

113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 17067-2020
Date Of Decision- 20.07.2023

TARMENDER

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sachin Gupta, Advocate
for the petitioner

Mr. Ashish Kumar, Advocate
for respondent no.7

Mr. Kapil Bansal, Deputy Advocate General
for the state of Haryana

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari/Mandamus quashing the letter dated 06.10.2020 (Annexure P-7) for fixing the date on 16.10.2020 regarding cancellation of the resolution dated 09.10.2017 that was passed without jurisdiction and in violation of principle of natural justice which is liable to be set aside on the ground that the service matter is not governed u/s 27 of the Cooperative Society Act.

2. The counsel for the petitioner while briefly apprising the court with the facts states that the post of the clerk/data operator was lying vacant in the Kilo PACS that effected the recovery of the funds of the society. The

society after adopting proper procedure vide resolution dated 19.07.2013 in the meeting passed the resolution regarding appointment of the petitioner on the vacant post(Annexure P-1) wherein the total regular sanction post in the society are five, one prabandhak and second chowkidar are on regular post and after considering the work conduct of the petitioner, the managing committee regularised the service of the petitioner vide resolution dated 09.10.2017(Annexure P-2). Counsel for the petitioner contends that the society provide salary to the employees of the PACS from their own sources and the Govt does not provide any grant, to pay the salary of the employees of the society and the managing committee is competent to appoint any person in favour of the society work. Later the petitioner vide resolution dated 09.02.2018 was sent for training of CTI for 6 months and during this training period the petitioner was issued roll no.14 in CCM, Rohtak(Annexure P-5).

3. The counsel for the petitioner vehemently argues that the petitioner along with other employees of the different societies filed the writ petition before the Hon'ble High court to challenge the stoppage of salary of the employees and the writ was disposed of vide order dated 10.02.2020 but the respondents did not comply to the order of the Hon'ble High Court therefore the petitioner filed COCP no.1604 of 2020 titled as "***Shishpal & another vs State of Haryana & others***" and the Hon'ble High court issued the notice for 29.09.2020 and the case is pending before the Hon'ble High court and the respondents in order to protect themselves and to harass the petitioner issued a letter to the society to fix the meeting on 16.10.2020 regarding cancellation of the resolution dated 09.10.2017 pertaining to regularization of the post of the petitioner.

4. The counsel for the petitioner strenuously argues that the Additional Chief Secretary vide order dated 11.05.2018(Annexure P-8) in revision petition no. 32 of 2017 titled as Dalbir Singh vs RCS Haryana & others observed that RCS cannot make rules for recruitment and condition of service of such employees but as per sec 34(4) read with rule 29, the Registrar can certainly frame guidelines and as per rule 40 of the bye laws of the society, the Managing Committee is eligible to make the service rules and also pass agenda to send the rule for Registrar for approval(Annexure P-9). The Division bench of this Hon'ble High Court in case titled "***Vinod Kumar and others vs State of Haryana and others(CWP NO.5693 of 2000, decided on 12.05.2000***", has held that the principles Of Natural justice have to be read into every statutory provision unless their application is barred either expressly or by necessary implication. Further, the resolution passed by a cooperative society can be rescinded if the same is passed in excess of powers or execution if it would be contrary to the interest of the society or the interest of the members whereas in the present case, the respondent society has not passed the resolution in excess of powers and the same cannot be rescinded.

5. On the other hand, counsel for the respondent at the very outset vigorously contends that the present writ petition is not maintainable since the petitioner has an alternate remedy available by way of an appeal under section 114(1)(c) of the Haryana Cooperative Societies and further, the Management Committee has illegally regularised the petitioner without following the proper procedure laid down under PACS Staff Service Rules 2014 as Amended in 2017 where the petitioner has been wrongly appointed without prior sanction of Registrar/Selection Committee as in mandatory

under the PACS Staff Service Rules 2014(amended in 2017) and moreover, the Registrar vide letter dated 12/08/2013(Annexure R-1) had issued instructions that there would be no fresh appointment in the PACSes in the state and without paying any heed to the above mentioned order,the Kilo PACS Ltd appointed the petitioner.

6. The counsel for the respondent further contends that the present petition has been filed merely to harass the respondents and to create a pressure so as to recovery could not be effected from the petitioner of the excess salary which he has drawn wrongly and illegally whereas indeed after the appointment of the petitioner, the recovery of funds of the society has been affected where at present a loss amounting to Rs. 4599372.87/- has been calculated in the balance sheet for the year 2019-20(Annexure R-2)and there is no post titled as Recovery Assistant/Data Operator in the state and moreover Kilo PACS Ltd,Kilo is not a department of the govt as has been stated by the petitioner. The counsel for the respondent apprises the court that the petitioner is a keen relative of the President of the Managing committee hence, was appointed arbitrarily without consulting the Selection Committee as per Rule 11 of the PACS Staff Services Rules 2014/2017 which states that:

“(2) The selection committee for the purpose of recommendation of Clerk/Cashier/Salesman/Peon-cum-chowkidar for direct recruitment and promotion will consist of:-

a) Assistant Registrar, Cooperative societies concerned as Chairman.

b) Chairman/Vice Chairman of the concerned society.

c) One Committee member duly authorised by the Committee of the concerned society.

d) Chief Executive Officer of the concerned Bank”

7. Further, the Rule 11(3) of PACS Staff Service Rules 2014/2017 states that the application for filling up direct vacancies shall be invited through newspapers(Hindi and English each) by giving 30 days notice and the petitioner was appointed directly when no advertisement was published in any newspaper for the appointment.

8. He vehemently argues that the Govt of Haryana regularly provides financial aid to every PACS in the state under various schemes and further, as per PACS Staff Service Rules 2014/2017, appointment of Salesman is to be made by a Selection Committee who is competent to appoint a person on the said post whereas the petitioner was appointed temporarily on DC rates which is evident from the letter of the Inspector, Cooperative societies, Rohtak-III written to Assistant Registrar Cooperative Societies, Rohtak (Annexure R-6) and recently, the petitioner in collusion with the office bearers of the society has withdrawn a huge amount i.e Rs.427707/- from the society on the pretext of his own salary vide voucher no.210 and Cheque no.749412 dated 05.06.2021.(Annexure R-4).

9. Counsel for the respondent strenuously argues that the petitioner have wrongly put up Annexure P-9 where no such copy has been supplied to the respondents and as a matter of procedure, a prior notice of 15 days is mandatory before framing the rules and such agenda cannot be placed before the Managing Committee without prior approval of concerned Assistant Registrar under Rule 5(10) of PACS/PCC Staff Service(second amendment) Rules 2017 which states that:

“(10) No agenda regarding salary,allowances,Grant of Increment,Promotion or recruitment of any PACS/PCCS will be placed before the Managing Committee by any Prabandhak/Incharge of PACS/PCCS Societies of concerned Assistant Registrar,Cooperative societies.”

10. The counsel for Respondent no.7 contends that the present petition is not maintainable as the petitioner is having alternate remedy of filing an appeal under Section 114(1)(e) of The Haryana Cooperative Societies Act and the order passed by the Registrar under Section 27-B of the act is appealable under Section 114(1)(e) and further, a revision can be filed under Section 115 of the Act against the appellate authority. He further contends that, the writ petition is only maintainable against the Government or the instrumentality of the state as envisaged under Article 12 of the Constitution of India and rely upon the judgment of the Hon’ble Supreme Court in **General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, U.P VS Satrugan Nishan and Others ,2003(8) SCC 639** wherein it has been held that there should be a deep and pervasive control of the Government over the cooperative society not administratively, but financially as well so as to treat the said cooperative society as an instrumentality of the state whereas in the present case, there is no complete control of the government over the respondent society neither administratively nor financially, rather it is only a financial aid been provided in the nature of the salary of the employees. He further contends that section 27 of the Cooperative Society Act provides to rescind the resolution passed by a managing committee or of a sub committee of a cooperative society whether it relates to service matter or otherwise contrary to the interest of the society and further contends that Rule 40 relied upon by the petitioner is not even in existence till now as the

alleged rules have been framed by the managing committee of the Kilo Primary Agricultural Cooperative Society Limited vide resolution dated 28.05.2020 and have been sent for approval of the Registrar and they are yet to be approved.

11. Heard learned counsel at length for the respective parties.

12. In the present writ petition, counsel for the petitioner has challenged the illegality of the order passed by the Deputy Registrar Cooperative Society, Rohtak dated 06.10.2020 wherein the resolution declaring petitioner as permanent employee of the society has been rescinded under section 27 of the Cooperative Societies Act and further while relying upon the decision of the Division Bench of this Court in '*Vinod Kumar and others vs State of Haryana and others*(CWP NO.593 OF 2000) states that there is nothing in section 27 of the Act to suggest that the resolutions could be rescinded without affording an opportunity of hearing and further, the resolution passed by the cooperative society can be rescinded if the same is passed in excess of powers whereas in the present case the society has not passed the resolution in excess of its powers and the same cannot be rescinded. On the other hand, the counsel for the respondent at the very outset has questioned the maintainability of the writ petition as the respondent society does not fall under the definition of Article 12 and further, the petitioner if aggrieved by the order dated 06.10.2020, has an alternate remedy available under sec 114 and 115 of the Cooperative Societies Act 1984.

13. The court is of the considered view that although cooperative societies are formed for the welfare of the members of the society but to

bring them under the instrumentality of the state, it has to pass the five point test as laid down by the Supreme Court in ***“R.D.Shetty vs Airport Authority Of India 1979 AIR 1628”***. In the present case, the State does have a deep and pervasive control over the society neither administratively nor financially, rather it is only the financial aid being provided by the state for the salary of the employees therefore Kilo PACS society is not the instrumentality of the state. This court opines that the petitioner has valiantly surpassed the procedure of the recruitment by being hand in glove with the President of the Managing committee and has sneaked in as a regular employee of the society whereas the managing committee has no authority to frame the rules for the recruitment and further recruit any person without consulting the Selection Committee as mentioned in Rule 11 of the PACS Staff Service Rules 2014/2017. From perusal of Section 27 of the act, it is crystal clear that the Registrar is clothed with the express power to entertain an appeal under section 114(e) with respect to the order passed by Deputy Registrar under section 27 of the Cooperative Societies Act 1984, therefore the petitioner has got a statutory right to challenge the impugned order date 06.10.2020 by way of an appeal under section 114(1) (e) and further a revision can be filed against an appellate authority under section 115 of the act.

14. The court finding this petition devoid of any merits, dismiss the same with no costs.

(SANDEEP MOUDGIL)
JUDGE

20.07.2023

Poonam Negi

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