

**Hem Raj Goel v. The Punjab State Agricultural Marketing Board
and another (M. M. Punchhi, J.)**

in rejecting this contention. It would be wasteful to traverse the same ground over again and affirming the reasoning on this point we reject the alternative stand of the learned counsel for the respondent.

15. Apart from the affirmance of the view of the learned Single Judge, even otherwise the argument raised in the aforesaid context appears to be wholly devoid of merit. It is manifest on the record that not only was an enquiry contemplated at the time of the respondent's suspension but subsequently it was actually initiated. A charge-sheet, annexure P. 8 was served on the petitioner, to which he duly replied. It was stated at the bar by the learned counsel for the respondent himself that in these disciplinary proceedings the respondent was subsequently exonerated of the charge. In view of the fact that the respondent after exoneration had been reinstated and would thus become entitled to emoluments during the suspension period, the dispute ceases to have any meaningful significance.

16. In the light of the foregoing discussion, this appeal is allowed and the judgment of the learned Single Judge is set aside and the writ petition dismissed. There will, however, be no order as to costs.

D. S. Tewatia, J.—I agree.

N.K.S.

Before M. M. Punchhi, J.

HEM RAJ GOEL,—Petitioner.

versus

**THE PUNJAB STATE AGRICULTURAL MARKETING BOARD
and another,—Respondents.**

Civil Writ Petition No. 2324 of 1973

March 15, 1982

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—
Sections 33(4) (i) and 42—Market Committee passing resolution
directing reinstatement of a suspended employee—Such resolution
annulled by the Board under section 33(4) (i)—Committee given a*

hearing before such annulment—Reinstated employee—Whether an aggrieved party entitled to a hearing—Aggrieved party—Whether could invoke the powers of revision under section 42.

Held, that there is no obligation conferred on the Punjab Agricultural Marketing Board by section 33(4) of the Punjab Agricultural Produce Markets Act, 1961 to the effect that it should give a hearing to the party whose interest was involved in the resolution of the Market Committee, which ultimately the Board chooses to annul and nor can such an obligation be spelled out even by interpretative process. If the law framers did not intend that such a right should be conferred on the party whose interest was involved, then the necessary intendment is obvious, that no opportunity of being heard was sought to be conferred on that party. It remains the concern of the Board and the Committee *inter se* as envisaged by section 33(4) and it is a far cry for such a party to be the effected party. (Para 6)

Held, that from a reading of the provisions contained in section 42 of the Act, it would be seen that the State Government has been conferred power of reversing or modifying any order of the Board or any of its officers passed or purporting to have been passed under the Act, if it considers it to be not in accordance with the Act or the rules or bye-laws made thereunder. However, filing of a revision petition at the instance of an aggrieved party is not a right vested by the Act. (Para 4).

Petition under Articles 226/227 of the Constitution of India, praying that this Hon'ble Court may be pleased to :—

- (i) *send for the records of the case and after a perusal of the same ;*
- (ii) *quash the impugned order dated 22nd June, 1973, Annexure P/8 ;*
- (iii) *declare the petitioner to be validly reinstated to his post and to be continuing in service ;*
- (iv) *direct the respondents to pay to the petitioner arrears of his salary and other allowance to which he is entitled in law.*

Costs of this petition may also be awarded to the petitioner.

M. R. Agnihotri, Advocate, for the Petitioner.

H. S. Bedi, Advocate & G. C. Garg, Advocate, for No. 1.

J. C. Batra, Advocate, for respondent No. 2.

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JUDGMENT

M. M. Punchhi, J. (Oral).

1. This petition under Articles 226/227 of the Constitution of India has been preferred by an unfortunate employee of Market Committee, Mansa, whose fate remained hanging and still hangs on the ultra legalistic approach of the respondents. It has arisen in these circumstances.

2. The petitioner Hem Raj Goel was appointed as Moharrir, Market Committee, Mansa, with effect from 27th January, 1956. In the normal course, he got his confirmation and then promotion. In the year 1967, he was Head Clerk-cum-Accountant. *Vide* order 16th October, 1967, Annexure P. 1 to the petition, he was placed under suspension pending an enquiry. The chargesheet supplied to him, which of course, the petitioner denied, became subject-matter of enquiry before a duly appointed Inquiry Officer. The petitioner objected to the appointment of the Inquiry Officer. Thereupon, the Committee appointed an Inquiry Sub-Committee to enquire into the allegations against the petitioner. After long drawn deliberations the Committee ultimately reported in favour of the petitioner. He accordingly was re-instated,—*vide* order of the Committee dated 4th April, 1973 and allegedly joined his duties that very day. The proceedings of the Sub-Committee of the Committee were, however, initially suspended by the Punjab State Agricultural Marketing Board, Chandigarh (hereinafter referred to as the Board) in purported exercise of power under section 33(4) (i) of the Punjab Agricultural Produce Markets Act, 1961. By the same order, the Board required of the Committee to submit an explanation with regard to the re-instatement of the petitioner. The petitioner approached this Court in C.W.P. No. 1488 of 1973 but the same was dismissed *in limine* on 4th May, 1973 since the final order of annulment of proceedings had not been passed by the Board by then. Thereafter, on 22nd June, 1973, the Board annulled the resolution of the Market Committee,—*vide* order Annexure P/8. This order is the subject-matter of challenge in this petition.

3. Both the Board and the Committee have put-in-their respective replies. They have given out details with regard to the proceedings but in nutshell have no quarrel with the petitioner on the factual aspects of the case. Alongside, a preliminary objection has

been raised that against the orders of the Chairman of the Board, a revision was competent before the State Government and in the presence of such an alternate remedy, this Court should not interfere in exercise of power under Article 226 of the Constitution.

4. It would be seen from a reading of the provisions contained in section 42 of the afore-referred to Act that the State Government has been conferred power of reversing or modifying any order of the Board, or any of its Officers, passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the Act or the rules or bye-laws made thereunder. Filing of a revision petition at the instance of an aggrieved party is not a right vested by the Act. Be that apart, I would not like otherwise to relegate the petitioner to that remedy after a lapse of nearly 9 years. When this petition came to be admitted, it did not attract any return from the respondents inclusive of the preliminary objection. The returns have been filed by both the respondents when the matter was fixed on the board. Thus, I do not entertain the preliminary objection and overrule it.

5. Learned counsel for the petitioner contends that the Board while annulling the resolution of the Committee had not granted any opportunity of being heard either to the Committee or to the petitioner and this tended to violate the rules of natural justice. Learned counsel for the respondents on the other hand contend that the Committee was provided such an opportunity as it alone was the aggrieved party. At the same time, they conceded that no notice was given to the petitioner as according to them none was required. Reliance has been placed by them on two decisions of this Court reported in *Shri Baldev Rai Sharma v. The State of Punjab and another*, (1) and *Karam Singh v. State of Punjab and others*, (2) in which an analogous provision contained in section 236 of the Punjab Municipal Act came to be interpreted and it was held therein that in such a situation the Committee alone was the aggrieved party and not the person in whose favour the resolution initially was. Sustenance to the view was also sought from *Shri Subhash Chandra and others, v. Municipal Corporation of Delhi and another*, (3), which decision was also relied on in *Karam Singh v. State of Punjab and others* (2). The Committee has

(1) 1972 P.L.R. 144.

(2) I.L.R. (1979) 2 Punjab & Haryana 85.

(3) A.I.R. 1965 S.C. 1275.

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also taken the stand that the effect of annulment of its resolution was that the petitioner continued to be under suspension as of before.

6. On the question of providing an opportunity of being heard to the petitioner by the Board, it seems that there is no scope for the petitioner's claim in view of the three decisions afore-referred to. No such obligation is conferred on the Board under section 33(4) of the afore-referred to Act and none can be spelled out even by interpretative process. If the law framers did not intend that such right should be conferred on the party whose interest was involved in the resolution of the Committee, which ultimately the Board choses to annul, then the necessary intendment is obvious, that no opportunity of being heard was sought to be conferred on that party. On that score, the case of the petitioner must cave in. If it remains the concern of the Board and the Committee *inter se* as envisaged by section 33(4), then it is a far cry for the petitioner to be the affected party.

7. On the stand taken by the Market Committee that the petitioner continued to be suspended, learned counsel for the petitioner has built an argument that under provisions of the Punjab Civil Services (Punishment & Appeal) Rules and governmental instructions suspension pending enquiry cannot exceed beyond a period of six months and here is a glaring case in which the suspension of the petitioner has continued for a period of nearly 15 years. Ironically, for this period the petitioner must have been paid only subsistence allowance and not his regular salary. This situation is extremely shocking. Significantly, when this petition was admitted on 25th July, 1973, no interim order was passed by this Court. Nothing then stopped the Market Committee to proceed with the case of the petitioner. If its resolution of re-instating the petitioner, had been annulled by the Board, it could yet have passed another order in conformity with law. And here one of the instance for which the Board was persuaded to annul the resolution was that the Committee passed the resolution reinstating the petitioner on 2nd April, 1973, which was a date of adjourned meeting, and the matter was not on the agenda. This ultra legalistic approach snatched from the petitioner his right to saddle the post. No explanation is forthcoming even now, either in the returns filed so late, or otherwise at the Bar, as to why the fate of the petitioner was kept hanging so callously. For these reasons a case has been made out for this Court to interfere to this limited extent that the petitioner shall remain no longer suspended any more. And if the petitioner is no

longer suspended he is entitled to get back his post. Additionally, the Market Committee is to be directed to take a decision time-bound to settle the fate of the petitioner.

8. Accordingly, this petition is allowed to the limited extent by ordering that henceforth the petitioner's suspension is set-at-naught and he is to be taken as re-instated in service. Additionally, the Market Committee is directed to decide the case of the petitioner within a period of three months from today. The petitioner will get costs of this petition which are assessed at Rs. 500.

N.K.S.

Before S. S. Sandhawalia, C.J. and J. V. Gupta, J.

KARTAR SINGH and others,—*Petitioners.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 4423 of 1981.

March 20, 1982.

Punjab Co-operative Societies Act (XXV of 1961)—Section 27 (1) & (6)—Members of Managing Committee of a Co-operative Society removed under section 27 (1)—Consultation with the financing institution under section 27 (6)—Whether necessary—Use of the word 'shall' in section 27 (6)—Whether to be construed as being directory.

Held, that it is well-settled that no absolute or doctrinaire rule can be laid down for determining the mandatory or the directory nature of a provision. The answer to the question invariably turns upon the language and the larger purpose of the statute itself; the importance and the significance of the particular provision; the procedural or the substantive nature thereof; whether any penalty or inflexible consequence is provided for its non-compliance as also other considerations which cannot be exhaustively catalogued. Section 27 of the Punjab Co-operative Societies Act, 1961 as its very heading and the detailed provisions of its seven sub-sections indicate, is primarily intended to confer the power of removal and suspension of the Managing Committee of a Society or any member thereof