

2024:PHHC:102588-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 01.08.2024
Pronounced on: 09.08.2024

1. CWP-16052-2020 (O & M)

THE PUNJAB STATE AGRICULTURAL COOPERATIVE SOCIETIES EMPLOYEES UNION PUNJABPetitioner

Versus

STATE OF PUNJAB AND ANR.Respondents

2. CWP-16991-2020

SATPALPetitioner

Versus

STATE OF PUNJAB AND ANR.Respondents

3. CWP-6377-2023

CHARANJEET SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

4. CWP-8894-2024

GURKIRPAL SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

5. CWP-11976-2022

JAGTAR SINGH AND ORS.Petitioners

Versus

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STATE OF PUNJAB AND ORS.Respondents
6. CWP-3780-2023

SAVINDER SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents
7. CWP-4189-2024

UJJAL SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents
8. CWP-4193-2024

JASPAL SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents
9. CWP-5371-2024

DALBIR SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents
10. CWP-574-2023

JASBIR SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. D.S.Patwalia, Senior Advocate with
Ms. Alisha Sharda, Advocate and

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Mr. Gaurav Rana, Advocate
for the petitioner(s) (in CWP-16052-2020).

Ms. Yukti Garg, Advocate for
Mr. Vikas Singh, Advocate
for the petitioner(s) (in CWP-6377-2023).

Mr. H.S.Saggu, Advocate
for the petitioner(s) (in CWP-3780-2023).

Mr. Nishant Sindhu, Advocate for
Mr. Deepak Gupta, Advocate
for the petitioner (in CWP-11976-2022).

Mr. Vijay Lath, Advocate and
Mr. Ajay S. Dhiman, Advocates
for the petitioner(s) (in CWPs-4189, 4193, 5371-2024).

Mr. Ashok Sharma Nabhwala, Advocate
for the petitioner (in CWP-574-2023).

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. All the writ petition(s) herein involve common question of law, inasmuch as, a challenge is thrown to the amendment dated 24.09.2020, as made in Rule 19 (A) of the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 (hereinafter for short called as the 1997 Rules) appertaining to the retirement age of the employees of the said societies, as such, they are liable to be decided through a common verdict.

2. For the sake of brevity, the facts of **CWP-16052-2020** are taken up here for deciding the instant *lis*.

3. The Government of Punjab has enacted The Punjab Cooperative Societies Act, 1961.



4. In exercise of the powers conferred by Section 85 of the Punjab Cooperative Societies Act, 1961 (hereinafter for short called as the Act of 1961) and all other powers enabling him in this behalf, the Governor of Punjab made the Punjab Cooperative Societies Rules, 1963 (hereinafter for short called as the 1963 Rules).

5. In the above regard, a perusal of Sub Section (2) (xxxviii) of Section 85 of the Act of 1961, provisions whereof become extracted hereinafter, reveals that thereby the State Government is empowered to not only prescribe the qualifications for the members of the Committee and qua the employees of a society or class of societies, but also become empowered to fix the conditions of service subject to which persons may be employed by the societies.

85. Rules :- (1) The Government may, for any co-operative society or class of such societies, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(i) to (xxxvii)

*(xxxviii) **qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by societies.***”

6. Moreover, Sub Section (3) of Section 85 of the Act of 1961, provisions whereof become extracted hereinafter, mandate that



every Rule made under this Section shall be laid as soon as may be after it is made before the State Legislature.

(3) Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is laid or the session immediately following the legislature agree in making any modification in the rules or the Legislature agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

7. Furthermore, conspicuously the Registrar Cooperative Societies, Punjab, is also under Rule 28 of the 1963 Rules thus empowered to frame service rules. The said Rule is extracted hereinafter.

"Rule 28- Qualifications and conditions of service of employees.

1) The qualifications and conditions of service subject to which any person may be employed by a cooperative society or a class of cooperative societies shall be such as may be determined by the Registrar from time to time.

2) Where the Registrar is of the opinion that it is necessary or expedient so to do, he may by order, for reasons to be recorded in writing relax the provisions of this rule with respect to any cooperative society or class of cooperative societies to such extent as he may consider proper."

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8. It is averred that in exercise of the powers conferred by Rule 28 of the 1963 Rules, the Registrar Cooperative Societies, Punjab framed the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 (hereinafter for short called as the 1997 Rules) by repealing the earlier Rules of 1986 which were governing the service conditions of the employees of the said State Co-operative Agricultural Societies. Thereafter, respondent No. 2 vide its letter dated 23.05.2001 had made an amendment in Rule 19(A) of the 1997 Rules. The said amendment as occurs in the Rules (supra) is extracted hereinafter.

Rule No.	Existing Rule	Rule No.	Amended Rule
19 (A)	Every employee of the society shall retire on attaining the age of 60 years except for the peon-cum-chowkidar who shall retire on attaining the age of sixty two years.	19(A)	Every employee of the society shall retire on attaining the age of 58 years except for the peon-cum-chowkidar who shall retire on attaining the age of 60 years. Provided that the employees appointed before this amendment shall be governed by the existing provision for retirement of age.

9. Subsequently, the Registrar Cooperative Societies, Punjab in exercise of the powers vested with him by Rule 28 of the 1963 Rules, vide letter dated 24.09.2020 amended Rule 19(A) of the 1997 Rules. The said amendment is extracted hereinafter.

Rule No.	Existing Rule	Rule No.	Amended Rule
19 (A)	Every employee of the society shall retire on attaining the age of 58 years except for the peon-cum-chowkidar who shall retire on attaining the age of 60 years. Provided that the employee appointed before this amendment shall be governed by the existing provision for retirement of age.	19(A)	Every employee of the society shall retire on attaining the age of 58 years except for the peon-cum-chowkidar who shall retire on attaining the age of 60 years.



10. Resultantly therebys the hereinabove underlined proviso, as existed in Rule 19(A) of the 1997 Rules, became deleted. As such, when therebys the earlier prospectivity assigned to the said Rule, became contrarily assigned retrospectivity, therebys a challenge is laid to the said assigned retrospectivity to the relevant Rule.

11. Reiteratedly, the petitioner(s) herein who are the employees of different Co-operative Societies thus also lay a challenge to the aforesaid amendment, as made to the Rules (supra), whereby their retirement age has been reduced from 60 years to 58 years.

Submissions of the learned counsel for the petitioner(s).

12. a) It is argued that since the amendment made by the respondent-State thus is purportedly made through the employment of the provisions carried in Section 85 (3) of the Act of 1961, thereupons, a statutory obligation became laid upon the respondent to ensure that the said amendment becomes placed before the State Legislature, thus for enabling the latter to modify or annul the same, whereas, with the apposite amendment as made to Rule 19(A) of the 1997 Rules, rather not becoming placed before the State legislature nor the said amendment becoming either approved nor annulled, thereby the amendment as made to the Rules (supra) acquires no force in the eyes of law. Resultantly the impugned Annexure(s) (memo/letter dated 24.09.2020) is liable to be quashed and set aside.

b) The amendment (supra) has been given retrospective effect and the employees who were appointed in the societies prior to the



making of the first amendment on 23.05.2001, shall untenably, also become affected from the same.

Reply of the respondent.

13. That another bunch of writ petitions with lead case bearing CWP No. 13831-2023 titled as Kulwinder Singh Kang Vs. State of Punjab, having the same/identical issues, as in the instant writ petition(s) came up for hearing before the learned Single Bench of this Court. The said writ petition(s) became dismissed by this Court vide order dated 30.05.2024. Since the said verdict remained unchallenged nor becomes reversed thereby it acquires conclusive and binding effect. Therefore, it is contended that in terms of the said binding and conclusive verdict, the instant petition(s) are also required to become dismissed.

14. The petitioner(s) can avail the alternative remedy as envisaged in Rule 20 of the 1997 Rules besides as envisaged in Rule 45 of the 1963 Rules. The said Rules are ad verbatim extracted hereinafter.

Rule 20 of the 1997 Rules

If any doubt arises at any time regarding interpretation or application of these rules, the matter shall be referred to the Registrar whose decision shall be final and binding and conclusive.

Rule 45 of the 1963 Rules

45. Powers of Registrar to give directions -

(1) The Registrar may, from time to time, give directions consistent with the provisions of the Act as he considers necessary for the beneficial and efficient functioning of

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any Co-operative Society or class of Co-operative Societies.

(2) If any question arises whether any directions given under sub-rule (1) are necessary for the beneficial and efficient functioning of the co-operative society or class of co-operative societies, as the case may be, the concerned co-operative society or class of co-operative societies may refer such question to the Government whose decision there on shall be final.

15. Furthermore, the averments made by the petitioner(s) that the respondents have not complied with Section 85 (3) of the Act of 1961, while passing the impugned amendment to Rule 19(A) of the 1997 Rules, is a totally misconceived interpretation besides arises from misreadings of the provisions of the Act of 1961, besides of the 1963 Rules and of the 1997 Rules.

16. Section 85 of the Act of 1961 empowers the 'Government' to make rules. Section 85 of the Act of 1961, is but an enabling Section, which empowers the State Government to make rules for the matters enlisted in the foregoing provisions of the said Section itself. The said Section does not talk of vesting of any Rule making power in the Registrar, therefore, the only authority which can make Rules under Section 85 of the Act of 1961, thus is the Government. Resultantly, therebys only the Rules which become enacted by the State Government in terms of Section 85(2) (xxxviii), are subjected to the compliances, as envisaged under Section 85(3) of the Act (supra), inasmuch as, the said Rules becoming laid before the Legislature

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concerned, whereas, the rules enacted in terms of Rule 28 of the 1963 Rules are not required to be placed before the Legislature concerned.

17. A similar power to make rules for the benefit and efficient functioning of any cooperative society or class of cooperative society has also been vested in the Registrar by virtue of Rule 28 and Rule 45 of 1963 Rules. The said provisions make it amply clear that the power vested under the said Rules is enabling and independent from the power arising from rules made in terms of Section 85 (3) of the Act of 1961 and thereby they are not amenable to compliance vis-a-vis Section 85 (3) of the Act of 1961.

Inferences of this Court.

18. The petitioner(s) society(ies) are State Agricultural Cooperative Society(ies). At the outset, the counsels appearing for the petitioner(s) admitted that the petitioner(s)-society(ies) are a secondary society(ies) and further it is admitted that the State Government, has not subscribed any share, to the financial corpus available with the society, for thereby respondent-State becoming fastened with any liabilities relating to the mercantile activities as become engaged into by the Society(ies) or vis-à-vis any liabilities arising from salaries or pension(s) or other retiral benefits, if any, bestowed to the employees of the petitioner(s)-cooperative society(ies).

19. The effect of the above, is that, when the registration of the petitioner(s) society(ies) occurred through the mandate carried in the Act of 1961, inasmuch as, the societies becoming registered with Registrar Co-operative Societies. Resultantly thereby the provisions

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carried in the Act of the 1961 came into play. Therefore, all the provisions carried therein relating to the auditings being made of the assets and income derived by the Co-operative Society(ies), do also surge forth. It appears that in the face of the auditings being made of the affairs of the society(ies), but as apparent on a reading of the reply on affidavit (in CWP-16052-2020), as furnished to the writ petition by the respondent-State, that thereby the financial conditions of the petitioner society(ies) were found to be in extreme distress and as such made the societies to become financially incapacitated to even liquidate the salaries to its employees.

20. Now considering the fact that if ultimately the unpaid employees of the petitioner(s)-co-operative societies are led to recourse the mandate carried in Sub Section (2) of Section 57 of the Act of 1961, provisions whereof become extracted hereinafter, which may also subsequently result in the appointment of an liquidator in terms of Section 58 of the Act of 1961.

57. Winding up of co-operative societies : (1) *If the Registrar, after an inquiry has been held under section 50, or an inspection has been made under section 51, or on receipt of an application made by not less than three-fourths of the members of a co-operative society, is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up.*

(2) *The Registrar may of his own motion make an order directing the winding up of a co-operative society-*

(a) *where it is a condition of the registration of the society that the society shall consist of at least ten members and the number of members has been reduced to less than ten; or*

(b) *where the co-operative society has not commenced working or has ceased to function in accordance with co-operative principles....”*

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21. Therefore, when in terms of Section 59 of the 'Act of 1961', the liquidator may ultimately also determine the liability of the society relating to the non payment or non disbursement of salaries to the employees of the petitioner(s)-society(ies). Moreover, if insufficient funds are yet available with the society rather for therebys the liquidator becoming led to ensure the liquidations of the unpaid salary to the employees concerned, therebys, the employees of the society may ultimately find themselves with no remedy or may ultimately find themselves in a position, whereby the petitioner society is unable to redeem their salaries qua them, even for the period when they had performed work under the petitioner(s) society.

22. The echoings as made in the reply on affidavit (in CWP-16052-2020), may even result in the above recourses being rendered completely nugatory. Since the said reply on affidavit has not been rebutted nor when the petitioner(s) society(ies) have placed on record rather the statements of accounts but revealing that they may have mopped up sufficient funds for therebys theirs ensuring the redemption(s) of salaries to their employees. Resultantly, the non placing by the petitioner(s) society(ies), vis-a-vis the apposite statement of accounts, also does have the necessary corollary, that therebys the salary to be paid to the employees on enhancement of the age of superannuation besides other post retiral benefits, rather may also come under some threat of non redemption(s) thereof. To save the employees of the petitioner(s) society(ies), from the ill predicament (supra), therebys thus it appears that the impugned Rules have been formulated.

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In sequel, therebys the deletion of the proviso (supra) whereby the earlier assigned prospectivity qua the relevant rules, rather has been assigned retrospectivity, thus appears to be with the holistic purpose (supra). Resultantly even if, some of the employees of the cooperative societies concerned, who otherwise were on account of prospectivity being assigned to the relevant Rules, rather were to retire on attaining the age of 60 years (62 years in case of peons), but when on account of retrospectivity being assigned they had retired on attaining the age of 58 years (60 years in case of peons), yet the said assigning of retrospectivity qua the relevant Rules rather does not come under any cloud of theirs being ultra vires vis-a-vis any constitutional provision.

23. Importantly also with the respondent-State not contributing any funds towards the financial corpus of the society(ies), so as to enable the petitioner(s) society(ies) to rely upon the said made subscription(s), thus by the State, whereupons redemptions therefrom may occur vis-à-vis the unpaid salaries of the employees concerned. In sequitur, therebys also it appears that the petitioner(s) society(ies) appear to be in a dire financial stress.

24. Be that as it may, the effect of similar cause(s) of action, and similar relief(s) being agitated in CWP-13831-2023 and connected writ petitions, whereons, a verdict of dismissal was made by this Court vide order dated 30.05.2024. Moreover, when the said decision remains unchallenged, therebys it acquires binding and conclusive effect. Therefore, the effect thereof, is that, the instant petition(s) are also liable to be dismissed.

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25. Now dealing with the argument raised by the learned State counsel that since Rule 20 of the 1997 Rules, provisions whereof are extracted hereinabove, speak that if any doubt arises at any time regarding interpretation or application of these rules, the matter shall be referred to the Registrar whose decision shall be final and binding and conclusive, thereupon finality assigned to the interpretation made by the Registrar vis-a-vis the disputed rules, thus bars the institution of the instant writ petition(s), but is an argument which is liable to be rejected.

26. The reason for forming the above conclusion stems from the factum, that the power of judicial review, vesting in this Court also covers a situation, whereby this Court may deem it appropriate to make a sound interpretation of the relevant Rules. Consequently, when the finality assigned to the apposite interpretation as made by the Registrar, as and when a doubt arises relating to the interpretation qua the application of Rules, does untenably fetter and trammel the power of judicial review, as vested in this Court. As such, the said Rule, *prima facie*, appears to be ultra vires the Constitution of India.

27. Conspicuously also when any conundrum besets thus the writ Courts, whereby this Court is led to determine the vires of any Rule, besides is also led to make an interpretation of the Rules, therebys, to the considered mind of this Court, this Court has the jurisdiction to determine the vires of any Rules or to make a sound reasoned interpretation of the said Rules, in respect whereof, the above power of judicial review is to be exercised, irrespective of the fact that



the Cooperative Agricultural Multipurpose Societies Limited rather are or are not an instrumentality of the State.

28. Now coming to the argument raised before this Court by the learned counsel for the petitioner(s), that since the impugned amendment was purportedly made in terms of Rule 28 of the 1963 Rules, yet when in terms of Section 85 (3) of the Act of 1961, the said amendment was required to become tabled before the State Legislative Assembly for the latter proceeding to either accord assent thereto or to decline the accordings of assent thereto. However, when the said impugned amendment to Rule 19(A) of the 1997 Rules, did not become placed before the State Legislature, thereby the impugned amendment to the Rule (supra), is ultra vires to the provision embodied in Sub Section (3) of Section 85 of the Act of 1961, and as such it is required to be quashed and set aside.

29. For the reasons to be assigned hereinafter, the said argument is merit-worthy and is accepted and the argument to the contra raised by the learned State counsel, thus is not found to be tenable.

30. The reason for drawing the above inference, naturally becomes sparked, from the factum that the parent provision is embodied in Section 85 (3) of the Act of 1961 and when in terms of any Rules which become enacted, through the sourcing of the substantive/parent statutory provision (supra), thereby but as a natural corollary thereto, the provisions of Section 85 (3) of the Act of 1961, do emerge in the forefront whereby the said formulated Rules are required

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to become placed before the State Legislative Assembly, thus for approvals or declinings thereto becoming made, or the supra was a dire imperative statutory necessity. Resultantly therebys the non compliance thereto may render the enactment of the Rules to be not merit worthy.

31. The said statutory necessity was irrespective of the factum that the relevant empowerment under Rule 28 of the 1963 Rules, rather is bestowed upon the Registrar. Conspicuously also for the further trite reason, that the Registrar, is but a functionary of the State Government and/or is the State Government but for all intents and purposes. In sequel, even if Rule 28 of the 1963 Rules, empowers the Registrar and not the State Government, to make the relevant rules, yet as stated (supra), when the Registrar is but for all intents and purposes, rather a functionary of the State Government or is the State Government, therebys the impugned Rule(s) enacted in terms of the substantive/parent statutory provision (supra), thus also required qua validating compliance being made in terms of the ordainment(s) carried in Section 85 (3) of the Act of 1961.

32. Be that as it may, since for reason (supra), the making of the said Rules thus has the holistic purpose (supra), and therebys when only for want of compliances being made to Section 85 (3) of the Act of 1961, thus the salutary purpose behind the enactment of the apposite Rule, rather may become ill frustrated, whereas, the said salutary purpose is required to be forwarded.

33. Resultantly, the respondent concerned, may consider, if now also possible, thus the placing of the said Rules before the State

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Legislative Assembly for therebys compliance being made to Section 85 (3) of the Act of 1961, and/or may enact either fresh Rules at par with the Rules under challenge, so that therebys the apposite retrospective approval becomes granted to the relevant Rule.

34. The said exercisings be considered to be completed within two months from today. It is also further expected that the cooperative societies concerned may rejuvenate their financial position, so that therebys they are able to mop up funds sufficient for liquidation of the liabilities concerned.

Final Order of this Court.

35. In aftermath, with the observation(s) and direction(s) aforesaid, the writ petition(s) are disposed of.

36. However, for facilitating the above besides for ensuring the effective functioning of the State Agricultural Cooperative Societies, a direction is made upon respondent No. 2 - Registrar Co-operative Societies, Punjab, to purvey to this Court, all the statistics with respect to the auditings being made of the funds of all the Cooperative Societies which are located in the State of Punjab.

37. Further, statistics with respect to the Societies coming under liquidation and with respect to the action takings by the liquidator concerned, be placed on record, through an affidavit becoming sworn by the Secretary, Cooperative Societies, Punjab.

38. Moreover, in case within the realm of certain provisions, the societies concerned, if are in any financial stress, thus can be taken over by the Government, if so required in public interest, thereupon the

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Government may also consider taking over the cooperative societies concerned. The said fact be also stated on the affidavit to be filed on the subsequent date of hearing.

39. For the afore purpose, list on 18.09.2024.
40. Since the main case(s) itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

09.08.2024

kavneet singh

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No

(SUDEEPTI SHARMA)
JUDGE