2023:PHHC:167076

THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254

Date of Decision: 13.12.2023

1. CWP-14410-2023

Roshan Lal ..... Petitioner

Versus

State of Haryana and others ..... Respondents

2. CWP-10791-2021

Babita ..... Petitioner

Versus

The Registrar Co-operative Societies Haryana and others ..... Respondents

3. CWP-1067-2022

Jai Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

4. CWP-11182-2020

Radhey Lal ..... Petitioner

Versus

Haryana State Federation of Consumers Coop. Wholesale Stores Ltd. and another ..... Respondents

5. CWP-1135-2021

Subhash Chand and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

6. CWP-11987-2016

Ajmat Singh ..... Petitioner

Versus

Haryana State Coop. Supply and another ..... Respondents

7. CWP-13051-2022

Munish Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

8. CWP-14828-2022

Ramdhari and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

9. CWP-14831-2022

Sadhu Ram and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

10. CWP-14838-2022

Jagpal Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

11. CWP-13065-2022

Sarjeet Singh Bhadu and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

12. CWP-13243-2017

Balwinder ..... Petitioner

Versus

Haryana State Cooperative Supply
and Marketing and others ..... Respondents

13. CWP-13254-2022

Satbir Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

14. CWP-13257-2022

Satpal Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

15. CWP-13437-2022

Avtar Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

16. CWP-13658-2023

Suraj Pal and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

17. CWP-13672-2023

Sompal ..... Petitioner

Versus

State of Haryana and others ..... Respondents

18. CWP-13676-2023

Charan Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

19. CWP-13730-2023

Kewal Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

20. CWP-13955-2023

Mahipal and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

21. CWP-14311-2022

Sube Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

22. CWP-14422-2023

Deepak Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

23. CWP-14425-2023

Ravinder Kumar ..... Petitioner

Versus

State of Haryana and others ..... Respondents

24. CWP-14524-2023

Rajesh Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

25. CWP-14641-2023

Jasvinder Singh and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

26. CWP-14659-2023

Rajeev Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

27. CWP-14676-2023

Aniket and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

28. CWP-14677-2023

Mukesh Sharma ..... Petitioner

Versus

State of Haryana and others ..... Respondents

29. CWP-14813-2022

Neki Ram and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

30. CWP-15788-2021

Jai Bhagwan and others . .... Petitioners

Versus

The Registrar and others ..... Respondents

31. CWP-15996-2022

Balbir Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

32. CWP-16340-2021

Satbir Singh ..... Petitioner

Versus

Deputy Registrar, Co-operative Societies,
Rohtak and others ..... Respondents

33. CWP-2303-2021

Satbir Singh ..... Petitioner

Versus

Assistant Registrar, Co-operative Societies
and another ..... Respondents

34. CWP-1660-2021

Suman Arora ..... Petitioner

Versus

State of Haryana and another ..... Respondents

35. CWP-18065-2023

Ankit ..... Petitioner

Versus

State of Haryana and others ..... Respondents

36. CWP-18346-2020

Shyam Sunder ..... Petitioner

Versus

State of Haryana and others ..... Respondents

37. CWP-18374-2020

Balbir Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

38. CWP-18728-2023

Monik ..... Petitioner

Versus

State of Haryana and others ..... Respondents

39. CWP-19079-2023

Roshan Lal and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

40. CWP-19172-2023

Krishan Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

41. CWP-19178-2023

Rajesh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

42. CWP-19186-2023

Dinesh Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

43. CWP-2266-2023

Krishan Kumar ..... Petitioner

Versus

Haryana State Cooperative Agricultural and Rural
Development Bank Ltd. Panchkula and another ..... Respondents

44. CWP-22715-2020

Shyam Sunder ..... Petitioner

Versus

State of Haryana and others ..... Respondents

45. CWP-23572-2022

Mohit Kumar and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

46. CWP-239-2023

Sultan Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

47. CWP-24467-2023

Rustam Khan and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

48. CWP-24486-2023

Surinder Pal Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

49. CWP-25097-2023

Pawan Kumar and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

50. CWP-2578-2020

Anil Kumar ..... Petitioner

Versus

State of Haryana and another ..... Respondents

51. CWP-25955-2021 (O&M)

Gurcharan Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

52. CWP-14988-2017

Mini Bank Karamchari Sangh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

53. COCP-2171-2021 (O&M)

Mini Bank (PACS) Karamchari Sangh ..... Petitioner

Versus

Rishi Kumar and others ..... Respondents

54. CWP-10111-2019

Primary Agriculture Cooperative Societies
Karamchari Sangh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

55. CWP-11879-2019

Surjit Singh and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

56. CWP-11953-2019

Sukhbir Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

57. CWP-12187-2019

Mamchand and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

58. CWP-12278-2019

Pawan Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

59. CWP-12489-2019

Sukhbir Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

60. CWP-12519-2019

Ram Kumar and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

61. CWP-15157-2019

Krishan Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

62. CWP-15524-2019

Om Parkash ..... Petitioner

Versus

State of Haryana and others ..... Respondents

63. CWP-15549-2019

Mahabir Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

64. CWP-22962-2021 (O&M)

Sube Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

65. CWP-28838-2019

Kulbir Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

66. CWP-31090-2019

Angrej Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

67. CWP-3736-2019 (O&M)

Mini Bank (PACS) Karamchari Sangh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

68. CWP-9346-2021

Satbir Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

69. CWP-16957-2023

Devender Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

70. CWP-23209-2023

Nishan Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

71. CWP-2702-2022

Santosh Devi ..... Petitioner

Versus

State of Haryana and others ..... Respondents

72. CWP-27099-2018

Virender Singh ..... Petitioner

Versus

The Addl. Registrar Co-operative Societies (Stores)
Haryana and others ..... Respondents

73. CWP-27770-2022

Jasbir Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

74. CWP-27793-2022

Devender Kumar and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

75. CWP-27820-2022

Rakesh Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

76. CWP-28150-2019

Mam Raj and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

77. CWP-28397-2017 (O&M)

Swaran Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

78. CWP-29229-2019

Kuldeep Singh and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

79. CWP-29245-2019

Jaswant Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

80. CWP-29317-2019

Ram Chander and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

81. CWP-3039-2022

Vijay Gopal and another ..... Petitioners

Versus

Addl. Registrar (General) Coop. SOCS and others ..... Respondents

82. CWP-3651-2022

Satish Kumar ..... Petitioner

Versus

State of Haryana and others ..... Respondents

83. CWP-3871-2021

Amar Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

84. CWP-3936-2016

Gurmail Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

85. CWP-4050-2021

Satpal and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

86. CWP-6281-2014 (O&M)

Mahavir and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

87. CWP-6325-2014

Dalbir Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

88. CWP-6655-2014

Ram Diya and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

89. CWP-7045-2020

Sonu Singh ..... Petitioner

Versus

Registrar Cooperative Societies Haryana and others ..... Respondents

90. CWP-715-2023 (O&M)

Mahavir Singh ..... Petitioner

Versus

State of Haryana and others ..... Respondents

91. CWP-7582-2020 (O&M)

Rahul and others ..... Petitioners

Versus

Registrar Cooperative Societies, Haryana and others ..... Respondents

92. CWP-7763-2016

Nirmala Devi ..... Petitioner

Versus

State of Haryana and others ..... Respondents

93. CWP-8312-2021

Sushil Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

94. CWP-8321-2023

Gourav Saini and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

95. CWP-8641-2019

Yogesh Kumar ..... Petitioner

Versus

State of Haryana and others ..... Respondents

96. CWP-8927-2022

Shri Bhagwan ..... Petitioner

Versus

State of Haryana and others ..... Respondents

97. CWP-12514-2019

Rahul and others ..... Petitioners

Versus

Registrar Cooperative Societies and others ..... Respondents

98. CWP-7597-2020 (O&M)

Mini Bank Karamchari Sangh District Panipat ..... Petitioner

Versus

Registrar Cooperative Societies, Haryana and another ..... Respondents

99. CWP-7342-2021

Karambir and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

100. CWP-20690-2021

Badan Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

101. CWP-8076-2020 (O&M)

Krishan and others ..... Petitioners

Versus

Registrar, Cooperative Societies, Haryana and others ..... Respondents

102. CWP-26179-2023

Rattan Lal and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

103. CWP-9554-2020

Himanshu and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

104. CWP-96-1996

Ramesh Kumar ..... Petitioner

Versus

The Haryana State Federation of Consumers
Cooperative Wholesales Store Ltd. and another ..... Respondents

105. CWP-2276-2017

Ravinder Singh and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

106. CWP-7395-2020

Sultan Singh ..... Petitioner

Versus

Registrar Cooperative Societies Haryana and others ..... Respondents

107. CWP-977-2022

Kharkhoda Primary Agriculture Primary
Cooperative Society Ltd. and another ..... Petitioners

Versus

State of Haryana and others ..... Respondents

108. CWP-27206-2023

Vinod Kumar and others ..... Petitioners

Versus

State of Haryana and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Karan Singh, Advocate for
the petitioner(s) in CWP-14410-2023, CWP-13051-2022, CWP-14828-2022, CWP-14831-2022, CWP-14838-2022, CWP-13065-2022, CWP-13254-2022 CWP-13257-2022, CWP-13437-2022, CWP-13658-2023, CWP-13672-2023, CWP-13676-2023, CWP-13730-2023, CWP-14311-2022, CWP-14422-2023 CWP-14425-2023, CWP-14524-2023, CWP-14641-2023, CWP-14659-2023, CWP-14676-2023, CWP-14677-2023, CWP-14813-2022, CWP-19079-2023, CWP-19172-2023, CWP-19178-2023 CWP-19186-2023, CWP-11879-2019, CWP-11953-2019, CWP-12187-2019, CWP-12278-2019 CWP-12489-2019, CWP-12519-2019, CWP-28838-2019, CWP-31090-2019, CWP-27770-2022, CWP-27793-2022, CWP-27820-2022, CWP-28150-2019, CWP-29229-2019, CWP-29245-2019, CWP-29317-2019, CWP-8312-2021.

Mr. R.K. Malik, Sr. Advocate with
Mr. Kartikey Chaudhary, Advocate
for the petitioner in CWP-23030-2021.

Mr. Anurag Goyal, Advocate and
Mr. Nikhil Lather, Advocate for
the petitioner in CWP-96-1996.

Mr. Kartar Singh Malik, Advocate for
the petitioner in CWP-18728-2023.

Mr. S.S. Kaushik, Advocate
for the petitioner in CWP-9346-2021.

Mr. Sanjiv Gupta, Advocate and
Mr. Gaurav Singla, Advocate for the petitioner.

Mr. Jagbir Malik, Addl. AG Haryana and
Mr. Rajesh Gaur, Addl. AG Haryana.
Mr. Sandeep Singh Mann, Addl. AG, Haryana.

Mr. Rahul Singla, Advocate for respondent(s) in
CWP-14410-2023, CWP-13051-2022, CWP-14828-2022,
CWP-14831-2022, CWP-14838-2022, CWP-13065-2022,
CWP-13254-2022,CWP-13257-2022, CWP-13437-2022,
CWP-13658-2023, CWP-13672-2023, CWP-13676-2023,
CWP-13730-2023, CWP-14311-2022, CWP-14422-2023
CWP-14425-2023, CWP-14524-2023, CWP-14641-2023,
CWP-14659-2023, CWP-14676-2023 CWP-14677-2023,
CWP-14813-2022, CWP-19079-2023, CWP-19172-2023,
CWP-19178-2023 CWP-19186-2023,CWP-11879-2019,
CWP-11953-2019, CWP-12187-2019 CWP-12278-2019
CWP-12489-2019, CWP-12519-2019, CWP-28838-2019,
CWP-31090-2019, CWP-27770-2022, CWP-27793-2022,
CWP-27820-2022, CWP-28150-2019, CWP-29229-2019,
CWP-29245-2019, CWP-29317-2019, CWP-8312-2021.

Mr. Sukhdev Singh, Advocate for
Mr. Vikram Singh, Advocate for
the petitioner in CWP-2702-2022 and for
respondents in CWP-9554-2020.

Mr. Keshav Pratap Singh, Advocate and
Mr. Namish Sodhi, Advocate for
the petitioner in CWP-18346-2020.

Mr. Chander Pal Tiwana, Advocate
for the petitioner in CWP-23209-2023.

Mr. Varuna Singh and Ms. Mamta Panwar,
Advocates for the petitioner in CWP-2578-2020.

Mr. Rakesh Nagpal, Advocate for
the petitioner in CWP-3936-2016.

Mr. Akshit Dhiman, Advocate for
the petitioner in CWP-18302-2017.

Mr. Sachin Gupta, Advocate for
the petitioner in CWP-9554-2020.

Mr. Munish Kumar Garg, Advcoate and
Mr. Puneet Kapoor, Mr. Gandhi Lal Aggarwal, Advocates
for the petitioners in CWP Nos.6655, 6325, 6281 of 2014 and
CWP-20690-2021.

Mr. Ankur Goyat, Advocate for
Mr. Ramesh Goyat, Advocate for
the petitioner(s) in CWP-13955-2023 and CWP-15996-2022.

Mr. Bhupinder Malik, Advocate for
the petitioner in CWP-16340-2021.

Mr. Shamsher Singh Tomar, Advocate for
the petitioner in CWP-10791-2021.

Mr. Nischal Chetanya Manchanda, Advocate for
the petitioner in CWP-27099-2018.

Mr. R.S. Malik, Advocate
for the petitioner in CWP-1660-2021.

Mr. Ravinder Malik, Advocate for
the petitioner in CWP-715-2023.

Mr. Subhash Ahuja, Advocate with
Mr. Karanveer Ahuja, Advocate for
the petitioners CWP-977-2022 and
for respondent in CWP-2276-2017.

Mr. Nitin Rathee, Advocate for
the petitioner in CWP-2276-2017.

Mr. Kuldeep Singh, Advocate for
respondent No3 in CWP-27099-2018, CWP-1011-2019 and
for respondent No.6 in CWP-14988-2017, CWP-3736-2019.

Mr. Jagbir Malik, Advocate for
respondent No.3 in CWP-18728-2023.

Mr. Arvinder Arora, Advocate for
respondent No.5 in CWP-15996-2022.

Mr. Nikhil Sharma, Advocate for
Mr. Rajvir Singh Sihag, Advocate
for respondent No.2 in CWP-2702-2022.

Mr. S.S. Dinarpur, Advocate with
Mr. Rohit Singh, Advocate for
respondent No.5 in CWP-715-2023.

Mr. Amit Jaiswal, Advocate for
respondent No.1 in CWP-96-1996.

Mr. Amit Khatkar, Advocate for
respondent No.5 in CWP Nos.8927, 1067 of 2022.

Mr. Ravi Kadian, Advocate for
respondent No.4 in CWP-18065-2023.

Mr. J.C. Kapoor, Advocate for
respondents in CWP-15996-2022.

Mr. Sunil Kumar, Advocate for
Mr. Samarth Sagar, Advocate for
respondent No.2 in CWP-1660-2021.

Mr. Shonad Choudhary, Advocate for
respondent No.5 in CWP-14831-2022 and
for respondent No.3 in COCP-2171-2021.

Mr. S.S. Mor, Advocate for
respondents No.3 to 5 in CWP-16340-2021 and
for respondent No.2 in CWP-2303-2021.

Mr. Pardeep Solath, Advocate for respondent No.3.

Mr. Harsh Aggarwal, Advocate for
respondents No.1, 4 and 5 in CWP-13243-2017.

Mr. Amit Jaswal, Advocate for
respondent No.1 in CWP-96-1996.

Ms. Bijuli Sinha, Advocate for
Ms. Veena Hooda, Advocate for respondents NO.5 & 6 in
CWP-18346-2020.

Mr. Vivek Sheoran, Advocate for
respondent No.5 in CWP-18728-2022.

Mr. Sourabh Goel, Advocate
for respondents in CWP-11987-2016.

SANDEEP MOUDGIL, J

1. The bunch of present writ petitions is heard together on the common question of law qua the maintainability of the writ petitions on the issue that whether the respondent-Primary Agriculture Cooperative Societies are amenable to writ jurisdiction.

2. To adjudicate the aforesaid question before this Court, it is to be tested as to whether the respondent-Primary Agriculture Cooperative Societies are "State" or "other authority" within the meaning of Article 12

of the Constitution of India.

3. Though the facts are not deemed necessary to be recorded herein of each and every writ petition separately but to have a better glimpse of the factual backdrop, the same are being taken up from the CWP No.14410 of 2023 titled as Roshan Lal versus State of Haryana and others, which was argued on behalf of the petitioner as a lead case on behalf of the accompanied all the writ petitions.

4. In brief the facts can be culled out that a writ in the nature of certiorari has been sought for quashing the order dated 05.12.2018 (Annexure P-17) passed by the Registrar, Cooperative Societies, Haryana whereby the representation against the reduction of pay stands rejected. Said action of the respondents was assailed asserting that the existing pay being drawn by the petitioner and other such employees cannot be reduced which was fixed by respondent No.3-The Haldri Cooperative Society Limited, Haldri, village Rampur, District Ambala (hereinafter referred to as "respondent No.3-Society" in short). As per circular/instructions dated 05.12.2008, 08.01.2009, resolution dated 26.02.2010, 07.10.2010, 25.10.2011 and 16.08.2013 (Annexures P-2 to P-7 respectively) with further averment that earlier there were no service rule and now under the garb of framing of service rules, same cannot be applied with retrospective effect to reduce their salaries

5. Certain employees challenged the vires of Rule 5 Sub-Rule 4 of the Service Rules for the Employees of Primary Agriculture Co-operative Societies, 2014 (hereinafter referred to as "Service Rules, 2014" in short) and during the pendency of said writ petition, a committee was constituted on 03.07.2015 (Annexure P-8) by The Registrar, Cooperative Societies,

Haryana-respondent No.2 to examine the issue of amendment in the Service Rules, 2014 qua the employees of Primary Agriculture Cooperative Societies/Primary Cooperative Credit Service Societies (hereinafter referred to as "PACS" in short). The suggestions were invited from the Employees Union of all the PACS vide letter dated 06.07.2015 (Annexure P-9), however, in the meantime, the bunch of writ petitions was disposed of vide order dated 03.08.2015 (Annexure P-10) with the main writ petition bearing CWP No.22097 of 2014 in the following terms:-

> *"In these bunch of petitions, the petitioners who are working in different Societies i.e. Cooperative Credit and Service Societies (CCSS) and Primary Agriculture Cooperative Societies, have challenged Rule 5 of the Primary Agriculture Co-operative Societies Staff Service Rules, 2014, (hereinafter referred to as PACS Staff Service Rules, 2014) and its Sub-rule (4), framed by the Registrar, Cooperative Societies, Haryana, whereby the pay drawn by the petitioners before coming into force of the aforesaid Rules has been reduced and the excess amount paid to them has been ordered to be recovered. The petitioners have also challenged various resolutions passed by the different Cooperative Societies, who in pursuance of the aforesaid amendment have ordered recovery of the excess pay/amount from the petitioners.*
>
> *Learned counsel for the petitioners today has placed on record the copy of the order dated 3.7.2015 passed by the Registrar Cooperative Societies, Haryana Panchkula. According to this order, a Committee comprising of officers has been constituted to examine the issue raised by PACS employees regarding amendment in PACS Staff Service Rules 2014. The said committee has been asked to submit the report with clear remarks and suggestions immediately so that action can*

> *be taken accordingly.*
>
> *In view of the said development, learned counsel for the petitioners argued that at this stage let this matter be disposed of with liberty to the said Committee to consider the objections raised by the petitioners against the amendment of PACS Staff Service Rules 2014 and submit its report and till then no recovery be effected from them.*
>
> *Learned counsel for the respondents have not disputed the factum of constitution of Committee by the Registrar, Cooperative Societies, for considering the amendment in PACS Staff Service Rules 2014.*
>
> *In view of these facts and circumstances and after hearing learned counsel for the parties, we dispose of these writ petitions with the directions that let the Committee consider the issue raised by PACS employees regarding amendment in PACS Staff Service Rules 2014 and give its report. Till the decision is taken on the said report by the respondents, no recovery be effected from the petitioners. If the report of the Committee goes against the petitioners, it will be open for them to avail their remedy in accordance with law."*

6. In fact that bunch of writ petitions was disposed of to await the decision of the aforesaid committee constituted by respondent No.2 on 03.07.2015 and till then recovery of alleged excess salary drawn by the petitioners-employees was stayed.

7. It is averred in the writ petition that despite pendency of issue under consideration with the aforesaid committee, the Assistant Registrar, Cooperative Societies, Ambala directed the Chief Executive Officer, the Ambala Central Cooperative Bank Limited, Ambala to fix the pay of petitioners employees as per Service Rules, 2014, which invited another forced round of litigation in the form of a bunch with main CWP No.23229

of 2015 titled as "***Rameshwar Lal and others versus State of Haryana and others"***, which was again disposed of with the following order:-

> *"The petitioners have filed the aforesaid civil writ petitions under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari thereby quashing the impugned order dated 01.10.2015 (Annexure P-9) vide which the Assistant Registrar, Co-operative Societies, Karnal, has directed to fix the pay of the petitioners as per Rule 5 of the Primary Agriculture Co-operative Societies Staff Service Rules, 2014.*
>
> *Reference can be made to the order passed by Division Bench of this Court in* ***CWP No.22097 of 2014****, titled as* ***"Sukhbir Singh and others vs State of Haryana and others"****, decided on 03.08.2015 (Annexure P-6) wherein, the petitioners who were working in different societies. i.e. Co-operative Credit and Service Societies (CCSS) and Primary Agriculture Cooperative Societies, have challenged Rule 5 of the Primary Agriculture Co-operative Societies Staff Services Rules, 2014 and its Sub-rule (4), framed by the Registrar, Co-operative Societies, Haryana, whereby the pay drawn by the petitioners before coming into force of the aforesaid Rules was reduced and the excess amount paid to them was ordered to be recovered. While disposing of the said writ petition i.e. CWP No.22097 of 2014 on 03.08.2015, the Division Bench of this Court gave directions that let the Committee consider the issue raised by Primary Agriculture Co-operative Societies employees regarding amendment in PACS Staff Service Rules, 2014 and gave its report. However, it*

was further ordered that no recovery was to be effected from the petitioners till the report was submitted by the Committee and if, the report of the Committee goes against the petitioners, it will be open for them to avail their remedy in accordance with law.

In the present case as well, the petitioners are seeking quashing of the order dated 01.10.2015 (Annexure P-9) whereby the Assistant Registrar, Co-operative Societies, Karnal, has given directions to fix the pay of the petitioners/employees as per Rule 5 of the Primary Agriculture Co-operative Societies Staff Service Rules, 2014.

All the writ petitions are being disposed of in view of the order dated 03.08.2015 passed by Division Bench of this Court. All the petitioners can raise their objections with regard to the impugned order dated 01.10.2015 (Annexure P-9) before the Committee constituted as per order dated 03.08.2015. However, a direction is being given to the Committee constituted by the Registrar, Co-operative Societies, to give its final report in view of the order dated 01.10.2015 (Annexure P-9).”

This Court vide its order dated 20.01.2016 while disposing of the said bunch directed that the petitioners can raise their objections with regard to the order dated 01.10.2015 (Annexure P-9) before the Committee and directed the committee to give its final report in view of the earlier directions.

8. The aforesaid committee after having examined the suggestions and representations so received by it from the employees of PACS/PCCS proposing the draft amendment in the Service Rules, 2014 with the

following provision as Rule 5 therein.

“5. PAY:

The following staffing Norms and pay scales will be applicable to the employees of PACS/PCCS w.e.f. date of notification:-

<table>
<tr><th>Sr. No.</th><th>Classification of PACS/CS Society</th><th colspan="6">Establishment</th></tr>
<tr><td rowspan="4">1.</td><td rowspan="4"></td><td>Sr. No.</td><td>Name of the post</td><td>Sanctioned Strength</td><td>Pay Band</td><td>Grade Pay</td><td>Minimum Pay</td></tr>
<tr><td>1.</td><td>Prabanhak</td><td>One</td><td>5200-20200</td><td>2400</td><td>5200+240 GP=7600</td></tr>
<tr><td>2.</td><td>Salesman/ Clerk-cum-Cashier</td><td>One for each sale point and two for each PACS</td><td>5200-20200</td><td>1800</td><td>5200+1800 GP=7000</td></tr>
<tr><td>4.</td><td>Peon/ Chowkidar</td><td>Two for each PACS</td><td>4440-7440</td><td>1300</td><td>4440+1300 GP=5740</td></tr>
<tr><td rowspan="3">2.</td><td rowspan="3"></td><td>1.</td><td>Prabanhak</td><td>One</td><td>5200-20200</td><td>2400</td><td>5200+240 GP=7600</td></tr>
<tr><td>2.</td><td>Salesman/ Clerk-cum-Cashier</td><td>One for each sale point and two for each PACS</td><td>5200-20200</td><td>1800</td><td>5200+1800 GP=7000</td></tr>
<tr><td>3.</td><td>Salesman</td><td>Two for each PACS</td><td>4440-7440</td><td>1300</td><td>4440+1300 GP=5740</td></tr>
</table>

9. Respondent No.2 carried out the second amendment vide order dated 30.05.2017 (Annexure P-14) in Service Rules, 2014 known as “The Primary Agriculture Cooperative Societies, Staff Service/Primary Cooperative Credit and Service Societies (2nd Amendment) Rules, 2017 (hereinafter referred to as “Service Rules, 2017” in short), making amendment as follows:-

"5. Pay

The following staffing norms and pay scales will be applicable to the employees of PACS/PCCS w.e.f. date of notification:-

Sr. No.	**Classification of PACS/CS Society**	**Establishment**					
1.	A	Sr.	Name of the post	Sanctioned Strength	Pay	DA @ 125% as on 01.01.2016	Minimum Basic Pay as on 01.01.2016 merging DA @ 125%
		1.	Prabanhak	One	7600 (5200+2400)	9500	17100
		2.	Clerk-cum-cashier	Two for each PACS	7000 (5200+1800)	8750	15750
		3.	Salesman	Two for each PACS	7000 (5200+1800)	8750	15750
		4.	Peon/ Chowkidar	Two for each PACS	5740 (4440+1300)	7175	12915
2.	B	1.	Prabanhak	One	7600 (5200+2400)	9500	17100
		2.	Clerk-cum-cashier	Two for each PACS	7000 (5200+1800)	8750	15750
		3.	Salesman	Two for each PACS	7000 (5200+1800)	8750	15750
		4.	Peon/ Chowkidar	Two for each PACS	5740 (4440+1300)	7175	12915
3.	C No. of employees	1.	Prabanhak	One	7600 (5200+2400)	9500	17100

	=4 (Four)	2.	Clerk-cum-cashier	Two for each PACS	7000 (5200+1800)	8750	15750
		3.	Salesman	Two for each PACS	7000 (5200+1800)	8750	15750
		4.	Peon/ Chowkidar	Two for each PACS	5740 (4440+1300)	7175	12915

10. The Assistant Registrar, Cooperative Societies vide its letter dated 23.06.2017 (Annexure P-15) asked the Prabandhak of the respondent Societies to adopt the Rules of 2017 and this order was further challenged by number of writ petitions which were clubbed along with the earlier bunch of writ petitions whereby vires of Service Rules, 2014 was already assailed and the same was disposed of by common order dated 22.01.2018 (Annexure P-16) in CWP No.21147 of 2017 with a direction that respondent No.2 will issue a show cause notice to the petitioners and other effected employees of the proposed action of reduction of pay, if any, in terms of the aforesaid amendment to enable the effected employees to respond within a period of one month from the service of notice which shall be effected within one month from the date of receipt of this Court order dated 22.01.2018. It was further ordered that the matter shall be finally disposed of within a period of one month by passing a speaking order and the entire exercise be concluded within three months and operation of impugned order issued by the Assistant Registrar, Cooperative Societies was stayed for a period of three months with a further rider that in case the reduction in pay of the petitioners is found to be justifiable, the amount, if any paid, shall be recoverable from them.

11. It is in compliance to the aforesaid order, respondent No.2 has passed the order dated 05.12.2018 which is subject matter before this Court

in the instant writ petition.

It would be worth noticing here that in the bunch of writ petitions, an interim protection was granted in the writ petitions on different dates to the effect "in the meantime, no recovery shall be effected from the petitioner as a result of re-fixation of pay".

12. It is in this backdrop of sequence, this bunch came to be heard before this Bench and before the petitioners are heard on merits of the case, the preliminary objection has been raised on behalf of the respondent No.3-PACS in the instant petition with different respondent number in the instant bunch though on behalf of the PACS itself to the effect that the PACS are only a registered Cooperative Society under the Haryana Cooperative Societies Act, 1984 and by its nomenclature are not amenable to writ jurisdiction stressing upon vehemently that these respondents Societies-PACS are neither "State" nor "other authority" and as such, are not within the ambit of Article 12 of the Constitution of India.

13. At this juncture, it would be appropriate firstly to proceed on the preliminary objection raised by the respondent-Societies on maintainability of the present bunch of writ petitions.

14. Mr. Kuldeep Singh, learned counsel appearing in various writ petitions on behalf of PACS would argue that it is not a statutory authority established by any Act and as such by its very inception is a group of like minded people voluntarily came together to form a cooperative society and got it registered under Section 4 of Act of 1984 and, therefore, is neither State nor its instrumentality or any other authority within Article 12 of the Constitution of India which would mean that these PACS are not amenable to writ jurisdiction.

15. Mr. R.K. Malik, Sr. Advocate would contend that the service rules governing the conditions of employees of all the PACS in the State of Haryana have been issued namely "The Primary Agriculture Cooperative Societies (PACS)/Primary Cooperative Credit and Service Societies (PCCS), 2014" issued by the Registrar Cooperative Societies Haryana and therefore, the State Government is the supervisory authority on the working of all these PACS/PCCS having deep and pervasive control.

16. He would further vehemently stress on the fact that under these Rules of 2014 and subsequently in the year 2017 the pay scales and other staffing norms have been fixed and in addition to that the Registrar Cooperative Societies Haryana is the Appellate Authority to adjudicate on the grievances of petitioners and all other employees. He, therefore, on the strength of these facts concludes the submission urging that the nomenclature of PACS/PCCS clear establish that they are State within the ambit of Article 12 of the Constitution of India and hence the present writ petitions are maintainable.

17. In other petitions of this Bunch, the Advocates on behalf of the petitioners have adopted the aforesaid arguments made on behalf of Mr. Malik, learned Senior Advocate and on this issue no other point has been raised for consideration to examine the question of maintainability.

18. On the other hand, Mr. Kuldeep Singh, Mr. Jagbir Singh, Mr. S.S. Dinarpur, Mr. Pardeep Solath and Mr. Amit Jaswal as well as Mr. Vivek Sheoran, Advocates pressed into submissions urging that the PACS/PCCS in the State of Haryana are totally a private entity run by its own self finance being a group of like minded volunteers coming together which is governed by its own bye-laws though approved by Registrar

Cooperative Societies, Haryana as per Section 9(A) of the Act of 1984.

19. It is further submitted on behalf of the respondents that the governance in complete vests with the managing committee of the PACS/PCCS and the final authority is in the general body of these societies. Referring to the Act of 1984, it is asserted before this Court that State Government has no control direct or indirect in any manner as it is the Secretary who is Government as defined in Section 80 CPC whereas Registrar is only an authority to register such societies who has a limited role to supervise that the aims and object for which such PACS/PCCS have been registered under the Act of 1984 are being adhered to in letter and spirit.

20. Mr. Pardeep Solath, learned Advocate goes on to submit that the respondent-PACS/PCCS do not get any financial assistance from the State Government or any other of its financing institutions to run the affairs and business including salary of its employees. He would also argue that the area of operation of each PACS/PCCS is limited within the defined territorial part stipulated in its bye-laws and none of the employees has any right or provision in the Service Rules or bye-laws for transfer of his/her services to any other PACS/PCCS.

21. Mr. Jagbir Malik, Advocate for the PACS add that as far as framing of Service Rules, 2014 by the Registrar Cooperative Societies Haryana is concerned i.e. only to bring uniformity to be followed by all the PACS/PCCS in the State of Haryana but the provisions of these Rules is to be adopted and implemented by the Managing Committee of such PACS/PCCS being final authority in the matter.

22. It is on the conclusion of these submissions on behalf of the respondents, the dismissal of present bunch of writ petitions have been sought urging that the respondent-PACS/PCCS are neither State nor instrumentality of State or any other authority to bring it within the ambit of Article 12 of the Constitution of India.

23. Heard.

24. I have considered the submissions made by learned counsel for both the sides and have scrutinized the record to proceed on the question of maintainability of the present bunch of writ petitions against the PACS/PCCS.

25. Certain facts which have gone unrebutted can be culled out to the effect that PACS/PCCS are the societies registered under the Act of 1984. These are governed by their own set of bye-laws and each PACS/PCCS in the State of Haryana has its own separate bye-laws as approved by the Registrar Cooperative Societies, Haryana.

26. The respondent-PACS/PCCS are cooperative societies registered vide Section 8(A) which are run by its own funds/self finance managed through its members as well as business. There is also no dispute to the fact that even the pay scales and other staffing norms are to be paid out of those funds itself without any financial aid from the State Government or any of its financial institutions. The area of operation of all these respondent-PACS/PCCS is confined to territorial part as stipulated in its byelaws. The appointing authority of its employees is the managing committee who is also empowered to enroll members or to remove any of such members. In all these affairs, there is no direct or indirect control of the State Government and what to talk of Registrar, Cooperative Societies,

Haryana.

27. The Hon'ble Apex Court vide various judicial pronouncements such as in Ajay Hasia's case (supra) and R.D. Shetty's case (supra) in particular laid certain tests to determine whether a society or any corporation is acting as an instrumentality and agency of the Government and observed in RD Shetty's case (supra) as under:-

> *"So far as India is concerned the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this," It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporation was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of*

corporations should equally be subject to the same limitations."

xx xx xx xx xx

"A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a Corporation is wholly controlled by Government not only in its Policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters.' So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government ? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control ? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial ? Now, one thing is clear that if the entire share Capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or

shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government. It is not possible to formulate an inclusive or exhaustive which would adequately answer this question. There is no cut and dried -formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

The Court then proceeded to indicate the different tests, apart from ownership of the entire share capital:

*".............. if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstances supporting an inference that the corporation is an instrumentality or agency of Government .... It may therefore be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character .... But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action - Vide **Sukhdev v. Bhagatram (1975) 3 SCR 619 at 658**. So also the*

existence of deep and pervasive State control may afford an indication that the Corporation is a agency or instrumentality. It may also be a relevant factor to whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporation's ties to the State."

"There is also another factor which may be regarded as having a bearing on this issue and it is whether the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed - Vide Arthur S. Miller : "The Constitutional Law of the Security State" (10 Stanford Law Review 620 at 664)"

"It may be noted that besides"the socalled traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying. the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram (supra) where the learned Judge said that "institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition, too important not to be considered government functions."

The court however proceeded to point out with reference to the last functional test :

"............. the decisions show that even this test of public or governmental character of the function is not easy of

> *application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions. Perhaps the distinction between governmental and' non-governmental functions is not valid any more, in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. (Mathew, J. in Sukhdev v. Bhagatram (supra) at p. 652). But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference."*

28. A larger Bench of the Hon'ble Supreme Court in Ajay Hasia's case (supra), culled out six factors after considering various earlier judicial pronouncements including International Airport Authority's case (supra), which reads as under:-

(i) If the entire share capital is held by Government, it would go a long way towards indicating that the body is an instrumentality or agency of Government

(ii) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the body being impregnated with Governmental character.

(iii) It may be a relevant factor--- whether the body enjoys monopoly status which is the State conferred or State protected.

(iv) Existence of "Deep and Pervasive State Control: may afford an indication that the body is a State Agency or instrumentality

(v) If the functions of body are of public importance and are closely related to Governmental functions, it would be a relevant factor in classifying the body as an instrumentality or agency of Government.

(vi) Specifically, if a Department of Government is transferred to that body, it would be a strong factor supportive of this inference of the body being an instrumentality or agency of Government.

29. It is on these relevant factors, this Court would test that whether the respondent-PACS/PCCS are an instrumentality or agency of Government and can be termed as "State" to being it within the meaning and expression as defined in Article 12 of the Constitution.

30. Now coming to the merits in the instant bunch of petitions related to this question of maintainability, the undisputed facts are that the respondent-PACS/PCCS are registered cooperative society under Section 8 of the Act of 1984, and the Registrar has limited duty assigned to him vide this statute as envisaged vide Section 8A, which reads as under:-

> *"Section 8A.* ***Power of Registrar to decide certain matters:-*** *Where in connection with the formation, registration or the admission of a member, a question arises whether a person resides in the area of operation of the society or whether a person belongs to a particular class or occupation or such other matter pertaining to the eligibility of the person to become a*

> *member of the society, such question shall be decided by the Registrar and his decision in this regard shall be final."*

31. It is worth noticing here that in the case of ***Pradeep Kumar Biswas V. Indian Institute of Chemical Biology and others, 2002(2) SCT 1067 (SC) : 2002(5) SCC 111,*** a Bench of seven Judges of the Apex Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case (supra) and approved in the case of Ajay Hasia (supra) for determining as to when a corporation can be said to be an instrumentality or agency of the government so as to come within the meaning of the expression 'authority' in Article 12 of the Constitution. There the Bench referred to the case of "*Chander Mohan Khanna v. NCERT", 1992(1) SCT 100 (SC) : 1991(4) SCC 578"* where, after considering the memorandum of association and the rules, this Court came to the conclusion that NCERT was largely an autonomous body and its activities were not wholly related to governmental functions and is governmental control was confined only to the proper utilization of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution.

32. Further, reference was also made in that case to the decision of this Court in "***Mysore Paper Mills Ltd. V. Mysore Paper Mills Officers' Association and another", 2002(1) SCT 83 (SC) : 2002(2) SCC 167***, where the Supreme Court held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and

carrying on important functions of public interest under the control of the Government.

33. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or co-operative or a company, is not decisive. The real status of the body with respect to the control of government would have to be looked into. The various tests as indicated above, would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, Bye-Laws of the PACS/PCCS would have to be seen. In one of the judgments, it was asserted that the Government of Uttar Pradesh held 50% shares in the PACS/PCCS which fact was denied in the counter affidavit filed on behalf of State and it was averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. It was on behalf of the petitioners in the counter informed that the State is holding 50% shares in the PACS/PCCS which was not denied on behalf of the PACS/PCCS. Therefore, even if it is taken to be admitted due to non traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the PACS/PCCS. It has been admitted on behalf of the petitioners that Government had never advanced any loans to the PACS/PCCS. It has no where been stated that the State used to meet any expenditure of the PACS/PCCS much less almost the entire one, but, as a matter of fact, it operates on the basis of self generated finances.

34. Before culminating the question qua maintainability of the writ

petition against a Primary Agricultural Cooperative Societies (PACS) and Primary Cooperative Credit Service Societies (PCCS), it would be imperative to understand the concept of Cooperative and how it developed in India is of vital importance. Without understanding the concept of cooperative movement and the societies registered therein adjudication on the issue would not be with perfection for which it could be referred as following:-

(i) The cooperative movement in India plays a crucial role in the agricultural sector, banking and housing. The history of cooperatives in India is more than a hundred years old. Cooperatives developed very rapidly after Indian independence. According to an estimate, more than half a million cooperative societies are active in the country. Many cooperative societies, particularly in rural areas, increase political participation and are used as a stepping stone by aspiring politicians.

(ii) The history would depict that the initial stage co-operative movement in India stood up slowly. In 1904 British govt formed a cooperative rule on the basis of report given by Fredric Nicholson a British officer of Madras region. While the first co-operative society formed in Kanaginahala of Gadaga district of Karnataka becoming the first co-operative of Asia. It was started by Siddanagauda Sanna Ramanagauda Patila.

(iii) In India, the Government initiative began with to say that the Union Ministry of Cooperation being a ministry under the Government of India came into existence in July 2021. The ministry provides a separate administrative, legal and policy framework for strengthening the cooperative movement in the country. The ministry's creation was announced on 6 July 2021 along with its vision statement of "Sahkar se samriddhi"' (transl. Prosperity through cooperation). Before the creation of this ministry, the objectives of this ministry were looked after by the Ministry of Agriculture. The ministry works in strengthening co-operatives at the grassroot level, working to streamline processes for 'Ease of doing business' for co-operatives and enabling the development of Multi-State Co-operatives (MSCS). The same was initially announced by Finance Minister Nirmala Sitharaman while presenting the 2021 Union budget. The ministry was created with objectives:

(a) To realise the vision of "Sahkar se Samriddhi" (prosperity through cooperation).

(b) To streamline processes for ''Ease of doing business'' for co-operatives and enable development of Multi-State Co-operatives (MSCS)

(c) to provide a separate administrative, legal and policy framework for strengthening the cooperative movements in the country.

(d) To deepen the cooperative as a true people-based movement reaching up to the grassroot level.

Many experts have raised concerns about the new ministry because co-operative societies are subject of State List under the Seventh schedule of the Constitution, and therefore creating such a ministry at the central level would increase the power in the hands of the union government. Kerala's Minister of Co-operation and Registration V. N. Vasavan stated that, "Creation of a new Cooperation ministry is an infringement upon the rights of the state governments.

(iv) The framing of legislation “Co-operative Societies Act (1912)” provided the legal framework. The said Act in the country elaborated the networks of cooperatives at the local, regional, state and national levels that assist in agricultural marketing. The commodities that are mostly handled are food grains, jute, cotton, sugar, milk, fruit and nuts. Support by the state government led to more than 25,000 cooperatives being set up by 1990s in Maharashtra.

As with sugar, cooperatives play a significant part in the overall marketing of fruit and vegetables in India. Since the 1980s, the amount of produce handled by Cooperative societies has increased exponentially. Common fruit and vegetables marketed by the societies include bananas, mangoes, grapes, onions and many others. ChangthangiPashmina which remained as the monopoly of few traders is also moving towards fairness in production and supply chains with source region Ladakh's cooperative Looms of Ladakh.

There are three distinct types of housing cooperatives in India approved by each state, through the Cooperative Societies Act, based on the co-op housing objectives and functionality. The categories of cooperative housing are tenure, finance, and building co-operatives. The classifications of these cooperatives vary across states, and its approval is not exclusive to each state.

Ganapati (2008) defines these categories as the following:

"In Tenure co-operatives, members collectively own and manage housing, similar to co-operative housing in the Western countries. Finance co-operatives provide loans for new construction or housing repairs to members. Building co-operatives construct housing for their members, but they may also be involved in land development"[24]

(v) The Gandhian Socialist Philosophy regarding cooperative is also of much significance to understand its concept according to which it was necessary for creation of a socialistic society and complete decentralization of power.

- He was of the opinion that cooperation was one of the important means to empower people.
- Phoenix Settlement: In South Africa, Mahatma Gandhi instituted the 'Phoenix Settlement' as a cooperative in a socialistic pattern.
- Its objective was to cultivate the three acres of land given to each member and to stop the emergence of a new class of absentee landowners.
- Tolstoy Farm: He established the Tolstoy Farm as a rehabilitation cooperative settlement for the families affected by the South African freedom struggle during the period.
- He fully believed in Tolstoy's socialistic philosophy.
- Cooperatives for Peasantry: On return from South Africa, Gandhiji visited the countryside of India and realized the bankruptcy and distress of Indian peasantry oppressed by excess taxation, rack renting, illegal exaction etc.
- He observed that the closest cooperation amongst the peasants is an absolute necessity.
- Any industry based on agricultural produce such as cotton, sugar, oil seed, wheat etc. should be on a cooperative basis so that the producers could secure the best value for their output.

(vi) Cooperative Movement After Independence

- Part of Mixed Economy:

After independence, the nation adopted the approach of planned economic development for establishment of a mixed economy consisting of three sectors namely Public, Private and Cooperative Sectors.

Cooperatives were visualized to play the role of a balancing factor between public and private sectors.

- Part of FYPs:

After independence, cooperatives became an integral part of Five-Year Plans (FYPs).

Pandit Jawaharlal Nehru considered cooperatives as one of the three pillars of Democracy, the other two being the Panchayat and the Schools.

- National Policy of Cooperatives:

In 1958, the National Development Council (NDC) had recommended a national policy on cooperatives and also for training of personnel and setting up of Cooperative Marketing Societies.

The Government of India announced a National Policy on Cooperatives in 2002.

- Establishment of NCDC:

National Cooperative Development Corporation (NCDC), a statutory corporation, was set up under National Cooperative Development Corporation Act, 1962.

(vii) From the very inception of cooperatives in India and growth of its movement resulted into multiple sectors having successful cooperatives such as:

- Agriculture and Allied Sectors: National Cooperative Development Corporation (NCDC), National Agricultural Cooperative Marketing Federation of India (NAFED), Indian Farmers Fertilisers Cooperative Limited (IFFCO), AMUL and Co-operative Rural Development Trust (CORDET).

- Banking Sector: Punjab and Maharashtra Cooperative (PMC) Bank, Bharat Cooperative Bank and Saraswat Cooperative Bank.

Conclusion

•Cooperatives have a futuristic role of fostering collectivism and preserving the social capital base of the country.

Cooperatives are the best channels to keep the spirit of collectivism and democracy afloat.

•The presence of a large network of social organizations, like cooperatives, would aid in the generation and utilization of social capital and 'greater the social capital, greater would be the possibility of development'.

35. Now coming back to the proposition and the factual aspects in the instant Bunch of writ petitions, the nature and nomenclature of PACS/PCCS would bring forth the following factors:

(i) The respondent-PACS/PCCS are merely the private cooperative societies having the registration under the Haryana Cooperative Societies, 1984 but not a creation of statute in itself.

(ii) It operates only within the area as is defined in its bye-laws and each and every PACS/PCCS has its own different bye-laws which governs its functioning and day to day working as well as providing manner of governance.

(iii) The Managing Committee of these PACS/PCCS are the governing body to run the day to day affairs and execute its aims and objects as defined in the bye-laws.

(iv) The Managing Committee is the appointing authority for all of its employees.

(v) The salary/wages to the employees of PACS/PCCS is paid by that very PACS/PCCS in which they are employed out of its own funds and pertinently the PACS/PCCS in the State of Haryana are self financed cooperative societies.

(vi) There is no financial aid grant or any other kind of share-holding of the State or of its financing institutions for these PACS/PCCS whereas such contribution, if any, from the State or any of tis financing institutions has to be not only substantial but to that extent which would be suffice to meet out almost all of its expenses.

(vii) The employees engaged in particular PACS/PCCS are not transferable to any other PACS/PCCS.

(viii) The final authority in taking decisions of any kind vests in the general body

(ix) These PACS/PCCS do enjoy monopoly status and are bodies corporate according to Section 39 of the Act of 1984, which reads as under:-

> ***Section 39. Co-operative societies to be bodies corporate***
>
> *A co-operative society registered under this Act shall be a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted.*

(x) It could be settled by looking at significant provisions of byelaws Nos.4, 23, 30, 34, 40, 42, 45, 47 and 51 of the respondent-PACS/PCCS which are being recorded hereinbelow:-

> *"**4. Objective**:-The main objective of this Committee is to promote the economic interests of farmers, in which small and marginal farmers are included, rural artisans,*

agricultural laborers by providing them credit, marketing and other services according to Cooperative principals. For achieving these objectives, the Committee will do the following tasks:-

a. To provide short, medium and long term loans to its members for productive purposes;
b. Providing essential items for agriculture such as fertilizers, seeds, insecticides etc., agricultural implements and machinery, odder for livestock, raw material and other materials for industrial purposes;
c. Development of agricultural production and managing marketing of industrial materials of its members;
d. To arrange for the processing and grading of the agricultural produce of its members.
e. To arrange for the supply of agricultural equipments and services on rent for its members.
f. To arrange for sale of goods to be consumed.
g. To encourage members to make savings and help themselves at their own level.
h. To make attempt to spread the Cooperative knowledge among their members.
i. To take on rent or own godowns and cold storages and to run warehouses for storing the produce.
j. To act as an agent of Government for procurement of agricultural produce and providing the agricultural related and industrial extension services to its members.
k. To Provide advance amount to its members on security of production.
l. To receive 'Amanants' (deposits) and loans from its members and non-members, in which Cooperative and Commercial Banks, Public Businesses and Government are included.
m. To undertake welfare activities, especially relating to children, youths, old-persons and ladies in their work

area.

n. Usually, doing other tasks, helpful for fulfillment of any one or for all out of abovementioned objectives.

Note: - Agriculture here includes animal husbandry, poultry, farming, pig farming, sheep and goat farming and other industries related to it. General Meeting

***23. General Meeting:** All members of the Committee shall constitute its general body meeting on any date.*

***30.** Without affecting the assumptions in aforesaid Bye-Laws, the following shall be powers and duties of General Body:-*

1) To elect, remove and suspend the members of the Managing Committee;

2) To consider institution's annual report, audited balance-sheet, income-expenditure accounts, inspection letters and other information received from the Registrar of Cooperative Societies;

3) To Review the work of previous year;

4) To share the profit;

5) To arrange for internal audit of the accounts of Committee;

6) To review the status of affairs of the Committee, including the list of defaulters together with the amount of default.

7) To consider on the list of employees relatives of office bearers of Committee.

8) To amend the Bye-Laws and expel the members.

9) To consider any other matter according to the Bye-Laws.

***34.** M**anagement Committee**: The Management Committee shall consist of following members:-*

1) Seven elected members, out of which five members are farmers and two members are non-farmers, in which at-least one member shall be from Schedule Caste and at-least one shall be a woman. The member getting *maximum votes shall be declared the winner.*

2) Maximum two members nominated by the Government in case the contribution is at-least one lakh rupees in the share capital of the Committee;

3) Representative of HAFED;

4) Only one nominated member of the institute providing finance to the Committee.

***40.** The Management Committee shall perform all powers and duties except those reserved for the General Body. The Management Committee shall have the following powers and duties in particular:-*

1), To prepare the profit-loss 'Khata' (book) and balance-sheet and present the same during annual general meeting;

2) To audit the accounts, sanctioning the contingency expenditures and maintaining the Rules registers;

3) To make discussion about the inspection notes/comments and accounts notes and taking necessary action in same;

4) To direct the Manager to call a general meeting in accordance with the Sub-Rules;

5) To arrange the loans as per the restrictions imposed by the general meeting or the Registrar and to approve the maximum loan limits to the members.

6) To appoint, suspend, dismiss or impose penalties on employees (other than those appointed by the Central Cooperative Bank of HAFED under the common cadre) under terms and conditions fixed by the Registrar from time to time and to take/recover appropriate securities from them as determined by the Registrar from time to time.

7) To ensure that the loans are utilized for the approved purposes for which the loans were issued.

8), To accept or reject the resignation of a committee member and in case of acceptance, substitute some other *member in Committee until election of some other member in his place by the general meeting;*

9) To bring the surplus funds of the Committee in use in accordance with the Rules formulated under the Act;

10) To hear and take action in complaint, if any.

11) To conduct/take the legal action, pursue it and make compromise.

12) To prohibit any member in voting on a matter in which he has a personal interest.

13) To make its own Rules for the business transactions of Committee or to adopt such Rules instructed by the Registrar time to time.

14) To prepare the annual programme and budget of Committee and giving it necessary work form.

15) To sanction loans according to the instructions issued by the Registrar and Central/Apex Bank time to time.

16) To approve expenditure for welfare activities provided that this fund is created for this purpose out of own profit of Committee.

17) Generally: carry on business of Committee in regular manner and

18) Making amendments in Bye-Laws and expelling members;

19) Supervising the sales made by the Committee.

***42.** According to necessity, the Managing Committee shall have the power to frame Bye-Laws under section 9-A of the Haryana Cooperative Societies Act, 1984 for expanding the business of the Society.*

***45.** In carrying on the affairs of the Society, the members of the Managing Committee shall act with the same diligence and foresight as ordinary business men and shall be responsible for any losses incurred because of acting against the Acts, Rules and Bye-Laws and the set objectives.*

> ***47.*** *The services of the members of the Management Committee shall be unpaid, but they may be paid travelling allowance and daily allowance as may be determined by the Management Committee and approved by the Registrar.*
>
> ***51. Manager****: The Manager will be appointed by the Management Committee. The Manager will be on deputation from any Cooperative institute until the appointment is made."*

(xi) A primary society is well-defined in the Act of 1984 as well vide Section 2(o), which envisage that a primary society means a cooperative society, object of which is to promote the common interest of its members and whose membership consists exclusively of individuals.

From the above it is crystal clear leaving no doubt that PACS/PCCS are admittedly primary societies which have membership of individuals exclusively which is sufficient to further demonstrate the nomenclature to be that of a monopoly and a corporate body.

36. A collective reading of the provisions of the Act of 1984 along with bye-laws of PACS/PCCS leaves no doubt in the mind of this Court that the respondent-PACS/PCCS are a voluntary organization having no control of the State Government what to say of "deep and pervasive control" either in the management or towards financial contribution in their running, which functions by a democratically elected Committee with the supreme power vested in its general body for all intents and purposes, hence, it cannot be held to be a "State" or "other authority".

37. In addition to the above said discussion, another most vital aspect cannot be lost sight by this Court i.e. Part IX-B of the Constitution of India whereby Article 243-ZI which envisage that incorporation of a

Cooperative Society is based on the principle of voluntary formation, democratic member-control, member-economic participation and autonomous functioning, which reads as under:-

> *"**243ZI. Incorporation of co-operative societies**.-Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding-up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning."*

38. After testing the issue hereinabove on the question of maintainability of the instant writ petitions against the respondents-PACS/PCCS and on the strength of consistent law laid down by the Hon'ble Supreme Court since *Ajay Hasia's case (supra)*, I, thereby hold that the petitioners have failed to establish all the relevant factors such as:-

(i) The financial aid by the State Government is to the extent that it would meet the entire expenditure to run the respondent-Sugar Mill inasmuch as on an admitted fact in none of the case in hand out of the present bunch, it is more than 50%.

(ii) There is deep and pervasive control of the State Government in the day to day affairs and functioning to afford any indication of it being a State agency or its instrumentality.

(iii) Though, it may be performing public function but it is a creation of a Statute as well.

(iv) The share capital of the State Government or other authority is in entirety.

39. Apart from above, one more pertinent factor which is undisputed that the functioning of respondent-PACS/PCCS as a Cooperative Society is also to earn profit though it may be facing loss in business it still has to pay the wages and salaries from its own sources to all of its employees including the Manager and other staff involved in its working and functioning since it is not a statutory body created under a Statute.

40. Hence, the writ petitions are held to be not maintainable and accordingly, ordered to be dismissed on this ground alone.

41. However, it is made clear that in various writ petitions an alternative remedy is available to the petitioners under the provisions of bye-laws of the respondent-PACS/PCCS, the Service Rules governing service condition of its employees for which the petitioners are at liberty to take appropriate recourse to avail such alternate remedy in accordance with law.

42. Accordingly, the writ petitions are ordered to be dismissed with no order as to costs.

43. All the miscellaneous applications, if any, shall also stand disposed off.

(SANDEEP MOUDGIL)
13.12.2023 **JUDGE**

Poonam Negi

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