

**CM-1441-CWP-2019 in/and
CWP-23232-2017 and
CWP-19098-2017**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-1441-CWP-2019 in/and
CWP-23232-2017
Date of decision: 30.01.2019**

Gaurav Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

AND

CWP-19098-2017

Satya Pal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arvind Bansal, Advocate for the petitioner
in CWP-23232-2017.

Mr. Babbar Bhan, Advocate for the petitioner
in CWP-19098-2017.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Rakesh Nagpal, Advocate for respondent No. 4.

Mr. Rajeev Sharma, Advocate for
respondents No. 5 to 8.

Ritu Bahri, J. (Oral).

CM-1441-CWP-2019

Application is allowed and replication is taken on record.

Main cases

This order shall dispose of CWP-23232-2017 and CWP-19098-
2017. However the facts are being extracted from CWP-23232-2017.

The petitioner is seeking quashing of the order dated 16.06.2017 (Annexure P-6) whereby respondent No. 1 while entertaining the Revision Petition No. 04 of 2016 filed by private respondents No. 5 to 8 has set aside the order dated 24.09.2015 (Annexure P-5) passed by respondent No. 2-Registrar Cooperative Societies, Haryana.

A perusal of the order dated 24.09.2015 (Annexure P-5) shows that the Registrar had examined the Primary Cooperative Marketing-cum-Processing Society's Staff Service Rules, 2003 (hereinafter referred to as 'Service Rules, 2003'). As per the provision of Rule 3 of the Service Rules, 2003, no appointment in the Marketing Societies can be made by the Managing Committee in any meeting in which Assistant Registrar, District Manager, Hafed and Inspector Cooperative Societies were not present. However, appointments made on 09.12.2013 in a Managing Committee Meeting are in violation of the above Service Rules, 2003 since Assistant Registrar, District Manager, Hafed were not present. It has further been observed that no procedure such as inviting applications, publishing advertisement in newspaper and Employment Exchange was adopted and no previous sanction was obtained for appointment of relatives of members of the Managing Committee and other 9 officials of the Society as required under Rule 112 of the Haryana Cooperative Societies Rules, 1989. The Registrar has further observed that the Deputy Registrar Cooperative Societies, Kurukshetra had wrongly declined to rescind the resolution dated 09.12.2013 keeping in view that the appointments were made as per the Service Rules, 2003 and as per Rule 112 of the Haryana Cooperative Societies Rules, 1989. Order dated 29.12.2014 passed by Deputy Registrar

Cooperative Societies was set aside and further resolution No. 2 dated 09.12.2013 passed by the Managing Committee of the Society was also rescinded being illegal, wrong and arbitrary. The Registrar, further while exercising powers under Section 34(2) of the Act suspended the Managing Committee and directed the DRCS to initiate further action under Section 34(1) of the Act. It has further been observed that the main appeal was filed in February, 2015 and notice was issued to the parties including the Manager of the Society on 24.09.2015. The said notice was not received back and undelivered and a news was published in the newspaper “Kaithal Kesri” on 11.01.2015. The Manager and the elected Directors were well aware about the proceedings. The Manager of the Society issued agenda for regularization and despite stay granted by the Court of Registrar, got the said resolution passed by the Managing Committee and even this resolution was passed in the absence of Assistant Registrar and District Manager which was mandatory. When agenda No. 3 dated 11.06.2015 was stayed by the Registrar and subsequent resolution regarding regularizing the appointments was suspended then the Manager knowing and deliberately issued agenda No. 1. A further direction was given to the Inspector Cooperative Societies Guhla to take action against the Managing Committee members with regard to the meeting dated 09.12.2013 to initiate proceedings under Section 101 of the Act.

On notice of this petition, the respondent No. 4 has filed the written statement. As per the written statement filed by respondent No. 4, they have reiterated the Service Rules amended upto 2011 which required

that power to make appointment shall vest with the BOD/BOA and decision to various appointments has to be taken in presence and concurrence of Assistant Registrar Cooperative Societies, Inspector Cooperative Societies and District Manager, HAFED and it has further been clarified that the resolution dated 09.12.2013 was passed without following the aboe said Rules. As per the short reply filed by Joint Registrar-respondent No. 2 on 27.04.2018, respondent No. 4 is the competent authority and the order dated 24.09.2015 (Annexure P-5) and 16.06.2017 (Annexure P-6), were under judicial capacity.

The private respondents No. 5 to 8 have filed the written statement but they have not stated anything as to how advertisement was issued and how they were appointed by following due process of law. While rescinding resolution dated 09.12.2013 in the order dated 24.09.2015 (Annexure P-5), it has specifically been observed that the appointments were made by not publishing any advertisement or calling application or through any employment exchange.

A perusal of the order dated 24.09.2015 (Annexure P-5) further shows that during the pendency of the appeal and stay, the Managing Committee have regularized the services of the private respondents. The resolution has been rightly rescinded by the order dated 24.09.2015 (Annexure P-5) and the impugned order dated 16.06.2017 (Annexure P-6) setting aside order dated 24.09.2015 (Annexure P-5) is liable to be set aside.

Hence, writ petition is allowed and the order dated 16.06.2017

(Annexure P-6) is set aside.

30.01.2019
Divyanshi

(RITU BAHRI)
JUDGE

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