

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1651-2017

Date of decision: 10.05.2019

Shamsher Singh and another

...Petitioner(s)

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Nehra, Advocate for the petitioner(s).

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Subhash Ahuja, Advocate for respondent No. 4.

Ritu Bahri, J. (Oral).

The petitioners are seeking direction to the respondents to allow them to continue on the post of Clerk or Salesman on contract basis as per the judgment passed in the case of *Hargurpartap Singh V/s. State of Punjab and others 2007(13) SCC 292*.

Vide order dated 30.09.2011 (Annexure P-3), petitioner No. 1 was engaged for the bidding work of paddy/purchase of Karnal Mandi and petitioner No. 2 was made Incharge of Nilokheri Mandi and he was to submit daily purchase report/lifting report and balance in mandi in the evening daily while confirming the stocks at receipt point and will reconcile account of bardana etc. with Arthia's and HAFED and Rice Millers. The services of the petitioners were extended for a period of one year on contract basis from 01.08.2014 and the agenda to this effect was approved on 11.09.2014 (Annexure P-9). Thereafter on 24.09.2015 an agenda No. 5 was approved with respect to extension of contract period of both the

petitioners (Annexure P-11). Subsequently vide letter dated 23.10.2015 (Annexure P-12) written by Sub Registrar Cooperative Societies, Karnal, the status of the petitioners was changed from contractual to that of daily wagers for 89 days through outsourcing agency. The petitioners remained out of service from 31.07.2015 to 1.10.2015 and they were re-employed after approval received from the Deputy Registrar. Thereafter, agenda No. 3 was approved on 30.06.2016 (Annexure P-13) to keep employees on daily wages for properly running the work of the society such as mid-day meal, fertilizers etc.

The grievance of the petitioners is that after this agenda was approved, they have been working on the post of Clerk but they have not been paid any salary. They made representation to the Registrar of the Karnal Haryana Cooperative Marketing cum Processing Society Limited-respondent No. 4 that they should be appointed on the vacant post of Clerk (Annexure P-14) and the Assistant Registrar, Cooperative Society vide letter dated 30.08.2016 (Annexure P-15) gave a direction to respondent No. 4 to take a decision within a period of one week and thereafter the petitioners were taken back in service and they have worked till 28.12.2016 pursuant to the letter dated 04.10.2016 (Annexure P-16). Some other persons have been engaged by the Society in the month of October, 2016 namely Surender and Sandeep and the petitioners have been relieved. The petitioners further claim that vide letter dated 06.12.2016 (Annexure P-18), approval has been granted by the Deputy Registrar, Cooperative Society for engaging one Clerk/Salesman on 89 days basis in the interest of the society. Despite this approval, petitioners are not being allowed to work and private

respondents No. 5 and 6 have been appointed by replacing the petitioners who were working since 2011.

On notice of this petition, short reply has been filed by respondents No.1 and 2 and written statement has been filed by respondent No. 3 and the consistent stand has been taken that the Karnal Cooperative Marketing-cum-Processing Society Limited, Karnal is governed by Primary Cooperative Marketing-cum-Processing Societies Limited Staff Service Rules, 2003 and according to which the Board of Directors/Board of Administrators is the appointing authority and at present there is no elected Managing Committee of the Society and it is a Board of Administrators who is managing the work of the Society as per the bye law and service rules. In a separate written statement filed by respondents No. 5 and 6, the preliminary objection has been taken that the present Society does not fall within the ambit of the 'State' or 'other authorities' under Article 12 of the Constitution of India. The 'Society' is neither owned nor controlled financially by Government as the Government is having only limited regulatory control in terms of the provisions of Haryana Co-operative Societies Act just to regulate the functioning of societies so as to protect interest of societies and its members. As per the amended Haryana Cooperative Societies (Amendment) Act, 2006, the share of the government has been restricted to 25% of capital share of a 'society' and number of nominated members to Board of Directors of 'Society' has also been restricted to one member only as per Section 29 which reads as under:-

“29. Nomination and co-option on committee:-

(1) Notwithstanding anything contained in sub section (1) of Section 28

(a) where the Government has-

(i) subscribed to the share capital of a cooperative society;

or

(ii) guaranteed the principal and interest in respect of debentures issued by society; or

(iii) guaranteed the principal and interest in respect of loans and advances to society or

(iv) assisted the society with loans and grants;

by not less than one lakh rupees, the Government or any person authorized by it shall have the right to nominate on the managing committee of such society not more than three members or one third of the total number of elected members of such committee, whichever is less;

(b) Where the Industrial Finance Corporation, the State Finance Corporation, or any other financing institution or an employer notified in this behalf by the Government has provided finance to a cooperative society the Industrial Finance Corporation, the State Finance Corporation or the other financing institution or the employer, as the case may be, shall have the right to nominate one person on the committee.

Now in the amended Act following proviso has been added to Section 29(b):

Provided that in case of a co-operative bank the share capital contribution by the Government shall not exceed twenty-five percent of the paid up share capital and the nomination shall be limited to one member only. The Managing Committee of respondent-Society presently consists of 9 members-6 elected members + Asstt. Registrar Coop. Societies + Inspector Coop. Societies + District Manager, HAFED (representative of APEX Society-without any dissenting power). Thus, the majority of members of Managing Committee/Board of Directors, are elected members from co-operative societies. All decision in meetings of Board of Directors are taken by majority. Since respondent-society does not within the ambit of "State" or "other authorities" envisaged under Article 12 of Constitution of India."

While referring to Annexure P-14, the representation made by the petitioners, it is clarified that petitioners have no right to seek appointment against a regular post as appointment on a regular post are made under Rule 15 by its Board of Directors/Board of Administrators who has to make selection and appointment on regular basis. The petitioners were given appointment only on contract basis at consolidated salary of Rs.6,000/- per month to meet the emergent exigencies during the paddy/wheat procurement seasons and for running work of mid day meal, fertilizer etc. Since the Society does not come within the definition of “State” under Article 12 of the Constitution of India, the judgment in the case of *Hargurpratap Singh V/s. State of Punjab and others, 2007(13) SCC 292* is not applicable.

On 04.07.2018, this Court passed the following order:-

“After hearing counsel for the parties, counsel for respondent No. 4 will assist on the next date of hearing on the point as to whether after sanctioning post of two Clerks on which the petitioners are working since 2008-09, their services can be dispensed with without abolition of the post.

Adjourned to 12.10.2018.”

After the order dated 04.07.2018, additional affidavit dated 07.10.2018 has been filed by the Parbandhak, the Karnal Haryana Cooperative-cum-Processing Marketing Society Ltd., Karnal. In this affidavit, it has been clarified that there are only two posts of Salesmen-cum-Clerks and one post of Store-keeper as per sanction accorded by Registrar, Cooperative Societies, Haryana dated 17.10.2014 (Annexure R-4/1) and these posts of Salesmen-cum-Clerks are manned by Vinod Kumar and Rajan Malik and the post of Store-keeper is occupied by Amit Chauhan who are working on regular basis.

The petitioners had been appointed keeping in view the emergent temporary job requirements which arose due to allotment of additional mandis for procurement of paddy and wheat allocated by the Government of Haryana. The petitioner No. 1 had continued in service from 03.10.2008 to 31.07.2015 and petitioner No. 2 had continued in service from 01.08.2010 to 31.07.2015. Thereafter Board of Directors vide resolution dated 24.09.2015 (Annexure P-11) decided to engage services of both the petitioners as Clerks for procurement season: Kharif-2015 and approval to this resolution was granted on 23.10.2015 (Annexure P-2). Subsequently, they were engaged on daily wages for 89 days w.e.f. 09.11.2015 to 05.02.2016 through outsourcing agency namely M/s. Gangotri Security Agency, Karnal and on completion of the said period, their services were dispensed with as is evident from the Bills of said Agency dated 31.03.2016 (Annexure R-4/2). Thereafter the Deputy Registrar, Cooperative Societies, Karnal vide letter dated 09.12.2016 accorded approval for engaging one Salesman-cum-Clerk for 89 days on D.C. Rates (Annexure R-4/4). Against this one post, Sanjiv Kumar was appointed. The petitioners were not in service when private respondents No. 5 and 6 were engaged and none of them was appointed against any permanent post and hence the judgment of Supreme Court in ***Hargurpartap Singh V/s. State of Punjab 2007(13) SCC 292*** is not applicable.

After going through the contents of the writ petition, written statements, and additional affidavit filed by Parbandhak, it becomes abundantly clear that petitioners have been appointed only in emergency with respondent No. 4-Society and they were never appointed against the permanent sanctioned post. The second aspect is that as per the By-Laws

of the Karnal Haryana Co-operative Marketing Cum Processing Society Ltd., Karnal, the Managing Committee has power to make the appointment as under:-

“36 (xxi). To appoint, suspend, dismiss or punish employee subject to any conditions laid down by the Registrar from time to time and to take proper securities from as determined by the Registrar.”

37. It shall be competent for the Managing Committee to frame subsidiary rules for the conduct of the business of the society-consistent with the by-laws. Such subsidiary rules shall be entered in the minute book of the society and shall take effect only after their approval by the Registrar.”

The Registrar Cooperative Society has no role to play in day to day functioning including the appointment of any of the employees of the Cooperative Society keeping in view the by-laws of the society. The present society cannot term to be 'State' under Article 12 of the Constitution of India.

At this stage, reference can be made to 2007(2) RSJ, 528 ***Mini Bank Karamchari Union Zila Jind, Narwana V/s. State of Haryana and others***, whereby Division Bench was considering the review application after dismissal of the writ petition. The case of the petitioner was that Jind Central Cooperative Bank Limited fell within the definition of the 'State' and writ petition has been wrongly dismissed. The Division Bench dismissed the review application by observing as under:-

“In the present case too the Bank (respondent No. 4) is a primary co-operative society and is not a 'State' within the meaning of and for the purpose of Article 12 of the

Constitution of India. It is neither an agency nor instrumentality of the State and is not engaged in any activity involving any public function. As regards the contention that the order of the Deputy Registrar has been assailed, the case of S.S. Rana vs. Registrar, Cooperative Societies and another, JT 2006(5) SC 186 may be noticed. The petitioner therein was working as a Branch Manager in the Kangra Central Cooperative Bank Limited. A departmental proceeding was initiated under the statutory rules applicable to the employees of the said Bank. On being found guilty of the charges levelled against him, his services were terminated. The delinquent employee therein preferred an appeal against the order terminating his services before an Administrator who had been appointed to manage the affairs of the Cooperative Bank therein. The appeal was dismissed by the Board of Directors who had by then replaced the Administrator. The delinquent employee thereafter filed a writ petition before the High Court of Himachal Pradesh praying for quashing the order of termination as also the appellate order. It was held by the Supreme Court that the functions of the cooperative society in the said case are regulated by the provisions of the Himachal Pradesh Co-operative Societies Act except as provided in the bye-laws. The State has no say in the functioning of the society.”

Learned counsel for the petitioners has referred judgments in **CWP No. 16930 of 2006** titled as **Raj Narayan Yadav V/s. State of Haryana and others** 2008(1) S.C.T. 756 and **LPA No. 34 of 1994** titled as **The District Red Cross Society, Sirsa V/s. Radha Krishan Rajpal and another** 2005(1) S.C.T. 41 which will not help to the petitioners as in those cases District Red Cross Society and Shahbad Cooperative Sugar Mills Ltd. were working under the direct control of the State Government and since in the present case, the State has no role to play as stated by respondents No. 1

to 3, writ petition is not maintainable and hence the judgment of Hon'ble the Supreme Court in the case of *Hargurpartap Singh V/s. State of Punjab and others 2007(13) SCC 292* cannot be made applicable.

Dismissed.

10.05.2019

Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No