

“learned Counsel Appearing on Behalf of the Vs.

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Court : Punjab and Haryana

Decided On : Jul-11-2013

Appellant : “learned Counsel Appearing on Behalf of the

Judgement :

CWP No.12463 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP No.12463 of 1991 Date of Decision:11.07.2013.

Harbans Singh and others ..Petitioners Versus The State of Punjab and anotherRespondents CORAM: HON'BLE Mr.JUSTICE PARAMJEET SINGH 1 Whether reporters of the local papers may be allowed to see the judgment?.

2) To be referred to the Reporters or not?.

3) Whether the judgment should be reported in the Digest?.

Present: None for the petitioners.Mr.T.N.Sarup, Addl.

A.G.Punjab.

**** PARAMJEET SINGH, J.

This writ petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari or mandamus directing respondents to appoint the petitioners on permanent basis being seniors and appointment of

juniors to the petitioners may be set aside and relevant record including orders dated 21.3.1978 and record of earlier appointments made w.e.f May, 1991 to July, 1991 may Kumar Parveen 2013.07.18 17:29 I attest to the accuracy and integrity of this document High Court, Chandigarh CWP No.12463 o

2. be quashed.

In view of judgment delivered by the Hon'ble Supreme Court of India in General Manager, Kishan Sahkari Chini Mills LTD.Sultanpur, U.P.versus Satrugan Nishad and others (2003) 8 Supreme Court Cases 639 wherein issue regarding maintainability of petition under Article 226 of the Constitution against a cooperative sugar mill was involved and it has been held as under: Learned counsel appearing on behalf of the contesting respondents submitted that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body.

The learned counsel appearing on behalf of the appellant, on the other hand, submitted that mandamus can be issued against a private person or body only if the infraction alleged is in performance of public duty.

Reference in this connection may be made to the decisions of this Court in Shri Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust versus V.R.Rudani in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked.

In the cases of K.

Krishnamacharyulu versus Sr.Venkateswara Hindu College of Engg.

and versus Industries LTD.versus WorkeRs.Union the same principle has been reiterated.

Further, in the case of Kumar Parveen 2013.07.18 17:29 I attest to the accuracy and integrity of this document High Court, Chandigarh CWP No.12463 o

3. versus Industries Ltd., it was observed that manufacture and sale of cigarettes by a private person will not involve any public function.

This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution.

In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function.

Thus, we have no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.

Despite repeated calls, none has appeared on behalf of the petitioners. Dismissed for non-prosecution.

(Paramjeet Singh) Judge July 11, 2013 parveen kumar Kumar Parveen 2013.07.18 17:29 I attest to the accuracy and integrity of this document High Court, Chandigarh

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