

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 12321 of 1994(O&M)

Date of decision :29.04.2015

**Haryana State Federation of Consumers' Cooperative
Wholesale Stores Ltd. Petitioner**

VS

**The Registrar, Cooperative Societies,
Haryana and others Respondents**

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr.Aseem Rai, Advocate
for the petitioner.

Ms.Shruti Goyal, AAG, Haryana.

Mr.R.K.Malik, Sr. Advocate with
Mr.Kuldeep Sheoran, Advocate for respondent No.2.

1. Whether Reporters of 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?

AJAY TEWARI, J. (Oral)

This writ petition has been filed against the order of the Registrar, Cooperative Societies whereby the plea of the private respondents for being permitted to join back before the petitioner has been accepted by respondent No.1.

The brief facts are that the petitioner is an apex cooperative

society and runs co-operative consumer stores in various part of Haryana. Originally the employees of the petitioner-society and the various cooperative stores being run by it were born on the respective cadre of the society/store. Admittedly, however, in 1979 the petitioner-society and the different stores agreed that all the employees should be encadred in the petitioner-society. Resolutions to this effect were passed by the petitioner-society and, after getting approval from respondent No.1, the action was effectuated and the petitioners were appointed after the common cadre was established. Thereafter in 1993 the petitioner-society decided to decadre some categories of employees like salesmen, peons and drivers etc. and place them back in the cadre of the stores. Undisputedly no objections were sought from the private respondents at that stage and the exercise was completed after getting approval from the Registrar, Cooperative Societies. The private respondents were consequently encadred with the District Cooperative Consumer Store, Jhajjar. In the year 1993 the District Cooperative Consumer Store, Jhajjar was wound up. It was at that stage that the private respondents agitated that they wanted to revert back to the petitioner-society. Prayer having not been acceded to they filed application before respondent No.1 who, after noticing hat no objections were ever sought from the petitioners, allowed the appeal. That order was challenged in this Court by way of the instant petition. The petition was ultimately admitted and the operation of the impugned order was stayed.

The first argument of learned counsel for the petitioner is that respondent No.1 could exercise right of appeal only in the event of a service dispute and in the present case there was, strictly speaking no service dispute since the private respondents had to lose their job because the store where they worked had been wound up and consequently it had to be held that the

posts against which they were working had come to an end.

On the other hand the argument of the private respondents is that once admittedly no objections were sought before changing the employer of the private respondents and rather even subsequently there is no record that the decision was ever brought to the notice of the private respondents, they continued to be employees of the petitioner-society and once their services were sought to be brought to an end they had the right to approach the Registrar, Cooperative Societies.

In my opinion the determining factor in the present case would be whether the order of 1993 whereby the private respondents came to be employees of the District Cooperative Consumer Store can be considered to be valid. In **Jawaharlal Nehru University v. Dr.K.S.Jawatkar and others** reported as AIR 1989 SC 1577 the Hon'ble Supreme Court held that an employee could not be transferred from one employer to another without his consent. This judgment was followed by a Division Bench of this Court in **Dr.H.K.Jain and others v. The State of Haryana and others** reported as 1991(1) RSJ 27. No contrary judgment has been cited.

In the circumstances it has to be held that the private respondents could not be treated to be the employees of the District Cooperative Consumer store without having sought their consent. Once that is so it further has to be held that their petition/appeal before the Registrar, Cooperative Societies and the order passed thereon cannot be held to be without jurisdiction.

Consequently the writ petition has to be dismissed and the petitioner has to be treated as employee of the petitioner No1. Ordered accordingly. The consequent question which arises is whether the petitioner is entitled to all the consequential benefits which the answering respondents

are entitled. In normal circumstances once the order of the petitioner is set aside all consequential benefits would be given to the employees but, as noticed at the very outset, the present is a case where the operation of the impugned order was stayed. In the circumstances the appropriate order to be passed would be for the dismissal of the writ petition. The answering respondents would be entitled to all consequential benefits till today except pay and allowances of the period when they were not able to work.

No other point has been argued. Petition disposed of in the above terms.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

April 29, 2015
sunita

(AJAY TEWARI)
JUDGE