

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

CWP-25573-2015

Date of Decision: 07.12.2015

Naresh Kumar

---Petitioner

Vs.

State of Haryana and others

-----Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: Mr. Gurinder Pal Singh, Advocate for the petitioner.

HARINDER SINGH SIDHU, J.

Respondent No.5 was appointed as Clerk-cum-Cashier in respondent No.4-society vide order dated 27.09.2004. The petitioner being aggrieved of the same, submitted an application dated 08.12.2004 to the Registrar, Cooperative Societies, Chandigarh, Deputy Commissioner, Rohtak and Deputy Registrar, Rohtak claiming therein that he should have been appointed on the said post instead of respondent No.5. Vide order dated 05.05.2005 (Annexure P-2) passed by the Deputy Registrar, the petitioner was asked to contact the respondent-Society with regard to the appointment to the post of Clerk. There is nothing on record as to whether the petitioner approached the society and without result.

After remaining silent for about 5-6 years, the petitioner again moved an application to the Assistant Registrar claiming that respondent No.5 had been illegally appointed and the petitioner be appointed in his place. A detailed report dated 09.09.2010 was given and it was stated that the appointment of respondent No.5 cannot be said to be illegal. The petitioner had placed reliance

on PACS Rules dated 16.11.1992, as per which, for appointment preference was to be given to the permanent resident of the area of the operation of the societies. It was stated that as there was no absolute embargo against the appointment of any other person and it was only required that preference is to be given the appointment of respondent No.5, who was residing at a distance of 50 kms. from the office of the society could not be considered to be illegal. The petitioner objected to the report vide letter dated 29.07.2010 and demanded the removal of respondent No.5 and requested that he be appointed. When no action was taken, he send letter dated 15.02.2011 reiterating his demand, but again to no avail. He finally served a legal notice dated 16.01.2014 (Annexure P-9), which also received no response.

Aggrieved of the inaction of the respondents, the petitioner filed CWP No.15672 of 2014, which was disposed of vide order dated 01.10.2014 directing the respondents to take decision on the legal notice. The said legal notice was considered and rejected vide order dated 19.12.2014 on the same grounds, on which earlier complaint of the petitioner had been rejected.

Aggrieved, the petitioner has filed this writ petition.

It is undisputed that respondent No.5 had been appointed and joined on 27.09.2004. After making the initial complaint in 2004, the petitioner did not pursue his grievance. Even after the report dated 29.06.2010 was submitted holding that the appointment of respondent No.5 could not be held to be illegal,

apart from one or two representations challenging the report be remained silent. Thereafter, he again woke up in 2014 by serving a legal notice and then filed writ petition, which was disposed of with a direction to the respondents to consider and decide the legal notice, which has been rejected vide impugned order.

The only illegality that the petitioner has pointed out to appointment of respondent No.5 is that as per PACS Rules, preference has to be given to the permanent resident of the area of the operation of the societies. This Court would have seriously considered the issue if the petitioner had taken legal recourse immediately after the appointment of respondent No.5. Respondent No.5 has been working for the last more than 11 years and there appears to be no patent illegality in his appointment.

It has also been stated in the impugned order that respondent No.5 is more meritorious than the petitioner as he is 10+2 pass and even in matric he has more marks than the petitioner. Moreover, it has been found that the petitioner had not applied for appointment to the appointing authority.

In these circumstances, it would not be fair or in the interest of justice to disturb his appointment only on the basis of a clause which requires preference to be given to a resident of the area of operation of the society.

Accordingly, there is no merit in the petition and the same is dismissed.

(Harinder Singh Sidhu)
Judge

07.12.2015

Atul