

2023:PHHC:064826

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

- (1)

CWP No.20639 of 2016 (O&M)

Reserved on: 27.03.2023

Pronounced on: 03.05.2023
- Gobind Ram and others

.... Petitioners
- Versus
- State of Haryana and others

.... Respondents
- (2) CWP-20640-2016 (O&M)

Arvind Kumar and another

.... Petitioners
- Versus
- State of Haryana and others

.... Respondents
- (3) CWP-20641-2016 (O&M)

Prahalad Singh and others

.... Petitioners
- Versus
- State of Haryana and others

.... Respondents
- (4) CWP-20642-2016 (O&M)

Shiv Kumar and another

.... Petitioners
- Versus
- State of Haryana and others

.... Respondents
- (5) CWP-20643-2016 (O&M)

Vinod and others

.... Petitioners
- Versus
- State of Haryana and others

.... Respondents

(6) CWP-20644-2016 (O&M)

Rambir and another Petitioners

Versus

Additional Chief Secretary to Government of Haryana, Cooperation
Department, Civil Secretariat, Chandigarh, and others

.... Respondents

(7) CWP-20645-2016 (O&M)

Hari Chand and others Petitioners

Versus

State of Haryana and others

.... Respondents

(8) CWP-20646-2016 (O&M)

Satbir and others Petitioners

Versus

State of Haryana and others

.... Respondents

(9) CWP-16686-2017 (O&M)

Baldev Singh Petitioner

Versus

The Additional Chief Secretary to Government of Haryana, and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Surender Singh Dalal, Advocate, for the petitioners.

Mr. Mohit Saini, Advocate, for
Mr. Mohit Garg, Advocate,
for the petitioners in CWP No.16686 of 2017.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Sachin Gupta, Advocate, for respondent No.3 in CWP No.20641 of 2016 and for respondent No.4 in all other cases except CWP No.16686 of 2017.

Mr. Rajeev Sharma (Raju), Advocate,
for respondents No.4 to 6 in CWP No.20641 of 2016.

JAISHREE THAKUR.J

1. As identical questions of law and facts are involved in all the nine writ petitions titled above, therefore, I propose to dispose of all of them by means of the present common judgment in order to avoid repetition. However, the factual matrix which needs a necessary mention for the limited purpose of deciding the core controversy involved in these petitions, has been extracted from **CWP No.20639 of 2016** titled as ***Gobind Ram and others Versus State of Haryana and others.***

2. The petitioners herein have sought quashing of order dated 01.04.2013 passed by respondent No.3 and the subsequent orders passed in appeal and revision whereby the resolution vide which they were appointed has been rescinded.

3. The petitioners herein are the employees of the Bata Primary Agriculture Cooperative Society Limited, Bata, Tehsil and District Palwal, respondent No.4 hereinafter to be called as “the Society”. They were appointed on different posts (petitioner No.1 as Salesman, petitioner No.2 as Clerk and petitioners No.3 and 4 as Peon-cum-Chowkidar) on regular basis, vide resolution dated 28.08.2012 passed by the General Body of the Society for its smooth functioning after following due procedure by making *munadi* in the area of operation of the Society. The petitioners joined the services on their respective posts on 01.09.2012. However, respondent No.3-Deputy

Registrar, Cooperative Societies, Gurgaon, issued a show cause notice to the Society for rescinding the resolution dated 28.08.2012, purportedly under Section 27 of the Haryana Cooperative Societies Act, 1984. The said show cause notice was replied to by the Society stating that the appointments were made against vacant posts for the smooth functioning of the Society, as per the byelaws of the Society and no approval was required under any rules. Respondent No.3, DRCS, in his decision held that the Society has not sought necessary approval and, therefore, the resolution was rescinded under Section 27 of the Haryana Cooperative Societies Act, 1984 read with Rule 110(II) of the Haryana Cooperative Societies Rules, 1989 framed there under vide his decision dated 01.04.2013 (Annexure P-3), holding that under instructions dated 22.02.2006, no new appointment can be made.

4. Against the said decision, the petitioners approached this Court by way of CWP No.18250 of 2013, which was disposed of vide order dated 21.08.2013 by relegating the petitioners to file an appeal before the Appellate Authority and further ordered to maintain status quo regarding the services of the petitioners during the pendency of the appeal. Accordingly, the petitioners filed appeal under Section 114 of the Haryana Cooperative Societies Act, 1984 before the Additional Registrar (Marketing), Cooperative Societies, Haryana, Panchkula, however, it was dismissed vide order dated 17.10.2014 (Annexure P-5) holding that instructions dated 22.02.2006 clearly bar such appointments. The instructions were issued for the financial benefits of the Society and it was admitted by the Society that it was running in financial losses i.e. more than Rs.4 crores as on 31.03.2013 and if such

appointments are allowed, then the losses would further increase. Moreover, no evidence was adduced that transparent procedure was adopted in their appointment, which was very essential.

5. The revision preferred against the said order under Section 115 of the Haryana Cooperative Societies Act, 1984, before the Additional Chief Secretary to Government, Haryana, Cooperation Department, Chandigarh, respondent No.1, was also dismissed vide order dated 15.09.2016 (Annexure P-6) upholding the order dated 01.04.2013 as well as the order passed in appeal. Hence, the present petition.

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

7. *Per contra*, learned counsel appearing on behalf of the Society would contend that the appointment of the petitioners is in violation of the

instructions dated 22.02.2006 issued by the Registrar, Cooperative Societies, vide which no new appointment can be made. It is submitted that the petitioners were afforded full opportunity to defend their case when their appeal was dismissed on the ground that no transparent procedure was adopted at the time of their appointment.

8. The petitioners filed replication to the reply filed by the Society and pointed out that the appointment of the petitioners was never challenged by any person as no one was aggrieved against such appointments since they were made in accordance with law by the then Managing Committee and with the change of Managing Committee, the said appointments cannot be said to be illegal by a new Committee. The provisions contained in Rule 5(2) of the Primary Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit & Service Societies Rules, 2014, removing the employees appointed in the Societies after 19.02.2006 has since been amended vide the Primary Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit & Service Societies (Second Amendment) Rules, 2017. The petitioners herein were appointed in 2012 i.e. after 19.02.2006, and therefore, the impugned order is liable to be set aside. It is submitted that under the Right to Information Act, it was intimated that after 01.10.2006, there were no Service Rules and the Byelaws framed under the Haryana Cooperative Societies Act 1984 attained finality qua the appointment of the employees of the Society.

9. Reply was also filed by respondent No.2, to which replication was filed by the petitioners by reiterating the averments made hereinabove

that the legal right of the petitioners has been infringed by the answering respondent by passing the impugned orders. The appointment made are valid as per Rule 5(2) & (3) of the amended Rules, 2017.

10. I have heard learned counsel for the parties and have gone through the pleadings of each case. The contention of the petitioners is that in the absence of Service Rules at the relevant time, the power to appoint a person was solely vested with the Managing Committee of the PACS and no approval was required, whereas the stand of the respondents is that as per instructions dated 22.02.2006 issued by the Registrar, Cooperative Societies, Haryana, no new appointment can be made, as the Society itself was running in losses and the appointment of the petitioners will further increase the burden.

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

12. Initially there were no Service Rules governing appointments to the Primary Cooperative Credit and Service Societies in the State of

Haryana. The Service Rules came into effect on 16.11.1992. These Rules were to apply to all Primary Cooperative Credit and Service Societies. As per Rule 8, it was specified that no person shall be appointed to a post in service unless he possesses qualifications and experience as mentioned in Appendix-II of the Rules, and the appointment to the service shall be made by the Committee with majority of votes. The Primary Agriculture Cooperative Societies (PACS)/Primary Cooperative Credit and Service Societies Rules, 2014 were formulated and the appointments as per Rule 10 were to be made by the Managing Committee on the recommendations of the Selection Committee. As per Rule 5.2, the Societies were to remove employees who are ineligible on the date of appointment due to age, qualification or *appointed after 19.02.2006 in contravention of the circular/instructions issued by the Registrar, Cooperative Societies, Haryana*, which is the issue in hand, but these Rules have been subsequently amended in the year 2017 and the amended Rules came into force w.e.f. 13.05.2017. As per the amendment, Rule 5.2 which mandates that a Society shall remove the employees who have been appointed after 19.02.2006 in contravention of the circular/instructions issued by the Registrar, Cooperative Societies, Haryana, stands deleted. In the Rules of 2014, there was also Rule 5.3 which mandates that PACS/PCCS shall arrange for deployment of excess staff beyond sanctioned posts in the adjoining PACS/ PCSS through a Committee headed by Deputy Registrar, Cooperative Societies and the posts falling vacant due to retirement/ resignation/ termination/death shall not be filled up unless the excess staff is exhausted by way of deployment/adjustment and wherever

DRCS concerned is unable to adjust/deploy the excess staff, the Registrar, Cooperative Societies, Haryana shall be the competent authority for final decision and the excess staff, if any, shall be kept in diminishing cadre. This Rule 5.3 also stands deleted with the amendment made in the Rules w.e.f. 2017. In the case of the petitioners herein, they were appointed by the Governing Body, but sought to be removed by the Deputy Registrar as the appointments had been made in contravention to the instructions dated 22.02.2006. The petitioners herein have been working in their respective posts till date under orders of the Court and, there is no allegation that their appointments are vitiated on account of any falsehood or fraud having been exercised by them. The Governing Body, at the relevant time, approved their appointments despite the circular issued by the Registrar. The appointments of the petitioners were made after due publication and inviting applications and, therefore, due process was followed and they cannot be faulted. The amendment of the Rules has also done away with the necessity of removing employees who have been appointed after 19.02.2006 in contravention of the circular and instructions issued by the Registrar and, therefore, as also the amendment allows for the excess staff to be either adjusted in adjoining Societies or to be kept in diminishing cadre. To uphold the order of termination at this juncture would not be justified keeping in view that the petitioners would have become overage and illegible for appointment elsewhere. Having families to support, a sympathetic view ought to be taken to save their families. An identical question arose before the Hon'ble Supreme Court in ***H.C. Puttaswami and others Versus The Hon'ble Chief***

Justice of Karnataka High Court, Bangalore and others, 1991 SLR 166,

wherein it has been held as under:-

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

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

conducted by the Public Service Commission for fresh selection (See: Lila Dhar v. State of Rajasthan) 1981 (1) SCR 320 at 326.

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

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

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

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

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

15. Therefore, keeping in view that there are no allegations of any irregularity or fraud having been played while appointing the petitioners, in fact they were appointed after due advertisement and *munadi*, it would be wholly unjust to uphold the order of termination especially in view of the fact that the Rule itself stands deleted in respect of any appointments made contrary to the circular/instructions of the Registrar, Cooperative Societies, Haryana, which is the ground for terminating the petitioners herein.

16. Consequently, the writ petitions are allowed and the impugned orders of termination are hereby set aside.

(JAISHREE THAKUR)
JUDGE

03.05.2023

sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No