IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.27310 of 2019 (O&M)
Reserved on : September 24, 2019
Date of decision : January 31, 2020

Surinderpal Singh Grewal ...Petitioner

Versus

Registrar Cooperative Societies, Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Shiv Kumar, Advocate
for the petitioner.

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Harinder Singh Sidhu, J. :

1. This writ petition has been filed challenging the amendment in Rule 14 of the Punjab State Cooperative Supply and Marketing Federation Employees (Common Cadre Service Rules) & (Punishment and Appeal) Rules, 1990 (herein for short '*the 1990 Rules*'), which was approved by the Registrar Cooperative Societies, Punjab vide order dated 24.07.2018 (Annexure P-15) as being ultra vires The Punjab Cooperative Societies Act, 1961 (herein for short '*the 1961 Act*') and The Punjab Cooperative Societies Rules, 1963 (herein for short '*the 1963 Rules*'). He has also prayed that the revision petition (Annexure P-14) filed by the Managing Director before respondent No.1 in pursuance to the impugned amendment be also set aside.

2. Briefly the facts as stated in the petition are that the petitioner while working as General Manager at the Kapurthala plant of The Punjab

State Cooperative Supply & Marketing Federation Ltd. (for short "Markfed") along with other members of the Purchase Committee was charge sheeted on 26.02.2004 on the charge of making un-competitive and untimely purchases of raw material during the year 2002-03 and thereby causing huge financial loss to Markfed. A regular departmental inquiry was instituted in which the charges against the petitioner and the other charged officials were proved. However, vide order dated 23.11.2009, passed by the Managing Director, while the other charged officials were exonerated, punishment of bringing down by three stages in the time scale of pay at the time of retirement was imposed on the petitioner. It was also directed that recovery be effected from him by initiating arbitration proceedings under the 1961 Act. Against the order of the Managing Director the petitioner preferred a statutory appeal before the Board of Directors. The Board of Directors in its meeting held on 27.11.2018 exonerated the petitioner of all charges and set aside the punishment order dated 23.11.2009 passed by the Managing Director. was set aside.

3. During the pendency of the petitioner's appeal before Board of Directors the respondent No.3- Markfed filed an arbitration reference under Section 55 and 56 of the 1961 Act on 05.02.2013 for recovery of the loss. The said reference was decided by the Additional Registrar (I) Cooperative Societies on 30.09.2013. The petitioner was directed to pay 3,25,64,422/- along with interest @ 18% per annum. Aggrieved against that order, the petitioner filed appeal under Section 68 of the 1961 Act before the Registrar, Cooperative Societies, who vide order dated 9.4.2014 remanded the case to Additional Registrar (I) and directed him to pass a fresh order on

merits. The Additional Registrar (I) vide order dated 10.03.2015 dismissed the reference for recovery as premature as the appeal of the petitioner was pending before the Board of Directors in which there was a stay regarding continuation of arbitration proceedings for recovery. Respondent No. 3 Markfed preferred an appeal against the order dated 10.03.2015 of the Additional Registrar (I). The appeal was decided by Additional Registrar (I) on 31.01.2017 in favour of Markfed. The Arbitration Reference was accepted and the petitioner was directed to pay Rs.3,25,64,422/- along with interest. The petitioner preferred an appeal before the Registrar Cooperative Societies which was dismissed vide order dated 18.09.2018. The petitioner filed CWP No.5798 of 2019 assailing the order of recovery. The said writ petition was dismissed as withdrawn with liberty to the petitioner to file a review petition before the Registrar Cooperative Societies for reviewing the order dated 18.09.2018 in view of the fact that after passing of the order dated 18.09.2018 the appeal filed by the petitioner against the order imposing punishment on him had been decided and the punishment had been set aside. However, the Registrar declined to review the order on the ground that it had no power to review its own order. The said order dated 04.07.2019 was challenged in CWP No.22698 of 2019 , which was disposed of as infructuous vide order dated 10.09.2019 as it was stated that the Registrar would appropriate orders in the review petition.

4. In the light of the impugned amendment in Rule 14 of the 1990 Rules respondent No. 3- has filed revision petition (Annexure P-14) assailing the order of the Board of Directors exonerating the petitioner.

5. It is this revision petition (Annexure P-14) and the amendment

in Rule 14 of the 1990 Rules (Annexure P-15) which has been called in question by the petitioner in this petition.

6. The un-amended Rule and the Amended Rule as approved by the Registrar is reproduced below:

Rules 14(d)	Existing Rule	Amendment to be incorporated in Rule
(i)	In all such cases where the Appellate Authority is AMD, the aggrieved employee shall have the right to file a revision to the MD, Markfed.	(i) In all such cases where the Appellate Authority is AMD, the aggrieved employee shall have the right to file a revision before M.D., Markfed.
(ii)	In all such cases where the Appellate Authority is AMD, the aggrieved employee shall have the right to file a revision to the BoD, Markfed.	(ii) In all such cases where the Appellate Authority is MD, the aggrieved employee shall have the right to file a revision petition before BoD, Markfed.
(iii)	In all such cases where the Appellate Authority is BoD, the aggrieved employee shall have the right to file a revision petition before RCS, Punjab.	(iii) In all such cases where the Appellate Authority is BoD, the aggrieved employee shall have the right to file a revision petition before RCS, Punjab.
(iv)		(iv) (d) Notwithstanding anything contained in these Rules, the Registrar may suo moto at any time, or on the application of a party presented within 60 days from the date of receipt of the order sought to be impugned, call for and examine the record of any disciplinary proceeding or the purpose of satisfying himself regarding the legality or propriety of any decision or order passed by the Punishing or the appellate authority. Provided that this provision shall not apply to disciplinary cases where the Registrar himself has decided the matter as appellate authority.

		(e) In case it appears to the Registrar that any such order or decision should be modified, annulled or revised, the Registrar may, after giving the persons affected thereby, an opportunity of being heard pass such order thereon as he may deem fit including remitted of the case to the authority which imposed the penalty or to any other officer of the Additional Registrar with such directions as he may deem necessary. (f) Where application is made to the Registrar for revision under clause (a) of these rules, the Registrar may decide the same himself or transfer it for decision to any other officer of the Cooperative Department not below the rank of Additional Registrar, Cooperative Societies.

7. As per the un- amended Rule 14(d) only the aggrieved employee could file revision. As per Rule 14(d)(i) the revision lay before the M.D. Markfed where the appellate authority was the AMD. Under Rule 14(d)(ii) the revision could be filed before the Board of Directors of Markfed where the Appellate Authority was the Managing Director. As per Rule 14(d)(iii) the revision would lie before the RCS, Punjab where the Appellate Authority was the Board of Directors. By the impugned amendment clause (iv) has been inserted in Rule 14(d) as per which notwithstanding anything in the Rules, the Registrar may suo moto at any time or on the application of a party presented within 60 days of the receipt of the order, call for and examine the records of any disciplinary proceeding to satisfy himself regarding the legality or propriety of such decision and may after hearing the affected party pass such order as he may deem fit.

8. Thus, while as per the un-amended Rule only the aggrieved employee could file a revision, after the amendment the Registrar can exercise that power either suo moto or on the application of a party.

9. Ld. Counsel for the petitioner had argued that it is only by virtue of Section 69 of the 1961 Act that the power of revision is vested in the Registrar Cooperative Societies. Section 69 enables the Registrar to either suo moto or on the application of a party to the reference, call for and examine the record of any proceedings in which no appeal under section 68 lies to the Government or the Registrar as the case may be, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed. And such order may after giving opportunity of hearing to the affected parties be modified, annulled or revised as deemed appropriate. He argued that Section 69 has been deleted by **" The Punjab Co-operative Societies (Second Amendment) Act, 2017" (for short "2017 amendment")**. After the deletion of Section 69, the Registrar cannot exercise power of revision. Hence, the amended Rule 14(d)(iv) of the 1990 Rules is ultra vires the 1961 Act.

10. The above contention of the Ld.Counsel cannot be accepted. It is not correct that Section 69 has been deleted by the 2017 Amendment.

11. The relevant extract of Punjab Co-operative Societies (Second Amendment) Act, 2017 is reproduced below:

"Part-I
GOVERNMENT OF PUNJAB
DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB
NOTIFICATION
The 29th December, 2017

No.37-Leg./2017 – The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 15th day of December, 2017, is hereby published for general information:-

THE PUNJAB CO-OPERATIVE SOCIETIES (SECOND AMENDMENT) ACT, 2017
(Punjab Act No.27 of 2017)
AN ACT

further to amend the Punjab Co-operative Societies Act, 1961.

Be it enacted by the Legislature of the State of Punjab in the Sixty-eighth Year of the Republic of India as follows:-

1. (1) This Act may be called the Punjab Co-operative Societies (Amendment) Act, 2017.

(2) It shall come into force on and with effect from the date of its publication in the Official Gazette.

2. to 5. xxx xxx xxx

6. In the principal Act, in Section 69, the following Explanation shall be added, namely:-

"Explanation:-

(i) The application of a party to a reference shall not lie before the Registrar or the Government, as the case may be, if appeal under Section 68 of the Act lies or has been availed of by such a party to a reference;

(ii) The application of a party to a reference shall not lie before the Registrar or the Government, as the case may be, if an order or decision is made in revision by the Registrar or any authority authorized by him in this regard;

(iii) No revision shall lie under section 69 against any order passed under the service rules of the concerned co-operative societies where in a revision is already provided in the service rules of that society; and

(iv) No revision under section 69 shall be available

against any office order passed by the Registrar or his subordinates".

VIVEK PURI

Secretary to Government of Punjab,

Department of Legal and Legislative Affairs"

A bare perusal of the same reveals that Section 69 has not been deleted. Only an Explanation has been added to the existing Section 69.

SECTION – 69 is as under:

> ***"Revision :*** *The State Government and the Registrar may, suo moto or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal under section 68 lies to the Government or the Registrar, as the case may be, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if, in any case it appears to the Government or the Registrar that any such decision or order should be modified, annulled or revised, the Government or the Registrar, as the case may be, may, after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit."*

On its plain language the powers of revision under Section 69 of the Act have to be read in the context of orders passed under various provisions referred to in Section 68 of the Act and which are appealable under that Section.

Section 68 is reproduced below:

"68. Appeals. (1) An appeal shall lie under this section against-

(a) an order of the Registrar made under sub-section (2) of section 8 refusing to register a society;

(b) an order of the Registrar made under sub-section (4) of section 10 refusing to register an amendment of the bye-laws of a co-operative society;

[(bb) an order of the Registrar made under section 10.-A directing amendment of bye-laws of a co-operative society;];

(c) a decision of a co-operative society, other than a producer's society, refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;

(d) a decision of a co-operative society expelling any of its members;

[(e) an order made by the Registrar removing or suspending a committee or a member thereof under Section 27;];

(f) an order made by the Registrar under section 52 apportioning the costs of an inquiry held under section 50 or an inspection made under section 51;

(g) any order of surcharge under section 54;

(h) any decision or award made under section 56;

(i) an order made by the Registrar under section 57 directing the winding up of a co-operative society;

(j) any order made by the liquidator of a co-operative society in exercise of the powers conferred on him by section 59;

(k) any order made under section 65 ;

[(l) grant of a certificate under sub-section (2) of section 67-A for the recovery of the amount due from a member on account of loan and interest thereon.]

[(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order,

(a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;

(b) if the decision or order was made by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in this behalf;

(c) if the decision or order was made by the Joint Registrar or Additional Registrar, to the Registrar;
(d) if the decision or order was made by the Registrar, to

the Government; and

(e) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorised by the Registrar in this behalf.

(3) No appeal shall lie under this section from any decision or order made by any authority in appeal.

(4) Any appeal under sub-section (1) pending immediately before the commencement of the Punjab Co-operative Societies (Amendment) Act, 1969, before any authority shall stand transferred to the authority to whom such appeal lies on such commencement.]."

12. Apart from the fact that Section 69 has not been deleted, it is also not relevant for determining the validity of the impugned provision of the 1990 Rules dealing with the conditions of service of employees of the Society (Markfed) as Section 69 and the 1990 Rules operate in totally different fields.

13. The power to frame Rules regulating the service conditions of employees of Cooperative Societies is enshrined in Section 84-A (in case of Common Cadre employees) and generally in Section 85 (2) (xxxviii) of the Act.

14. The considerations on which a subordinate legislation/ rule can be struck down are well settled.

In ***Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703***, the same were outlined as under:

"**34.** In *State of T.N.* v. *P. Krishnamurthy*, this Court after adverting to the relevant case law on the subject, laid down the parameters of judicial review of subordinate legislation generally thus: (SCC pp. 528-29, paras 15-16)

> "*15.* There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:
>
> > (*a*) Lack of legislative competence to make the subordinate legislation.
> >
> > (*b*) Violation of fundamental rights guaranteed under the Constitution of India.
> >
> > (*c*) Violation of any provision of the Constitution of India.
> >
> > (*d*) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
> >
> > (*e*) Repugnancy to the laws of the land, that is, any enactment.
> >
> > (*f*) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).
>
> *16.* The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

15. Ld. Counsel for the petitioner has not been able to point out as to how the amended Rule is invalid on any of the aforesaid parameters.

16. Accordingly, we find no merit in contention of the petitioner

that the impugned Rule is invalid.

17. In view thereof his contention that the the revision petition (Annexure P-14) is incompetent and without jurisdiction as it has been filed by the Managing Director under the provisions of the amended Rule is also without merit. However, other than assailing the maintainability of the revision petition on the aforesaid ground, it would be open to the petitioner to raise any contention before the Registrar as may be permissible in law.

18. The petition is accordingly disposed of .

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 31, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No