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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2780-2020
Date of decision: 11.11.2022

THE PUNJAB STATE AGRICULTURAL COOPERATIVE SOCIETIES EMPLOYEES UNION, PUNJAB

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. H. S. Bedi, Advocate
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

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JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for setting aside order dated 02.07.2019 (Annexure P-1), whereby it has been ordered that the period for which the salaries have not been paid, be not shown in the head of salary payable in the balance sheet of the Society.

2. The grouse of the petitioner is that the Registrar, Cooperative Societies, Punjab vide impugned order has ordered the Chief Auditor, Cooperative Societies, Punjab that the salaries which are payable to the Secretaries be not shown in the head of salaries payable in the balance sheet.

3. Learned counsel for the petitioner herein would contend that the petitioner is the Union of the employees working in the Primary Cooperative Agricultural Service Societies in the State of Punjab and there are certain Primary Cooperative Agricultural Societies which at times are unable to pay the salaries to their employees working with them. However, the said salary which remains payable to the employees is shown in the balance sheet prepared by the Audit Department of Cooperative Societies and when the Society earns profit, the said salaries are paid. It is submitted that as per Section 85(2) (xxxviii) of the Punjab Cooperative Societies Act, 1961, the Government has to frame the rules with regard to the conditions of service, subject to which persons may be employed by the societies. It is further submitted that the provisions of the Punjab Cooperative Societies Act, 1961; the Punjab Cooperative Societies Rules, 1963 as framed by the Government as well as the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 as framed by the Registrar, Cooperative Societies, Punjab do not vest any power with the Registrar, Cooperative Societies, Punjab to pass an order that the salaries which are payable to the employees of the societies be not shown in their balance sheets. It is contended that the petitioner-Union requested the Registrar, Cooperative Societies, Punjab, vide representation dated 11.10.2019 (Annexure P-2) to withdraw the impugned order, but to no avail. It is argued that the impugned order is against the accounting principles and is liable to be set aside.

4. Learned State counsel would submit that the impugned order has been passed as per the letter and spirit of the Punjab Cooperative Societies Act, 1961 and the rules framed thereunder as Rule 45(1) of the Punjab Cooperative

Societies Rules, 1963, gives power to the Registrar, Cooperative Societies to pass such directions in the interest of the cooperative society. He submits that the Punjab Cooperative Societies Act, 1961; the Punjab Cooperative Societies Rules, 1963 as well as the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997, vest the powers with the Registrar, Cooperative Societies to pass such orders for betterment of the societies. He further submits that service conditions of the employees come under the purview of Rule 28(1) of the Punjab Cooperative Societies Rules, 1963, so they fall within the jurisdiction of the Registrar, Cooperative Societies. It is further submitted that the instructions/bye-laws relating to Primary Cooperative Agricultural Societies are prepared by the Registrar, Cooperative Societies and the audit is being conducted by the Auditors of Chief Auditor, Cooperative Societies-respondent No.3 once in a year as per instructions by the Registrar, Cooperative Societies-respondent No.2. He would contend that to safeguard the interest of the members of the societies, it is necessary to pass orders such as the impugned order, so that efforts can be made to recover the societies of the losses and the Committee after considering the legal and other aspects, suggested to pass the impugned order.

5. I have heard learned counsel for the parties and have also perused the pleadings of the case.

6. The short issue in question is the legality of the order as passed by the Registrar, Cooperative Societies, Punjab directing the Auditors not to include the salaries payable to the employees of the cooperative societies in the balance sheet.

7. A balance sheet is a financial statement that contains details of a Company's/Corporation's/Society's assets or liabilities at a specific point in time. It

is one of the three core financial statements, income statement and cash flow statement being the other two used for evaluating the performance of a business. A glance at a balance sheet gives a person a snapshot of company's financial position at any given point in time. Section 48 of the Punjab Cooperatives Societies Act, 1961, mandates that the Registrar shall have the accounts of the societies audited at least once in each year and such audit shall include an examination of overdue debts, if any, the verification of the cash balance and securities, and a valuation of the assets and liabilities of the society.

> ***48. Audit*** *:- (1) The accounts of co-operative societies shall be audited at least once in each year within a period of six months of the close of the financial year to which such accounts relate.*
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> *(1-A) The accounts of co-operative societies shall be audited by an auditor or auditing firm approved by the general body of the co-operative society from out of the panel of auditors or auditing firm approved by the Government or by an authority authorized by the Government in this behalf. The qualifications and experience of the auditors or auditing firms shall be such, as may be precribed.*
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> *(2) The audit under sub-section (1) shall include an examination of over-due debts, if any, the verification of the cash balance and securities, and a valuation of the assets and liabilities of the society.*
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> *(3) The auditor or the auditing firm auditing the accounts of a co-operative society shall have free access to the books, accounts, papers, vouchers, stock and other property of such society and shall be allowed to verify its cash balance and securities.*
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> *(4) The directors, managers, administrators and other officers of the society shall furnish to the auditor or the auditing firm auditing the accounts of a co-operative society all such information as to its transactions and working as such person*

may require.

(5) Auditor or the auditing firm authorized under sub-section (1) to audit the accounts of a co-operative society shall have power where necessary -

(a) to summon at the time of his audit any officer, agent, servant or member of the society, past or present, who he has reason to believe can give valuable information in regard to transactions of the society or the management of its affairs; and

(b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to the society by officer, agent, servant, or member in possession of such books, documents, cash or securities and in the event of serious irregularities discovered during audit, to take them into custody.

(6) If at the time of audit the accounts of a society are not complete, the auditor or the auditing firm authorised under sub-section (1A) to audit, may cause the account to be written up at the expense of the society.

(6-A) The audit report of the accounts of an apex co-operative society shall be laid before the State Legislature.

(6-B) Audit report shall be submitted by the auditor or the auditing firm, as the case may be, to the co-operative society and a copy thereof shall be submitted to the Registrar.; and

(7) Audit fee, if any due from any co-operative society shall be recoverable in the same manner as is provided in section 67.

(8) If the Registrar, suo-moto, or on the application of not less than ten members of a co-operative society finds that it is necessary or expedient to conduct special audit of the accounts of a co-operative society, he may by an order, provide for such special audit and the provisions of this Act, and the rules applicable to the audit shall also apply to such special audit:

Provided that such special audit shall be ordered only when there is a prima-facie case of fraud or misappropriation *or embezzlement of funds.*

8. Rule 45(1) of the Punjab Cooperative Societies Rules, 1963 gives power to the Registrar to give directions from time to time, which are consistent with the provisions of the Punjab Cooperative Societies Act, 1961 which he considers necessary for the beneficial and efficient functioning of any Co-operative Society or class of Co-operative Societies. Rule 45 is reproduced as under:-

> "***45. Powers of Registrar to give directions****:- (1) The registrar may, from time to time, give directions consistent with the provisions of the Act as he considers necessary for the beneficial and efficient functioning of any Co-operative Society or class of Co-operative Societies.*
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> *(2) If any question arises whether any directions given under sub rule (1) are necessary for the beneficial and efficient functioning of the co-operative society or class of co-operative societies, as the case may be, the concerned co-operative society or class of co-operative societies may refer such question to the Government whose decision there on shall be final."*

9. The argument of the respondents to the effect that the Registrar is competent to pass orders for the betterment of the societies is not in dispute but any order so passed will have to be consistent with the provisions of the Punjab Cooperative Societies Act, 1961, and the Registrar cannot act capriciously or whimsically. Section 48 of the said Act, mandates the Registrar to prepare an audit which shall include an examination of over-due debts, if any, the verification of the cash balance and securities, and a valuation of the assets and liabilities of the societies. An unpaid salary of an employee is an overdue of the Society which will have to be reflected in an audit, otherwise, a false financial statement will be

presented. Any direction given to exclude the salaries payable to the employees will be inconsistent with Section 48 of the Punjab Cooperative Societies Act, 1961, which provides for an audit to be prepared reflecting assets and liabilities of a Society.

10. Consequently, the instant writ petition is allowed and the impugned order dated 02.07.2019 (Annexure P-1) is hereby set aside, as being in contravention to Section 48 of the Punjab Cooperative Societies Act, 1961.

(JAISHREE THAKUR)
JUDGE

11.11.2022
Chetan Thakur

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