

CWP No.11356 of 2016

#1# Manoj Kumar
2016.10.17 17:32
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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11356 of 2016

Date of decision: 07.10.2016

Charanjit Singh

....Petitioner

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. M.S. Kang, Advocate for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab

for respondent Nos.1 to 3.

None for respondent No.4.

Jaswant Singh, J

Petitioner, who is working as Secretary of Palli Jhikki M/P Cooperative Agriculture Service Society Ltd, Palli Jhikki, District S.B.S Nagar (for short "the Society"), by way of filing this writ petition under Article 226 of the Constitution has laid challenge to impugned order dated 11.5.2016 (P.3) passed by respondent No.1 whereby revision petition filed by him is dismissed.

It is contended by learned counsel for the petitioner that respondent No.2-Deputy Registrar was having no jurisdiction to set aside the resolution dated 31.12.2013 passed by the Managing Committee of Society-respondent No.4 whereby regular pay scale for the post of Secretary was granted to the petitioner w.e.f 01.1.2014.

On the other hand, learned state counsel has argued that the Deputy Registrar was well empowered to set aside the resolution in view of the fact that at the relevant time the petitioner was not fulfilling the requisite qualification of three years'

experience as Salesman for promotion to the post of Secretary.

Heard learned counsel for the parties and perused the paper book with their able assistance.

Undisputedly, the petitioner was appointed as a Salesman on 05.11.2012 vide resolution No.4 (R.2) by the Society for one month and thereafter the Society sought an approval for appointment of the Salesmen, which was duly granted by the Joint Registrar, Cooperative Society, Jalandhar vide letter dated 01.2.2013. Consequently, vide resolution dated 04.2.2014 (R.3), the petitioner was appointed as Salesman on D.C rates and thereafter, he was promoted to the post of Secretary. However, the resolution was invalidated by the Deputy Registrar vide order dated 18.12.2015 (P.2) and a revision petition thereagainst has been dismissed by the Special Secretary vide impugned order dated 11.5.2016 (P.3).

The service conditions for the post of Salesman and Secretary are governed by Rules known as Punjab State Agricultural Cooperative Service Society Rules, 1997 (R.4) (for short "1997 Rules") which stipulates the qualifications for the post of Secretary as well as Salesman-cum-Clerk and Cashier and the same reads as under:

"QUALIFICATIONS

The qualifications necessary for appointment to various posts shall be as under:

SECRETARY: EDUCATIONAL QUALIFICATION.

RULE 6(1) SECRETARY EDUCATIONAL QUALIFICATION

- (i) Ten Plus two with at least 45% marks.*
- (ii) 3 years experience as paid salesman in the society.*
- (iii) Rural background.*
- (iv) They have to pass the test/training conducted by ACSTI, Jalandhar.*

(II) SALESMAN-CUM-CLERK AND CASHIER

- (i) Ten Plus Two with at least 45% marks.*
- (ii) Rural back-ground*

Note: Salesman already working with matric qualification will be eligible for promotion as Secretary.”

A perusal of Rule 6 (1) clearly reveals that an experience of three years as Paid Salesman is required along with qualification of 10+2 with at least 45% marks in addition to rural background etc. There is no dispute that the petitioner is having the qualification of 10+2 with 45% marks and belong to rural background. There is no quarrel that a Salesman can be promoted as a Secretary if he is having three years experience along with other conditions as stipulated under Rule 6(1) reproduced above. The only dispute is that the petitioner was not fulfilling the requirement of three years of Salesman in the Society on the date of his promotion i.e on 31.12.2013 (P.1) and on this count, instead of setting aside the resolution in entirety, the Deputy Registrar has invalidated the para 3 of the Resolution dated 31.12.2013 whereby pay scale granted to the petitioner w.e.f 01.1.2014 has been set aside thereby invoking the powers under Rule 80 (ia) of Punjab Cooperative Societies Rules, 1963 (for short “1963 Rules”), which read as under:

“80. Special Rule (i) xxxx

(ia) The Registrar, may of his own motion or on a reference made to him, declare the proceedings of the meeting referred to in clause (i) as invalid, if he is satisfied that the meeting was held without proper notice or without all the members having received the notice for the meeting or if the meeting was not conducted at the appropriate place and time.”

A perusal of the Rule (80(ia) of 1963 Rules clearly reveals that the Registrar (in the present case Deputy Registrar while exercising the powers of Registrar) may declare the proceedings of meeting referred in clause (i) **as invalid if he is satisfied that the meeting was held without proper notice or all the members have not received the notice or the meeting was not conducted at the appropriate place and time;** but in the case in hand, no such occasion or circumstance has arisen for invoking the powers under Rule 80 (ia) of 1963 Rules.

Learned counsel for the respondents has not been able to show any provisions of law which authorizes the Deputy Registrar to invalidate the resolution of the Society on the ground of non-fulfilment of three years experience as required under 1997 Rules for promotion to the post of Secretary. Even if it is assumed that the petitioner is not fulfilling the requirement of three years experience as Salesman and his promotion and pay scale as Secretary is de hors the Rule 6, still the Deputy Registrar has no power to set aside the same. As the law is well settled since long by Hon'ble Supreme Court that when a power is given to an Authority to do a certain things in a certain way, then the things

must be done in that way or not at all.

Although the petitioner was not fulfilling the requisite experience of three years as per the requirement of Rule 6 reproduced hereinabove; but still he has been promoted by the Managing Committee of the Society-respondent No.4 to the post of Secretary, which is not appreciable by this Court. But at the same time, it is not in dispute that the petitioner has been working as Secretary in pursuance of the Resolution dated 31.12.2013 and thus by now he must have gained the sufficient experience to run the affairs of the Society and as such the petition merits acceptance.

But to balance the situation, it is made clear that the petitioner will be entitled for the pay scale as Secretary only after completion of his three years experience as Secretary and not prior thereto i.e 31.12.2016 and in case he has already received the benefit of pay scale as Secretary w.e.f 0.1.1.2014 then the same shall be recovered and adjusted from his future salary.

With these observations, writ petition stands allowed and impugned order dated 11.5.2016 (P.3) is set aside.

October 7th, 2016
manoj

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No