

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

**CWP NO. 3023 of 2011
DATE OF DECISION : 26.09.2019**

Kiran Sharma

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Amit Jhanji, Advocate,
for the petitioner.

None for the respondents.

ARUN MONGA, J. (ORAL)

Impugned herein, *inter-alia*, is Notification dated 03.07.2001 issued by respondent No.3-Markfed, to the extent of inserting condition No.4 therein, whereby right of the petitioner to seek promotion/appointment against the existing post in Markfed in any category, was forfeited while absorbing him in Markfed after merger of Constofed into Markfed.

2. Shorn of unnecessary details, succinct facts of the case are that the petitioner was initially appointed in Constofed as Junior Scale Stenographer. Merger of Constofed with Markfed was made vide Merger Scheme dated 17.05.2001 (Annexure P-9), respondent No.2-Registrar, Cooperative Societies, Punjab, in exercise of its powers conferred on him under Section 13(8) of the Punjab Cooperative Societies Act, 1961 (hereinafter referred

to as "the Act"), on following terms and conditions of amalgamation :-

- i) Markfed will take over all assets and liabilities of Constofed;*
- ii) All the 54 employees of Constofed will be absorbed in Markfed in equivalent rank and pay. However, these 54 posts will be treated as personal posts meaning thereby that the posts will be abolished as soon as any of these employees retires, resigns or dies;*
- iii) The other terms and conditions will be governed by Markfed Employees' Rules from the date they join the service in Markfed;*
- iv) Markfed will issue a Share Certificate of the face value of shares to the shareholders of Constofed within three months from the order of amalgamation;*
- v) Leased and rented buildings of Constofed will be taken over by the Markfed immediately after the amalgamation. These buildings will be used for the purpose, for which these were allotted/leased/rented to Constofed;*
- vi) The liabilities on account of claims at (i) to (xii) above, would be subject to the outcome of judicial proceedings, if any, pending with the competent authorities and*

vii) *The liabilities arising out of business dealings as noted above in para no. 7.0 would be taken over by Markfed in keeping with the last audited books of accounts of Constofed and may be handed over to them by Constofed."*

3. In the background of the above Amalgamation Scheme, employees of Constofed vide order dated 03.07.2001 (Annexure P-1) were absorbed into Markfed on the following terms and conditions :

Terms and Conditions :

1. *All the 54 employees of Constofed are absorbed in Markfed in equivalent rank and pay. However, these 54 posts are treated as personal posts these posts shall stand abolished as soon as any of the employee retires, resigns or dies.*
2. *They will be governed under the Punjab State Cooperative Supply & Marketing Federation Employees (Common Cadre) Service Rules, 1990, as amended from time to time from the date they join the service in the Markfed.*
3. *Their pay shall be fixed by protecting the pay presently drawn by them in their present pay scale from the date of their joining in Markfed.*
4. *Their posting in any cadre in Markfed will not give them any existing or vested right to claim the appointment of promotion against the existing posts of Markfed in any category.*

5. *District Managers, Markfed or Branch Incharges shall utilize the services of these employee in the Branch Officers or in their offices as Field Officer/ Salesman in their own pay scale presently being drawn by them."*

4. Grievance of the petitioner is confined to aforesaid condition No.4, which envisages that his posting in any cadre in Markfed will not give him any right to claim appointment and/or promotion against any higher post in Markfed. Hence, the writ petition.

5. In the return filed by contesting respondent No.3- Managing Director, The Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh (hereinafter referred to as "the Managing Director"), the only stand taken is that the impugned condition has been inserted by its Managing Director and is, therefore, binding upon the petitioner. While the petitioner had sought amendment of the writ petition which was allowed by this Court. However, no amended reply has been filed by respondent No.3-Managing Director. Therefore, one has to necessarily read the un-amended reply in response to the amended writ petition. For ready reference, the stand taken by respondent No.3-Managing Director, as contained in para 4 of the preliminary objections is reproduced herein below :

"4. That the amalgamation of Constofed with the answering respondent i.e Markfed has taken place under Section 13(8) on the Punjab State Cooperative Societies Act, 1961 (in short the Act). This order of

amalgamation was passed by respondent No.2 i.e Registrar of Cooperative Societies Punjab on 17.05.2001. Condition No.10 (iii) of the order of merger reads as under :

"all the 54 employees of Constofed will be absorbed in Markfed in equivalent rank and pay. However, these 54 posts will be abolished as soon as any of these employees retires/resigns or dies."

*In view of Order dated 17.05.2001 that order dated 03.07.2001 was passed by the answering respondent and condition No.4 of the same makes absolutely clear that the posting of 54 employees of Constofed in any cadre in Markfed will not give them any existing or vested right to claim the appointment or promotion against the existing posts of Markfed in any category. Meaning thereby the petitioner and other employees of the Constofed were merged in Markfed and their posts were to be abolished on account of any reason i.e resignation/death or retirement. In this way the petitioner has no vested right to claim promotion in any of the cadre in Markfed in view of the condition imposed by the Registrar Cooperative Societies in the order of amalgamation and further in view of condition laid down by the Markfed in **Annexure P-1**. Thus the present writ petition is liable to be dismissed on this score alone because as such the petitioner cannot claim any parity with the employees of Markfed."*

6. A perusal of the above reflects that no explanation, whatsoever, what to say of any plausible one, has been given by Markfed as to why the terms and conditions of the Amalgamation

Scheme under Section 13(8) of the Act, *ibid*, is not binding on respondent No.3. The only stand taken is that since the impugned condition has been inserted by the Managing Director of the Society, the same is, therefore, binding on the petitioner as he has accepted the same by joining/absolving in Markfed.

7. I do not find the said justification sustainable at all, as conjoint reading of Sections 13 (8) and 13(12) of the Act leaves no manner of doubt that the order passed by the Registrar, Cooperative Societies under the Act shall be final. For ready reference, the relevant provisions of the Act, *ibid*, are reproduced hereunder :

Section 13 (8): *Where the Registrar is satisfied that it is necessary in the interest of the co-operative society or co-operative societies that -*

(i) any co-operative society be divided to form two or more co-operative societies; or

(ii) one or more co-operative societies be amalgamated with any other co-operative society; or

(iii) two or more co-operative societies be amalgamated to form a new co-operative society, then, notwithstanding anything hereinbefore contained, the Registrar may, after consulting the financing institution, if any, provide for -

(a) the division of that co-operative society into two or more co-operative societies; or

(b) the amalgamation of the society or societies -

(i) with any other co-operative society; or

(ii) to form a new co-operative society; with such constitution including representation on the committee, property rights, interests,

liabilities, duties and obligations, as may be specified in the order.

Section 13 (12) *Save as provided in sub-section (11), the order passed by the Registrar under sub-section (8) shall be final and where such an order involves the transfer of any assets and liabilities the same shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the society in which these are vested under that order without any further assurance."*

8. In the premise, the writ petition is allowed. Impugned condition No.4 in the absorption order dated 03.07.2001 (Annexure P-1) is set-aside, with a direction to respondents to grant all consequential benefits to the petitioner which may arise out of quashing of condition No.4, as aforesaid. No order as to costs.

(ARUN MONGA)
JUDGE

SEPTEMBER 26, 2019
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Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No