

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

CWP-11693-2020 (O&M)

Date of decision : 06.01.2021

Sumer Singh

...Petitioner

Versus

Indian Red Cross Society and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Ms. Sangita Dhanda, Advocate, for the petitioner.

Ms. Seema Pasricha, Advocate for respondent No.1.

Mr. Pankaj Jain, Advocate for respondent No.2.

Mr. Raman Sharma, Advocate for respondent No.3.

Mr. B.R. Mahajan, Advocate General, Haryana with
Mr. Samarth Sagar, Addl. A.G., Haryana
for respondent Nos.4 and 5.

Mr. Anil Mehta, Advocate for respondent No.6.

ANIL KSHETARPAL, J.

The challenged herein is to the order granting extension in the service to respondent No. 6 on the post of General Secretary Haryana in Indian Red Cross Society Haryana Branch for a period more than 3 years. There is only one post in the State. Originally, Respondent No. 6 was appointed for a period of 3 years. In other words he was given tenure posting.

In the considered view of this Court, the question which needs adjudication is

“Whether in absence of enabling power in the Service Rules, the period of tenure posting could be extended by the State or its instrumentalities?”

At the outset, it must be noticed that there is disagreement with regard to applicability of a particular set of Service Rules. There are three sets of Service Rules, which have been placed on file. The Managing Body of the Indian Red Cross Society at national level insists that the Rules framed by the National Body are applicable. Whereas the stand taken by the Haryana branch of the Society is entitled to frame its own rules and hence, the Indian Red Cross Society and St. John Ambulance (India) Haryana State Branch (Head Quarters) Staff Rules, 2017 (hereinafter referred to as “the Staff Rules 2017”), were made, approved and adopted and hence governed by the same. However, for the purpose of this writ petition, this Court, for the sake of arguments has accepted the stand of the Haryana State branch without finally opining as to which set of Rules are applicable. Further, although in the written statement, respondent No.6 has claimed that the writ petition is not maintainable as the petitioner has alternative remedy of filing petition before the Central Administrative Tribunal, however, at the time of arguments, no objection with regard to maintainability of writ petition was pressed. Therefore, this Court refrains from entering that arena.

From the material which has come on record, it is apparent that Indian Red Cross Society was constituted under Indian Red Cross

Society Act, 1920 which was amended by the Parliament vide Act No.22 of 1956 and the adaptation of laws (4) Order of 1956. The Act has further been amended vide Act No.14 of 1992. At the National Level, His Highness the President of the Country is the President of the Society whereas at the State Level, it is his Highness, the Governor who is the President of the Society.

The President of the society (Haryana Branch) on 02.12.2013 appointed respondent no. 6 as General Secretary on a tenure post of three years, which reads as under:-

*“The Hon’ble Governor of Haryana-President, Indian Red Cross Society (Haryana State Branch) is pleased to appoint/depute Shri D.R. Sharma, Secretary, District Red Cross Society, Faridabad as General Secretary, Indian Red Cross Society (Haryana State Branch) **for a period of three years** as provided under Rule G(b), Chapter III of the proposed IRCS-Uniform Rules State/UT branches made/circulated by the National Head Quarter, New Delhi under Section 5 of the Indian Red Cross Society Act, 1920 (as amended by Act No.22 of 1956 and Adaptation of laws (No.4) Order of 1957 and the Act No.14 of 1992) issued by the Government of India, Ministry of Health and Family Welfare (Department of Health) vide No.V.15014/19/2004-MS dated 19.08.2009 on the same terms, conditions and in the same pay scale as he is drawing as Secretary, District Red Cross Society, Faridabad.*

The Hon’ble Governor of Haryana-President, St. John Ambulance Association, Haryana State Centre is further pleased to appoint/depute him as State Secretary of St. John Ambulance Association, Haryana State Centre under the

provision of Clause 18 of the Constitution of St. John Ambulance Association, Haryana State Centre.”

It is apparent from the reading of the order, that the appointment has been made under Rule G(b) Chapter III of the proposed IRCS-Uniform Rules, State/UT Branches Male/Circulated by National Headquarter, New Delhi under Section 5 of the Indian Red Cross Society Act, 1920 (hereinafter to be referred as “the Act of 1920”). These Rules were proposed/draft Rules made by the National Body and circulated to various state units.

Thereafter, vide Notification dated 15.12.2017, the Managing Body of the Red Cross Society with the previous approval of the President of the Society notified Rules known as “Indian Red Cross Society Branch Committee Rules, 2017”.

As noticed above, this writ petition is being decided while assuming that the Staff Rules, 2017 as framed by the Haryana State Branch. The post of General Secretary is referred to in Rule 6, the relevant part whereof reads as under:-

Appointing Authority	6.	Appointments to the posts specified in column 2 of the table given below, in the service shall be made by the authorities mentioned against each in column 3 of the said table
2.	General Secretary	To be appointed by the President under Rule No.G(b), Chapter III of the Uniform Rules of State/UT Branches made/circulated by the NHQ, New Delhi under Section 5 of the Indian Red Cross Society Act, 1920 subject to ratification in the Managing Committee.

Rules 9 and 10 lays down the source of recruitment and method of recruitment, the same reads as under:-

Source of Recruitment	9	All direct recruitments shall be made through advertisement in News Papers.	
Method of Recruitment	10	(i)	Recruitment shall be made by promotion or by direct recruitment to be decided by the competent authority.
		(ii)	In case of direct recruitment, the selection of the candidate(s) will be made by a committee to be constituted by the competent authority from time to time.
		(iii)	Any recruitment beyond the sanctioned post shall be made with the prior approval of the President for which the indenting officer shall give the requirement in writing alongwith the justification for the same.
		(iv)	The recruitment in the service in the case of the followings shall be made as under:-
S. No.	Designation	Method of Recruitment	
1.	Vice-Chairman	To be appointed by the President under rule No.d, Chapter-III of the Uniform Rules of State/UT Branches made/circulated by the NHQ, New Delhi under Section 5 of the Indian Red Cross Society Act, 1920 subject to ratification in the Managing Committee.	

2.	General Secretary	The post of General Secretary will be filled up either by Direct Recruitment or by Promotion by the Chairman/President subject to ratification in the Managing Committee meeting of Indian Red Cross Society, Haryana State Branch. <u>By Direct Recruitment:-</u> To be appointed by the President under Rule No.G(b), Chapter III of the Uniform Rules of State/UT Branches made/circulated by the NHQ, New Delhi under Section 5 of the Indian Red Cross Society Act, 1920 subject to ratification of the Managing Committee. Under Chapter IV, the term of the General Secretary shall initially be for a period of three years. On completion of the term, the post shall be made open. The existing Secretary may, if interested, apply for another term. <u>By Promotion</u> From amongst the first three senior District Secretaries from entire District Red Cross Branches of Haryana and Joint Secretary State Brach on seniority-cum-merit basis under rule No.11. The merit shall be decided on the basis of service record.
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The petitioner completed his tenure of three years on 04.12.2019. Thereafter, he continued to work on the post. On 13.02.2020, the petitioner has been directed to continue to perform duties of the General Secretary until regular General Secretary is appointed, the operative part whereof reads as under:-

“Consequent upon the completion of the term of Sh. D.R. Sharma on 05.12.2019, Hon’ble Governor-cum-President, Indian Red Cross Society (Haryana State Branch) & St. John Ambulance Association, Haryana State Centre, is pleased to order that Shri D.R. Sharma outgoing General Secretary, Indian Red Cross Society (Haryana State Branch) and the State Secretary, St. John Ambulance Association, Haryana State Centre, shall continue to perform the duties of the General Secretary, Indian Red Cross Society (Haryana State Branch) and State Secretary, St. John Ambulance Association, Haryana State Centre w.e.f. 06.12.2019, until regular General Secretary and State Secretary respectively, is appointed.

This is subject to ratification by Managing Committee of the Indian Red Cross Society, (Haryana State Branch) and Executive Committee of the St. John Ambulance Association, Haryana State Centre.”

On 02.06.2020, another order has been issued, extending the tenure of the petitioner till his superannuation i.e. on 30.04.2022. The same reads as under:-

“I have gone through the office note. However, Indian Red Cross Society, Haryana State Branch has rendered appreciable services during COVID-19, Hon’ble President

of India, Hon'ble Prime Minister of India, Union Health Minister, Ministers and MLAs of Haryana have also appreciated the services of the Haryana State Red Cross Branch. Keeping this in view, I would like that the term of Shri D.R. Sharma, as General Secretary, Indian Red Cross Society and St. John Ambulance of India, Haryana State Branch, Chandigarh be extended uptill his superannuation i.e. 30th April, 2022."

On the basis of the aforesaid order, an office order has been issued to the following effect:-

"The Hon'ble Governor Haryana-cum-President, Indian Red Cross Society, St. John Ambulance (India), Haryana State Branch, vide orders dated 02.06.2020, has extended the term of Shri D.R. Sharma as General Secretary, Indian Red Cross Society and State Secretary, St. John Ambulance (India), Haryana State Centre, Chandigarh until his superannuation i.e. 30th April, 2022."

In this writ petition, correctness of the orders dated 02.06.2020 and 04.06.2020 have been assailed.

The parties have filed their pleadings. Learned counsels for the parties have been heard at length and with their able assistance perused the paper book. Learned counsels for the parties have addressed elaborate arguments on the issue as to which of the Service Rules is applicable. However, as noticed above, this Court does not wish to enter into the aforesaid controversy and for the sake of arguments, assume that the Staff Service Rules of 2017 as per the stand of respondent Nos.2 and 6, are applicable.

On the one hand, learned counsel for the petitioner has contended that there is no power to extend the tenure. Learned Advocate General Haryana as well as learned counsel appearing for the Indian Red Cross Society, National Body have taken a stand that the order passed is illegal and, therefore, the extension could not be granted.

Per contra, learned counsels for respondent Nos.2 and 6 have contested this position.

The entire case revolves around the interpretation of the Service Rules. Therefore, it is necessary to carefully analyze and interpret the Staff Rules, 2017. As per Rule 6, the President is the appointing authority for the post of General Secretary. Rule 9, provides that all direct recruitment shall be made through advertisement in the newspaper. Rule 10 provides that the post of General Secretary can be filled up from two sources i.e. either by direct recruitment or by promotion. However, the appointment shall be subject to ratification by the Managing Committee of Indian Red Cross Society Haryana State Branch. It is further provided that the President shall be entitled to make appointment either by direct recruitment or by promotion. If the competent authority decides to fill up the post by direct recruitment, a committee shall be required to be constituted. Under the column of direct recruitment, it is provided that the tenure of General Secretary shall be for a period of three years and on completion of the term, the post shall be made open. However, the existing Secretary (incumbent) can also apply for another term. In other words, the direct recruitment is against a tenure post for a period of three

years. Whereas, in the second mode of appointment i.e., by promotion, it can be made amongst the first three Senior District Secretaries from District Red Cross Branches of Haryana and Joint Secretary, State Branch on seniority-cum-merit basis under Rule 11 which provides that the promotion shall be made on the basis of seniority-cum-merit and the seniority alone shall not confer any right to such promotions.

Although, it is not clear, however, since the order dated 05.12.2016 specifically provide that the appointment is for a period of three years, therefore, it is safe to assume that the petitioner was appointed by way of direct recruitment. It may be noted here that if the General Secretary is appointed by promotion, then the rules does not envisage tenure posting. The tenure appointment is provided only under the category of direct recruitment. However, this is not relevant for the decision of this case. The tenure of respondent No.6 came to an end on 04.12.2019. At that stage, the competent authority had two options; either to appoint through direct recruitment and therefore constitute a selection committee or decide to fill up the post by promotion. The authority did not choose to go by what is provided in the Rules. Although, learned counsels for the parties have not address any arguments, however, it is important to note that Rule 22 does enable the President to relax any of the provisions of these Rules with respect to any class or category of persons or an individual, however, the same is required to be ratified by the Managing Committee. Rule 22 is extracted as under:-

Power of Relaxation	22	Where the President is of the opinion that it is expedient to do so, it may, by order, relax any of the provisions of these rules with respect to any class or category of persons, or an individual, as the case may be. Provided that relaxation so considered by the President will be ratified by the Managing Committee.
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It is not the case of the respondents that the President of the Society has in exercise of its powers under Rule 22 relaxed the Rules.

It may be noted here that learned counsels for the respondents No. 2 and 6 do not even assert that the extension has been given by the Governor in exercise of its powers under Rule 32 which reads as under:-

Extension and Reappointment after superannuation and Retirement	32	(a)	Extension in service may be given for one year to the State Awardees and two years to the National awardees (One year at one time) after attaining the age of superannuation/retirement as per pattern of Haryana Government.
		(b)	The employees who are in service and rendered outstanding performance can be re-appointed after superannuation on the basis of satisfactory performance and medical fitness on a contract of year to year basis by the competent authority on a fixed 50% of the last pay drawn. Initially he/she will be re-appointed on contract upto one year and may be extended (not more than one year at one time) upto sixty five years of age by the competent authority.

Even otherwise, Rule 32 which is in two parts has no application to the facts of the present case. The case of respondent No.6 neither falls under Clause-(a) nor in (b) of the Rule 32.

Now the stage is set for answering the question as framed.

In absence of enabling powers in the Service Rules, the President had no inherent power to travel beyond the Service Rules. Once, the Service Rules have been framed, notified and adopted then the State or its instrumentalities are required to follow the same. The Rules are framed/notified in order to regulate. If the authorities at the highest level do not adhere to the Rules, then the Court is left with no choice but to intervene. In the present case, extension given in the service is beyond the scope of the Staff Rules, 2017. If the appointment of respondent No.6 is considered to be a direct recruitment, then it has to be made after issuing recruitment notice in the newspapers and a Selection Committee was required to be constituted in this regard. The same has not been followed. On other hand, if it is considered to be by way of promotion, then the case of first three Senior District Secretaries was required to be considered. It is also not the stand of respondent Nos.2 and 6 that the appointment of respondent No.6 is by promotion.

It is important to note here that learned Advocate General Haryana has taken a stand that the decision of the President of the Society has not been ratified as required under Rule 6 although a meeting Managing Committee has already taken place. In any case, once the order of extension is itself beyond the enabling powers, then subsequent ratification, if at all comes through, would not result in curing the inherent defect.

At this stage, it is important to note that learned counsel for the respondents has relied upon a judgment in **Laxmi Kant D. Kolwaykar Vs. State of Goa and others, 2019(2) Maharashtra Law Journal 330** to contend that the extension can be granted in exercise of inherent powers. This Court has carefully gone through the aforesaid judgment. In the aforesaid case, respondent No.3 was given charge to the post of Chief Electrical Engineer on

officiating basis and thereafter extension granted. The Government found that both the Superintendent Engineers in the feeder post for the promotion to the post of Chief Electrical Engineer, were neither qualified nor possessed of the requisite experience. First of all, the Government gave charge to the writ petitioner, however, thereafter, respondent No.3 was given charge and subsequently gave extension. In that context, the Division Bench just observed that the extension in the service is inherent. However, it was never held that in all eventualities, the extension can be granted by the employer even in absence of enabling power in the Rules.

In the present case, the power to grant extension in the service has been provided in the Service Rules but regulated. The power of extension and reappointment is not absolute. The power of extension can be exercised only in the cases which fall within the scope of Rule 32. Further, the facts of the aforesaid judgment from Bombay High Court are entirely different.

In view of the aforesaid discussion, the extension granted to respondent No.6 is clearly beyond what has been provided in the Staff Rules, 2017 and, therefore, liable to be set aside and hence, set aside.

Accordingly, the writ petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

06.01.2021

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No