. However, if he intends to leave the service during the crushing season, he has to give six months' notice or pay the salary for the equivalent period thereof.

sd/-

MANAGING DIRECTOR"

(3) It can be culled out from the order that the petitioner remained on probation for the period of one year, i.e., say up to 02.09.2003. Notwithstanding the probation clause, the management reserved its right to revert the petitioner during probation. The petitioner too had a right to pay three months' notice during probation, in case, he intends to leave the job. The order further says that confirmation would be in writing and on successful completion of probation even then his services were liable to be terminated on giving three months' notice or wages in lieu thereof without assigning any reason. There is a provision for resignation as well with which we are not concerned in the present matter. It is past muster that the petitioner was confirmed on the permanent post of Deputy Chief Chemist w.e.f. 31.08.1998. It was from that post that he was promoted as Chief Chemist. The petitioner had earlier joined service as a Manufacturing Chemist on 22.6.1992 and was confirmed on successful completion of probation against the entry level post.

(4) The service conditions of all employees of Sugar mills located in Haryana are governed by rules called "*The Service Rules for the Employees of Coop. Sugar Mills in the State of Haryana*", which have been framed in exercise of the powers conferred under Haryana Coop. Societies Act, 1984. Though the promotion order dated 02.09.2002 has been resorted to in ordering the termination the substantive rule enabling termination of services of a confirmed employee by giving three months' notice and without holding enquiry is enshrined in Rule 13 (ii) (b) of the aforesaid Rules. The vires of Rule 13 (ii) (b) have been challenged in this petition. Rule 13 (i) and (ii) reads as follows:-

"13. Conditions of Service:-

- (i) *Probation:- All the appointments shall ordinarily be made in the first instance on probation for a period one year. This will be mentioned in the appointment order/letter. This*

probation period can be extended by the appointing authority at its sole desecration without any reason, from time to time. The probation period shall, however, not be extended more than one year. Thus, the total probation period shall not go beyond 2 years

During the period of probation the service of any employee can be terminated by the Appointing Authority by giving a notice of one month, if the performance of the employee is not found satisfactory or if there is any reason sufficient for the action. For this purpose whether the reason is sufficient or will be decided by the Appointing Authority.

The Society shall have the right to transfer one employee from one department/section to another or from one machine to another at its sole desecration not affecting his salary/wages and class or service provided, such transfer does not affect the functioning of the mills.

(ii) *Confirmation:-*

(a) *Upon the satisfactory completion of probation period an employee shall be eligible for confirmation.*

(b) *After confirmation:- After confirmation unless otherwise agreed upon in writing between the society and the employee, no employee of the society shall resign from the service of the society, at time, without giving the society atleast 3 months notice in writing of his intention to do so or on surrender of salary of the equivalent period i.e. 3 months in lieu thereof or salary for the unexpired period of notice. Similarly, after confirmation of an employee unless, otherwise, agreed to in writing between the society and the employee, the society shall have the right to terminate the service of the employee on giving him not less than three months notice in writing or salary of 3 months period in lieu thereof or salary of the unexpired period of his notice.*

Provided that no such notice or payment of equivalent salary in lieu thereof will be required when an employee is retired at attaining the age of superannuation or dismissed from the service as a result of an enquiry conducted against him."

(5) The service rules also lay down that services of a confirmed employee can be brought to an end only in terms of Rule 24 i.e. on being found guilty of misconduct after proper enquiry. The acts of misconduct and acts of omission and commission have been elaborately and exhaustively laid down in Rule 25. Forty three such acts have been identified and the Note to the list states that this list is only illustrative and not exhaustive. It is not disputed that neither charge-sheet was issued to the petitioner nor any enquiry held when the impugned termination order was passed.

(6) A rule similar and akin to such a rule as 13 (ii) (b) has not survived judicial review in **Delhi Transport Corporation versus D.T.C. Mazdoor Congress and others (1)**.

(7) Mr. R.K. Malik, learned Senior counsel submits on the strength of this decision that Rule 13 (ii) (b) which empowers the employer to terminate the services of a confirmed employee by giving three months' notice is akin to a similar rule i.e. Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 which operated in the Delhi Transport Corporation and was struck down by the Supreme Court in the above case as a Henry VIII Clause.

(8) We are of the considered view that Rule 13 (ii) (b) cannot stand judicial scrutiny for the reasons which led the Supreme Court in striking down Rule 9(b) (supra) in the Delhi Transport case. The petitioner was a confirmed and permanent employee of the Mill and could not have been removed from service without holding enquiry in matter set out in the exchange of correspondence between the Managing Director and the petitioner resulting from an explanation call. We do not find any necessity to go into the intricacies of the reasons which led to the explanation call or reply thereto and explanation given nor do we express any opinion thereon since we are convinced that Rule 13 (ii) (b) deserves to be declared ultra vires the Constitution, arbitrary, unreasonable and violative of the sacrosanct principles of natural justice which have to be read inherent in every rule.

(9) Mr. J.P. Bhatt, Advocate appearing for the respondents submits that the petitioner is not a holder of a civil post under the Union or State nor has the protection of Article 311 of the Constitution and, therefore, this Court should not intervene or interject against the impugned order which is one of contract of personal service. He relies on **Dr. S.L. Aggarwal versus The General Manager, Hindustan Steel Ltd. (2)**. It may be true that the petitioner does not hold a civil post under the State nor is protected by Article 311 but we do not agree with him that we should stay our hands from declaring the offending Rule 13 (ii) (b) as arbitrary and unconstitutional. In that case, the Supreme Court had no occasion to consider a clause as foul as Rule 13 (ii) (b).

(10) For the reasons recorded above, we allow this writ petition. The impugned order of termination dated 15.06.2012 (P-15) in CWP No.12264 of 2012 and the order of even date (P-9) in CWP No.12269 of 2012 stand quashed and Rule 13 (ii) (b) is struck down as ultra vires the Constitution.