

109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6744-2023

Date of decision: 03.10.2023

Balkaran Singh

.....Petitioner

V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. TPS Tung, Advocate
for the petitioner.

DEEPAK MANCHANDA J. (ORAL)

1. By way of present petition, the petitioner has challenged the speaking order dated 18.11.2022 (Annexure P-10) as well as Annexure P-4 with a prayer for release of his salary i.e from 30.04.2013 to till date with interest @ 18% from the due date to till the date of payment.

2. The facts emanated from the present petition are that the petitioner filed CWP-22558-2019, which was disposed of vide order dated 09.08.2022 with a direction to decide legal notice dated 04.02.2019 (Annexure P-6). The request of the petitioner for release of salary as well as his presence which was not being marked by the respondent/society was made in compliance of the directions issued by this Court. The claim of the petitioner in compliance of the order dated 09.08.2022 was rejected by passing a detailed speaking order dated 18.11.2022 (Annexure P-10), and aggrieved by the same, petitioner has filed the present writ petition.

3. Learned counsel for the petitioner contends that the petitioner was appointed as Salesman Fertilizer on 30.04.2013 with the respondent-Society No.5 by following a proper procedure and a resolution to this effect was also

passed. He further contends that despite having worked continuously on the said post right from 30.04.2013, the respondents have erred in rejecting the claim of the petitioner for release of his salary.

4. Notice of motion.

5. On the asking of the Court, Mr. Arun Gupta, AAG Punjab, who is present in the Court, accepts notice on behalf of respondents No. 1 to 4. While referring to the speaking order dated 18.11.2022 (Annexure P-10) vide which the claim of the petitioner was rejected, learned State counsel has pointed out that father of the petitioner namely Hargopal Singh was the Secretary of the Society who after misusing his official position got adjusted his son-petitioner as Salesman Fertilizer on 30.04.2013, when one Boota Singh Salesman of the Society was going to retire. He also refers to Resolution No.3 which was passed for filling up the post of Salesman which was not approved by the authority as neither an interview was held as per the proceeding book nor any nominee through Assistant Registrar Co-operative Societies, Gidderbaha was on duty when the appointment was made, which is against the rules and sub-rules. He also submits that as per Punjab State Co-operative Societies Service Rules, 1997 amended from time to time and instructions issued, prior approval is required for appointment of any employee in Society after approval from competent authority. As such, no rule or sub-rule was considered on 30.04.2013 due to which the appointment of the petitioner is not proper and was declared illegal.

6. Learned State counsel also submits that all the Co-operative Societies in State of Punjab are subject to annual audit of employees, however, from the year 2013 till date the name of petitioner does not find mention in the list of employees which shows that the petitioner was never appointed in the Society and was adjusted by his father who misused his position being Secretary

of the Society by facilitating his son to be an employee against the statutory rules.

7. I have heard learned counsel for the petitioner and have gone through the case file carefully.

8. A perusal of order dated 18.11.2022 (Annexure P-10) shows that as per Rule 46 of the Punjab Co-operative Societies Rule, 1963, which deals with the 'Appointment of relatives to any office', no relative of any member of the Committee or of any other officer or a Co-operative Society shall be appointed to any office in the Co-operative Society except with the previous sanction of the Registrar. In the said order, the appointment of the petitioner has been held illegal while dealing with Rule 5(1) of the Punjab State Service Co-operative Agriculture Service Society Service Rules, 1997 which is as under:-

"METHOD OF RECRUITMENT ETC - (i) The appointments to the service shall be made by the committee on the recommendations of the Selection Committee consisting of the President, two other Committee members of the society and the Assistant Registrar concerned or his nominee. This appointment can be made either on regular basis on consolidated emoluments not exceeding that fixed by the Deputy Commissioner of the District concerned for the concerned category. The appointment shall be made by inviting applications from the suitable candidates in the similarly situated Primary Cooperative Agriculture Service Societies in the District. In case suitable and sufficient candidates are not available, then the application may be called from the open market. Provided that no appointment shall be made without prior approval of the Registrar, Coop. Societies, Punjab."

9. Once it is established on record that the petitioner was never appointed after following due procedure and was not an employee of the Society, to rebut the same learned counsel for the petitioner has not produced any material

on record with regard to valid appointment of the petitioner. In view of the same, this Court is of the view that the order dated 18.11.2022 (Annexur P-10) does not suffer from any illegality and the claim of the petitioner has been rightly rejected which does not warrant any interference by this Court.

10. Consequently, the present writ petition is dismissed.

03.10.2023
sapna/vanita

(DEEPAK MANCHANDA)
JUDGE

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