

229

2023:PHHC:166535

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-7118-2019

DECIDED ON: 26th JULY, 2023

BRIJ LATA

PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. S.S. Dalal, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. U.K. Agnihotri, Advocate
for respondent No.4.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *certiorari* for quashing the impugned orders dated 08.03.2019, 28.03.2014 and 01.04.2013 (Annexures P-11, P-9 and P-6 respectively).

2. The factual matrix of the present case is that the husband of the petitioner was working as Salesman in the respondent No.4-Society when he unfortunately died on 06.04.2004. Necessary permission for giving appointment to the dependent of the deceased was sought by the Society from Assistant Registrar, Co-operative Societies, Palwal who further referred the matter to Deputy Registrar, Co-operative Societies,

Gurugram and the same was duly accorded for appointment of the petitioner as Peon vide letter dated 13.09.2004 (Annexure P-1).

3. The petitioner was appointed as Peon on DC rate basis by the Society vide Resolution dated 30.08.2010 (Annexure P-2) after obtaining necessary approval accorded by Deputy Registrar, Co-operative Societies, Gurugram. Vide Resolution dated 30.08.2011 (Annexure P-3), the services of the petitioner were regularized. Respondent No.3 took *suo-motu* proceedings and issued a show cause notice dated 22.02.2013 (Annexure P-4) to the Society for rescinding the Resolution dated 30.08.2011 (Annexure P-3) under Section 27 of Haryana Cooperative Societies Act, 1984 (hereinafter referred to as 'the Act of 1984'), in response to which Society has filed reply (Annexure P-5) stating therein that the appointment of the petitioner was made against a vacant and sanctioned post, after obtaining necessary approval from the Deputy Registrar, Co-operative Societies, Gurugram.

4. Without taking into consideration the reply submitted by the Society and on the ground that Society has not sought approval before appointment of petitioner, vide impugned order dated 01.04.2013 (Annexure P-6) rescinded the resolution No.3,4, 2 dated 30.08.2010, 06.05.2010 and 30.08.2011 respectively under Section 27 of the Act of 1984.

5. The petitioner has approached this Court by way of filing CWP No. 14983 of 2013, which was disposed of vide order dated 16.07.2013 (Annexure P-8) being not maintainable, relegating the petitioner to avail the alternative remedy of appeal. While disposing of the

writ petition this Court has directed the respondents to maintain *status quo* regarding the services of the petitioner as existing on that day, during the pendency of appeal. Thereafter, the petitioner has filed an appeal under Section 114 of the Act of 1984 before Registrar, Co-operative Societies, Haryana, which was dismissed vide order dated 28.03.2014 (Annexure P-9). Assailing the same the petitioner has filed revision petition before the Government, which also met with the same fate by passing order dated 08.03.2019 (Annexure P-11). Hence, the present petition.

6. Learned counsel appearing on behalf of the petitioner would contend that before passing the impugned order dated 01.04.2013 (Annexure P-6), petitioner was not afforded an opportunity of hearing. It is submitted that after the amalgamation in the year 2006, there were no Service Rules framed and the power to appoint a person solely vested with the Managing Committee of the Primary Agriculture Cooperative Societies (PACS) under byelaws framed under Section 40 of the Act of 1984. It is further submitted that the Service Rules were framed only in June, 2014, called "the Primacy Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit and Service Societies Rules, 2014" by the Registrar, Cooperative Societies, Haryana and, therefore, at the relevant time, the Managing Committee of the Society itself was competent to appoint the petitioner.

7. Per contra, learned counsel appearing on behalf of the Society would contend that the appointment of the petitioner is in violation of the instructions dated 22.02.2006 issued by the Registrar, Cooperative Societies, vide which no new appointment can be made. It is also

submitted that the petitioner was afforded full opportunity to defend her case when her appeal was dismissed on the ground that no transparent procedure was adopted at the time of her appointment.

8. No other argument has been raised by either of the parties.

9. Heard learned counsel for the respective parties.

10. The contention of the petitioner is that in the absence of Service Rules at the relevant time, the power to appoint a person was solely vested with the Managing Committee of the PACS and no approval was required, whereas the stand of the respondents is that as per instructions dated 22.02.2006 issued by the Registrar, Cooperative Societies, Haryana, no new appointment can be made, as the Society itself was running in losses and the appointment of the petitioner will further increase the burden. In the present case the situation is on better footing as the approval for appointment was accorded by Deputy Registrar, Co-operative Societies, Gurugram vide Annexure P-5, in pursuance to which the petitioner was appointed.

11. The Managing Committee of the Society appointed the petitioner which appointment was approved by the Governing Body of the Society, despite the fact that instructions dated 22.02.2006 had been issued by the Registrar, Cooperative Societies, Haryana restraining Societies from making any new appointments. The Deputy Registrar, thereafter, set aside the resolution in the interest of the Society on the ground that the Society was not sound financially and running in losses. The petitioner is sought to be relieved only on account of the fact that her appointment is in contravention to the circular of the Registrar, Cooperative Societies,

Haryana.

12. Initially there were no Service Rules governing appointments to the Primary Cooperative Credit and Service Societies in the State of Haryana. The Service Rules came into effect on 16.11.1992. These Rules were to apply to all Primary Cooperative Credit and Service Societies. As per Rule 8, it was specified that no person shall be appointed to a post in service unless he possesses qualifications and experience as mentioned in Appendix-II of the Rules, and the appointment to the service shall be made by the Committee with majority of votes. The Primary Agriculture Cooperative Societies (PACS)/Primary Cooperative Credit and Service Societies Rules, 2014 were formulated and the appointments as per Rule 10 were to be made by the Managing Committee on the recommendations of the Selection Committee. As per Rule 5.2, the Societies were to remove employees who are ineligible on the date of appointment due to age, qualification or appointed after 19.02.2006 in contravention of the circular/instructions issued by the Registrar, Cooperative Societies, Haryana, which is the issue in hand, but these Rules have been subsequently amended in the year 2017 and the amended Rules came into force w.e.f. 13.05.2017. As per the amendment, Rule 5.2 which mandates that a Society shall remove the employees who have been appointed after 19.02.2006 in contravention of the circular/instructions issued by the Registrar, Cooperative Societies, Haryana, stands deleted. In the Rules of 2014, there was also Rule 5.3 which mandates that PACS/PCSS shall arrange for deployment of excess staff beyond sanctioned posts in the adjoining PACS/ PCSS through a Committee headed by Deputy Registrar,

Cooperative Societies and the posts falling vacant due to retirement/ resignation/ termination/death shall not be filled up unless the excess staff is exhausted by way of deployment/adjustment and wherever DRCS concerned is unable to adjust/deploy the excess staff, the Registrar, Cooperative Societies, Haryana shall be the competent authority for final decision and the excess staff, if any, shall be kept in diminishing cadre. This Rule 5.3 also stands deleted with the amendment made in the Rules w.e.f. 2017. In the case of the petitioner herein, she was appointed by the Governing Body, but sought to be removed by the Deputy Registrar as the appointments had been made in contravention to the instructions dated 22.02.2006. The petitioner herein has been working as Peon till date under orders of the Court and, there is no allegation that her appointment is vitiated on account of any falsehood or fraud having been exercised by her. The Governing Body, at the relevant time, approved her appointment despite the circular issued by the Registrar. The appointment of the petitioner was made by the Managing Committee after following due procedure, therefore, the same cannot be faulted. The amendment of the Rules has also done away with the necessity of removing employees who have been appointed after 19.02.2006 in contravention of the circular and instructions issued by the Registrar and, therefore, as also the amendment allows for the excess staff to be either adjusted in adjoining Societies or to be kept in diminishing cadre. To uphold the order of termination at this juncture would not be justified keeping in view that the petitioner would become overage and illegible for appointment elsewhere. Having family to support, a sympathetic view ought to be taken to save her family. An

identical question arose before the Hon'ble Supreme Court in ***H.C. Puttaswami and others Versus The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, 1991 SLR 166***, wherein it has been held as under:-

“Having reached the conclusion about the invalidity of the impugned appointments made by the Chief Justice, we cannot, however, refuse to recognise the consequence that involves on uprooting the appellants. Mr. Gopala Subramanayam, counsel for the appellants while highlighting the human problems involved in the case pleaded for sympathetic approach and made an impassioned appeal for allowing the appellants to continue in their respective posts. He has also referred to us several decisions of this Court where equitable directions were issued in the interests of justice even though the selection and appointments of candidates were held to be illegal and un-supportable.

There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post graduates as against the minimum qualification of S.S.L.C. required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed, it would be an act of cruelty

at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection (See: Lila Dhar v. State of Rajasthan) 1981 (1) SCR 320 at 326.

The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy. We take note of the fact that the writ petitioners also would be appointed in the High Court as stated by learned Advocate General of the State.

In the result, we allow these appeals and direct that these appellants should be treated to be regularly appointed with all the benefits of the past service. The judgment of the High Court is accordingly modified. This order would govern all those whose appointments have been quashed by the High Court.”

13. Similarly, a Division Bench of this Court in **Shanti Devi and another Versus State of Haryana and others, 1999 (2) SLR 259**, observed as under:-

“Despite the above, we feel reluctant to interfere with the view taken by the learned Single Judge. The reason which compels us to do so is that the respondents have in fact continued on these posts for the last more than 15 years. In this situation, it would be extremely harsh to them and their families if they are now thrown out of service. They would have admittedly become overage for other posts. We are conscious of the fact that mere delay should not be a ground for putting a seal of approval on illegal appointments. Nor should such a concession encourage the Department to appoint ineligible persons in future. However, in the peculiar circumstances of this case and without intending to lay down a precedent, we choose not to interference so as to avoid hardship to respondents No.3 to 15.”

14. Apart from above, in a bunch of cases i.e. CWP No.16166 of 1991, decided on 09.02.2011, a Single Bench of this Court did not interfere in the appointments made even though there were allegations of illegality in the selection process. The Bench did not go into the merits of the selection process holding that it would not be appropriate to dislodge the candidates after a period of about 20 years from their respective posts.

15. Therefore, keeping in view that there are no allegations of any irregularity or fraud having been played while appointing the petitioner, in fact she was appointed after following the due procedure by the Managing Committee after taking necessary approval from the Deputy Registrar, Co-operative Societies, Gurugram. It would be wholly unjust to uphold the orders dated 01.04.2013, 28.03.2014 and 08.03.2019 (Annexures P-6, P-9 and P-11 respectively), especially in view of the fact that the order dated 01.04.2013 has been passed without following the principle of *audi-alterm-partem* and the Rule itself stands deleted in respect of any appointments made contrary to the circular/instructions of the Registrar, Cooperative Societies, Haryana, which is the ground of passing of impugned order against the petitioner.

16. Consequently, the writ petition is allowed and the impugned orders dated 01.04.2013, 28.03.2014 and 08.03.2019 (Annexures P-6, P-9 and P-11 respectively) are hereby set aside.

(SANDEEP MOUDGIL)
JUDGE

26th JULY, 2023
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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |