

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.995 of 2015 (O&M)

Date of Decision: 05.08.2016

Jagmohan Lal Kataria

... Appellant

VS.

Haryana State Federation of Consumers
Cooperative Whole Sale Stores Ltd. & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

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| 1. Whether speaking / reasoned? | Yes / No |
| 2. Whether reportable? | Yes / No |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes / No |
| 4. To be referred to the Reporters or not? | Yes / No |
| 5. Whether the judgment should be reported in the Digest? | Yes / No |

Present: Mr. R. K. Malik, Senior Advocate with
Mr. Bhupinder Malik, Advocate for the appellant(s)
in LPA Nos. 995 to 998 of 2015 and
for respondent(s) in LPA Nos. 1738, 1766 to 1768 of 2015.

Mr. Aseem Rai, Advocate for the appellant(s)
in LPA Nos. 1738, 1766 to 1768 of 2015 and
for respondent(s) in LPA Nos. 995 to 998 of 2015.

SURYA KANT, J. (Oral)

(1) This order shall dispose of LPA Nos.995 to 998, 1738, 1766, 1767 & 1768 of 2015 which are directed against the order of the learned Single Judge dated 29.04.2015. The employees as well as the Haryana State Federation of Consumers Cooperative Whole Sale Stores Ltd. have preferred these cross-appeals. Keeping in view the commonality of the point in issue, the appeals are being disposed of by way of one composite order.

(2) The Haryana State Federation of Consumers Cooperative Whole Sale Stores Ltd. (in short, 'the CONFED') is the apex body of Cooperative Societies constituted for the distribution of essential commodities through the Central Consumer Cooperative Stores spread over the entire State. The appellant-employees were appointed by the CONFED

on different dates in the year 1979-1980 etc. in the District Consumer Stores. Pursuant to restructuring exercise undertaken by CONFED in the year 1983, various categories of employees like Helpers, Peons, Drivers, Salesmen, Clerks and Storekeepers were rendered surplus. A decision was taken to absorb them in the District Central Cooperative Consumer Stores as these Stores were independent registered Cooperative Societies, namely, different legal entities though were under the overall administrative control of CONFED. The appellant-employees were also amongst those who were rendered surplus. They were already posted at Jhajjar and were ordered to be absorbed in the services of Jhajjar Central Cooperative Consumer Stores Ltd. They joined on different dates. For example, in the lead case the appellant joined in December, 1983. Eventually, the District Cooperative Consumer Stores also became unviable and were ordered to be closed down. The appellant-employees were thus again rendered surplus and their services were terminated in the year 1993. For example, the appellant in the lead case was relieved of his duties w.e.f. 04.02.1993.

(3) The appellants represented the Registrar, Cooperative Societies against the orders of termination of their services. Their objections were allowed by the Registrar, Cooperative Societies vide different orders passed in the year 1994 like the order dated 27.05.1994 (P5).

(4) The Registrar, Cooperative Societies accepted their claim that they were deployed by CONFED in the District Cooperative Consumer Stores without their consent and their services could not be terminated by the District Cooperative Consumer Stores. The CONFED was thus directed to reinstate the appellants.

(5) Aggrieved by the orders of Registrar, Cooperative Societies, the CONFED approached this Court. The writ petitions were admitted and operation of the impugned orders was stayed. Resultantly, the appellants remained out of service. Meanwhile they attained the age of superannuation as well. The writ petitions filed by CONFED have been dismissed by learned Single Judge vide the order under appeal but having regard to the fact that the *ad-interim* stay was granted and the appellants remained out of service, it has been directed that they shall not be entitled to any arrears of pay.

(6) While the appellant-employees through these intra-court appeals seek a direction for payment of consequential arrears of pay, CONFED has also filed cross-appeals contending that the Registrar, Cooperative Societies had no jurisdiction to order reinstatement of the employees as such orders were not passed as a punitive measure against which an appeal could be maintainable.

(7) We have given our thoughtful consideration to the rival submissions and have perused the relevant material.

(8) Regardless of the fact that no specific plea was apparently raised by CONFED before the learned Single Judge on the question of competence of the Registrar, Cooperative Societies, we are satisfied that in a 'service dispute' between the employees of apex body or its District Cooperative Consumer Stores, the Registrar, Cooperative Societies enjoins upon ample powers under Section 37 of the Haryana Cooperative Societies Act, 1994 to adjudicate such disputes. The provision reads as follows:-

“37. Constitution of common cadre

(1) The Registrar may require an apex society to constitute a common cadre of all or a specific class of

employees in the service of that society or in the service of the central societies which are members of the apex society, or of the service of the primary society which are members of the apex society or the aforesaid central societies.

(2) When a common cadre is constituted under subsection (1), the Registrar shall make rule to regulate recruitment and the conditions of service of such employees, and their strength in consultation with the cadre society: Provided that the Registrar may add or delete any class of employees from the common cadre in consultation with the cadre society.

(3) Notwithstanding anything contained in this section there shall not be any cadre system in Cooperative Credit Structure.

(4) The Registrar shall circulate guidelines in consultation with the National Bank in matters relating to personnel policy, staffing, recruitment, posting and compensation of staff.”

(emphasis applied)

(9) It may be seen that the Registrar is competent to command the Apex Body (like CONFED) or its Central Societies (like District Consumer Stores) to have a common cadre of employees and can lay down Rules to regulate their conditions of service. Registrar is further competent to lay down guidelines in the matters relating to personnel policy, staffing, recruitment, posting and compensation of staff. The expressions like ‘conditions of service’ or ‘staffing’ and ‘recruitment’ are of wide amplitude and bring the disputes like the case in hand fall within the sweep of the powers exercisable under the quoted provision.

(10) We thus do not find any merit in the appeal preferred by CONFED which are accordingly dismissed. The contention that the

appellant-employees were informed and were asked to exercise their option before transferring them to the Store cannot be accepted at this stage as no such plea, which is essentially a question of fact, found favour firstly with the Registrar, Cooperative Society and then the learned Single Judge.

(11) Adverting to the appeals filed by employees claiming arrears of pay, true it is that ordinarily an employee on his reinstatement in service is entitled to consequential benefits. Under various special Statutes like Industrial Disputes Act also, such benefits are admissible save in a case where the employee remained gainfully employed.

(12) The fact situation in the instant case, however, is altogether different. The District Cooperative Consumer Store as well as CONFED have been running into losses and are ailing due to poor financial conditions. The exercise of restructuring was carried out and the employees were rendered surplus to cope with the financial crisis. Any direction for payment of consequential arrears of pay would cause fatal blow and may lead to compulsory winding up of the Cooperative institutions.

(13) The principle of denying wages on 'no work no pay' too has an impact on the determination of the appellants' claim. That apart, the *ad interim* stay granted by this Court need not work to the disadvantage of either party even though it merged with the final order.

(14) Taking into consideration the totality of circumstances, it appears that the appellants are not entitled to payment of full wages for the period when stay order continued to operate against them and no work could be taken by CONFED from them. But they are entitled to such benefit for the period from the dates of termination of their services by the District Cooperative Consumer Store till the order of granting stay was passed by

this Court against the orders of Registrar, Co-operative Societies. Such arrears shall be payable by the CONFED as well as the District Cooperative Consumer Stores. If the District Cooperative Consumer Stores have been wound up, the CONFED shall pay the same but with liberty to set off its claim against the assets of the Stores. The arrears shall be paid within three months from the date of receipt of a certified copy of this order failing which the appellant-employees shall be entitled to interest @ 7% per annum.

(15) Shri Malik, learned senior counsel for the appellant-employees has pointed out that some of the employees have not been paid their salary for the period when they were in the services of District Cooperative Consumer Stores. If that is so, we direct the CONFED to ascertain the correct facts in respect of individual claims and ensure payment of such arrears to the employees, may be out of the sale proceeds of the assets of the Consumer Stores. If the appellant-employees have any other claim towards statutory benefits, they may approach the Registrar, Cooperative Societies for its determination.

(16) The appeals filed by the appellant-employees stand allowed in part to the extent above.

(Surya Kant)
Judge

05.08.2016
vishal shonkar

(Sudip Ahluwalia)
Judge