

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

227

CWP- 23148-2017(O&M)
Date of Decision:22.04.2024

Gaurav Mehla and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CWP- 16172-2014(O&M)
Date of Decision:22.04.2024

Randhir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sanjeev Sharma, Senior Advocate with
Mr. Sandeep Singh, Advocate and
Mr. Harkeerat Singh, Advocate for the petitioners
in CWP-23148-2017.

Mr. Vivek Goyal, Advocate and
Mr. Pardeep Sehrawat, Advocate for the petitioner(s)
in CWP-16172-2014 and for respondents No.6 and 7
in CWP-23148-2017.

Mr. Gaurav Jindal, Addl. A.G. Haryana.

Mr. M.S. Kathuria, Advocate for respondents No.4 and 5
in CWP-23148-2017.

Mr. Sanjay Jain, Advocate
for respondents No.7 to 13 in CWP-16172-2014.

JASGURPREET SINGH PURI J.(Oral)

CM-15073-CWP-2017

Present application has been filed under Order 6 Rule 17 to amend the writ petition.

Application is allowed as prayed for subject to all just exceptions.

The accompanying amended writ petition is taken on record.

Main cases

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties as facts are common and issues are inter-related.

2. CWP-23148-2017 titled as *Gaurav Mehla and others Vs. State of Haryana and others* is taken up first for consideration, since the second petition bearing CWP No.16172-2014 will be dependant upon the outcome of this petition.

3. Brief facts of the present case are that the respondents No.4 and 5 which is a Cooperative Marketing-cum-Processing Society Limited, Thanesar, District Kurukshetra, wanted to make some recruitments to the post of Clerk-cum-Salesman and Peon-cum-Chowkidar and sought permission from the Registrar, Cooperative Societies, Haryana. Vide Annexure P-4 dated 16.06.2014, the Registrar Cooperative Societies, Haryana, Panchkula, granted permission to fill up 03 posts of Salesman and 04 posts of Peon-cum-Chowkidar on the condition that these posts are to be filled as per Rules 3, 4 and 7 of the Primary Cooperative Marketing-cum-Processing Societies Limited Staff Service Rules 2003 (hereinafter to

be referred to 'Service Rules 2003') by giving the advertisement of the posts in two newspapers in Hindi and English and by following the conditions which were prescribed from time to time by the office. Thereafter vide Annexure P-5 dated 11.07.2014 (Page No.65) an advertisement was issued in this regard. Vide Annexure P-6 dated 30.07.2014 (Page No.67) a corrigendum was issued to furnish a fresh application in the prescribed performa for those who had not applied for the aforesaid posts. An agenda for the proposed meeting was drawn up for making the selection. This agenda was drawn by the BOD consisting of 06 members present including Assistant Registrar Cooperative Societies, Inspector Cooperative Societies. By way of this meeting held on 04.07.2014, a decision was taken to formulate a committee comprising of 04 officers i.e. the President, 02 Directors and the Inspector Cooperative Societies for further processing the recruitment process. Thereafter, interviews were conducted and vide Annexure P-7 dated 13.08.2014 (Page No.68) a meeting of the Managing Committee of the Thanesar Cooperative Marketing-cum-Processing Society Ltd. Societies took place and a decision was taken in this regard for the purpose of appointment of three candidates as Salesman-cum-Clerk and four candidates as Peon-cum-Chowkidar on regular basis. One person in the name of Randhir Singh-respondent No.6 has already filed a writ petition before this Court bearing CWP No.16172-2014 seeking quashing of the selection process. However, an interim order was passed in the aforesaid writ petition on 14.08.2014 that selection and appointment, if not already made, shall remain stayed till the next date of hearing. However, one day

prior to passing of the aforesaid interim order, Annexure P-7 dated 13.08.2014 has been passed by which appointments have been made by the Managing Committee. This selection and the resolution of the committee was challenged by respondent No.6-Randhir Singh by filing a petition under Section 27 of the Haryana Cooperative Societies Act before the Registrar Cooperative Societies and the same was decided on 06.06.2017 by the learned Additional Registrar Cooperative Societies (Stores), Haryana, Panchkula vide Annexure P-4 (Page No.100), whereby it was observed that the selection was in violation of the mandatory provisions of rules and is not sustainable in the eyes of law and therefore the resolution dated 13.08.2014 was set aside on 06.06.2017 by the learned Additional Registrar Cooperative Societies (Store), Haryana on two grounds.. Firstly, there was a violation of Rule 3 of the Services Rules 2003 because the quorum was not completed, since the members i.e. Assistant Registrar Cooperative Societies, Inspector Cooperative Societies, District Manager, HAFED were not present in the meeting which was a mandatory requirement of Rule 3 of the Service Rules 2003. Secondly as per Rule 14-A medical was required to be conducted by a Civil Surgeon and the same was got conducted by one MBBS Doctor. Thereafter, vide Annexure P-5 (Page No.113), the petitioners herein filed an appeal before the Additional Chief Secretary to Government of Haryana, Cooperation Department, Chandigarh, which was dismissed on 29.09.2017 and upheld the reasons given by the Additional Registrar Cooperative Societies with an additional reason that even in the appointment made there is no mention regarding the sanction strength of

staff and available posts. The present writ petition has been filed by the petitioner assailing the aforesaid two orders passed by the Additional Registrar Cooperative Societies and Additional Chief Secretary to Government , Haryana, Cooperation Department.

4. Learned Senior counsel appearing for the petitioners argued that the aforesaid impugned orders are liable to be set aside for number of reasons. Firstly, the mere fact that the medical of the selected candidates was got conducted from one MBBS doctor instead of the Civil Surgeon even though it is in violation of Rule 14(a) of the Services Rules 2003 but it was not the fault of the petitioners and at the most fault can be found with the Society at that point of time and therefore the selection cannot be vitiated only on this ground. He further submitted that at the most it is a matter of procedure even if it has been violated, cannot take away the rights which are now vested with the petitioners. Therefore, the selection cannot be vitiated on this ground. Secondly, the petitioners have already worked in the respondents-Society in pursuance of the selection for about 10 years and therefore even on the ground of equity, the appointments made therein by the respondents-Society should not be set aside because it will prejudicially affect the rights of the petitioners. Thirdly, even though the quorum in pursuance of Rule 3 of the Service Rules 2003 was not completed in the resolution dated 13.08.2014 whereby the selection was made, the same was not attributable to the petitioners and the reasons as to why the Assistant Registrar Cooperative Societies, the Inspector Cooperative Societies, and Manager of the HAFED did not come present in the meeting was not the fault of the petitioners and rather for number of

times they were informed to be present but for the reasons best known to them they did not come present in the meeting and when the appointments were made, the petitioners joined the services and continued for a period of 10 years and therefore the aforesaid defect if any was a curable defect and with the efflux of time, the defect can be cured because it was only at the most violation of procedural law. He further asserted that procedure is only a handmaid of justice and the rights of the petitioners who have been working for last 10 years will be seriously affected in case the impugned orders are upheld. Fourthly, he submitted that even if assumingly in the meeting dated 13.08.2014, the quorum was not completed, the provision of Rule 35 of the Service Rules 2003, can be invoked in the present case. While by referring to Rule 35, he submitted that there are omnibus powers with the managing committee to hold a meeting whenever necessary with seven days notice and three members can formulate the quorum in this regard and submitted that in view of Rule 35 of the Service Rules 2003, no defect can be found in the resolution dated 13.08.2014 and therefore the impugned orders are liable to be set aside.

5. On the other hand, learned State counsel submitted that impugned orders have been passed by the learned Additional Registrar Cooperative Societies and Additional Chief Secretary to Government , Haryana, Cooperation Department in a quasi judicial capacity.

6. Learned counsel appearing on behalf of the respondents-Managing Committee submitted that the present petition is liable to be dismissed in view of the fact that there is a direct violation of Rule 3 of the Service Rules 2003 and at that point of time managing committee

could not have passed a resolution in violation of mandatory Rule 3 and therefore learned Additional Registrar Cooperative Societies has rightly set aside the selection made.

7. He also submitted while replying to the argument raised by learned Sr. Counsel for the petitioners that when agenda was made and authority was vested with the formation of committee to further process vide Annexure P-8, the same was also without any adequate quorum. While referring to Annexure P-8, he submitted that even in that meeting of the managing committee consisted of 06 members including ARCS and Inspector Cooperative Societies, Kurukshetra but in that meeting also there was no representative of the HAFED which was requirement of Rule 3 and therefore the meetings dated 04.07.2014 and 13.08.2014 are also in violation of express provision of Rule 3 of the Service Rules 2003.

8. He further submitted that another important point involved in the present case is that the Cooperative Society belongs to District Kurukshetra and advertisement (Annexure P-5) has been issued in the Indian Express of Delhi Edition instead of Haryana Edition which goes to show clear cut *mala fide* on the part of the then Management Committee and this issue was not discussed by learned Additional Registrar Cooperative Societies and learned Additional Chief Secretary to Government, Haryana, Cooperation Department, Chandigarh and this would also go into show that the entire selection was based upon bias and *mala fide*. Learned counsel for the respondents-society also submitted that when the approval was granted by the Registrar, Cooperative Societies vide Annexure P-4 then it was also subject to compliance of

Rule 3, 4 and 7 of Service Rules 2003 and as per Rule 7(d), the selection has to be done by taking into consideration the reservation in direct recruitment for SC/ST, Ex-serviceman and physically handicapped persons shall be according to the instructions of the State Govt. issued from time to time whereas in the present case no such bifurcation was made and no reservation was kept and even otherwise also there was a direct violation of Rule 7(d) and rather the permission was granted by the learned Registrar Cooperative Societies, 'subject to fulfilment of the aforesaid rules'. He further submitted that although this issue was not discussed by the learned Registrar Cooperative Societies and by learned Appellate Authority but on this ground as well the selection was not sustainable and therefore prayed for dismissal of the present petition.

9. Learned counsel appearing on behalf of the private respondent-Randhir Singh, adopted the arguments raised by learned counsel for the respondents-society but with an additional argument by referring to a judgment of Hon'ble Supreme Court in ***Ramjit Singh Kardam and others vs. Sanjeev Kumar and others (2020) 20 SCC 209*** and contended that when a selection on the face of it, is in violation of the mandatory provision of law then irrespective of the length of service there can be no equity in favour of the selected candidates.

10. I have heard learned counsels for the parties.

11. The present is a case where the controversy was about the validity of resolution dated 13.08.2014 (Annexure P-7). The relevant provisions of the Services Rules 2003 are reproduced as under :-

“Rule 3-Powers to make appointment shall lie with the BOD/BOA of the society which may alter, amend, add or withdraw any of the rules herein from time to time subject to prior approval of the Registrar, Coop.Societies, Haryana.

Rule 4- These rules vest in the B.O.D./B.O.A which is also empowered to issue such instructions as may be necessary to give effect to and carry out the purposes of the provisions of these rules or otherwise to secure the effective control of the staff of the marketing society.

Rule 7- Recruitment:-

(a) All appointments shall be made by the B.O.D./B.O.A.

(b) Prior permission under rule 7(a) of the Rules shall be obtained for stop gap arrangement from the Registrar, Coop. Societies, Haryana.

(c) The Recruitment shall be made in accordance with the procedure laid down in these rules.

(d) Reservation in direct recruitment for S.C./S.T., ex-servicemen, physically handicapped persons shall be according to the instructions of the State Govt.issued from time to time.”

Rule 14A- *Every persons selected for appointment by B.O.D./B.O.A. shall before joining duty, be required to furnish a medical certificate of fitness from Civil Surgeon of the area provided that such certificate shall not be necessary for a person who is on deputation or who is selected by promotion and has already given a certificate of fitness in his former appointment.”*

12. In Rule 3 of the Service Rules 2003, an amendment was carried out vide Annexure P-11 at page 83 of the petition, which is reproduced as under:-

Rule No.	Existing Provision	Amended provision
3.	<i>Powers to make appointment shall lie with the B.O.D./B.O.A. of the society which may alter, amend, add or withdraw any of the rules therein from time to time subject to prior approval of the Registrar Coop. Societies, Haryana</i>	<i>Powers to make appointment shall vest with the B.O.D./B.O.A. of the society. Further provided that decision for appointment to various categories of service shall be taken in the meeting in which the presence and concurrence of concerned Assistant Registrar, Inspector Coop. Societies & Distt. Manager, Hafed, shall be compulsory. Any addition, alteration or amendment in the service rules will be subject to prior approval of Registrar Coop. Societies Haryana.</i>

13. A perusal of the aforesaid amended provision of Rule 3 would show that the amendment has been carried out on 28.01.2011 vide Annexure P-11 and the present selection is processed much after the amendment and therefore the aforesaid amendment is applicable to the present resolution. A perusal of Rule 3 would show that it provides for powers to make appointments in the Societies and provides that the appointment shall “**vest with the BOD/BOA of the Society**”. It further provides that the “**decision**” for appointment to the various categories of service “**shall**” be taken in the meeting in the presence and concurrence of the concerned Assistant Registrar, Inspector, Cooperative Societies and District Manager, HAFED which “**shall be compulsory**” . Therefore it is clear that the aforesaid provisions in the service rule are mandatory in nature. The aforesaid Service Rules of 2003 have been framed under Rule 29 of the Haryana Cooperative Societies Rules, 1989 and therefore are statutory in nature. Rule 3 does not only state that the powers of appointment shall vest with the BOD/BOA but it also clearly states that the decision has to be taken in the presence and concurrence of the concerned Assistant Registrar, Inspector Cooperative Societies and District Manager, HAFED. In the present case it is an admitted position that in the resolution dated 13.08.2014 all the 3 officers were not present and there is no dispute with regard to the aforesaid factual position.

14. The first argument raised by learned Senior counsel for the petitioners that so far as the violation of Rule 14-A of Service Rules 2003, is concerned, the same was only a procedural irregularity if any, this Court is of the considered view that had the aforesaid reason been the only

reason for vitiating the selection then certainly the argument raised by learned Senior counsel for the petitioner would have been sustainable. However, the primary reason of setting aside of the selection by the learned Additional Registrar and upheld by the learned Additional Chief Secretary to Government, Haryana, Cooperation Department was pertaining to violation of Rule 3.

15. Another argument which was raised by learned Senior counsel for the petitioner was that as per Rule 3, appointment is to be made by the management committee for appointment but vide Annexure P-8, the process was started by the management committee consisting of learned ARCS and also Inspector Cooperative Societies wherein a committee was formed and therefore even if the resolution dated 13.08.2014, was passed in the absence of these officers, the same cannot vitiate the selection process because when it was initiated, the quorum was complete. However on the other hand learned counsel appearing on behalf of respondents-Society has rather pointed out to Annexure P-8 again and stated that Annexure P-8/resolution was also lacking quorum because there was no representative of District Manager, HAFED and therefore the aforesaid resolution cannot be said to be a valid resolution. Therefore, the aforesaid argument of learned Senior Counsel for petitioners is also not sustainable.

16. There was another argument raised by learned Senior counsel for the petitioners that even if there was a lack of quorum as so prescribed in Rule 3 but residuary powers under Rule 35 could have been invoked.

Rule 35 is reproduced as under:-

“Meeting of the Managing Committee shall be held when necessary. At least 7 days notice of the meeting shall be given to committee members before a meeting is held. Three members shall form a quorum. The President or the Vice-President or in his absence a member elected by those present in a meeting shall preside. Unless otherwise provided in these by-laws, all questions shall be decided by a majority of votes. Each member shall have one vote. In case of equality of votes, the chairman shall have a casting vote.”

17. A perusal of the aforesaid Rule 35 would show that it pertains to powers of Managing Committee to hold meetings when it is necessary by giving 07 days notice. It also states that three members shall form a quorum. A perusal of the aforesaid further shows that it is a general provision for holding a meeting when it is necessary with 07 days notice whereas Rules 3 and 4 are specific provisions by which powers have been vested in BOD/BOA for the purpose of making appointments. Although there is no contradiction between Rules 3 and 4 on one hand and Rule 35 on the other hand but once there is a specific provision under Rules 3 and 4 only for the purpose of making appointments as to what shall be the competent authority and what would be the quorum for the same then a general provision of Rule 35 cannot be invoked to justify the action which was otherwise in violation of Rules 3 and 4.

18. Another argument raised by learned Senior counsel for the petitioners on the ground of equity. He had submitted that about 10 years

have elapsed after the appointment of the petitioners and they have been working as such. The aforesaid argument appears to be attractive but does not cut any ice. If at the inception level, the very appointment is contrary to the statutory rules then with the efflux of some time the same cannot be validated. Even otherwise also, the petitioners have been working on their posts on the strength of interim orders passed by this Court in the year 2017 and the matter was adjourned from time to time. Learned counsel for the respondent-Randhir Singh, has placed reliance on the judgment of Hon'ble Supreme Court in ***Ramjit Singh Kardam and others v. Sanjev Kumar and others (supra)***. The relevant portion of the same is reproduced as under:-

*“We may also notice one more submission of the learned counsel for the appellant. Learned counsel for the appellant submits that in pursuance of selection dated 10.04.2010, the appellants were appointed and they have now continued for more than nine years and at this juncture, it is not equitable to throw out them from their posts. In the present case, result of the selection dated 10.04.2010 was published on 11.04.2010 and the writ petitions were filed in May, 2010 itself, i.e., immediately. Selection was set aside by learned Single Judge on 11.09.2012. The continuance of the appellants is only by way of interim order. This Court has also passed an order on 29.11.2013 for maintaining status quo, which order has been continued till this date. When the continuance of a person on a post is by virtue of an interim order, the continuance is always subject to outcome of the litigation. The displacement of appellants from their posts is inevitable consequence of upholding of the judgment of the High Court. A Constitution Bench of this Court in ***C. Channabasavaih Etc. Etc. Vs. State of Mysore and Others,****

AIR 1965 SC 1293 has made following observations in paragraph 9 in such a situation, which is beneficial to record, is as follows:-

“9. It is very unfortunate that these persons should be uprooted after they had been appointed but if equality and equal protection before the law have any meaning and if our public institutions are to inspire that confidence which is expected of them we would be failing in our duty if we did not, even at the cost of considerable inconvenience to Government and the selected candidates do the right thing.”

19. This Court is of the considered view that when there is a violation of express provision of Rule 3 of the Service Rules 2003, which are statutory in nature, the same cannot be validated due to efflux of time.

20. Even otherwise also the reasoning given by the learned Additional Registrar Cooperative Societies and Additional Chief Secretary to Government, Haryana, Cooperation Department in the impugned orders cannot be faulted and there is no ground made for interference under Article 226 of the Constitution of India.

21. In view of the aforesaid facts and circumstances, the present petition is hereby dismissed. All interim orders stand vacated.

22. At this stage, learned Senior counsel for the petitioners submitted that in case fresh selection process is started then liberty may be granted to the petitioners to participate in accordance with law.

23. Learned counsel for the committee has stated that he has no objection regarding participation of the petitioners in the fresh selection process, if any, and in accordance with law.

24. In view of the above, it is directed that in case a fresh selection process starts then the petitioners shall be at liberty to participate in the selection process in accordance with law.

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25. Learned counsel for the petitioners submitted that in view of the aforesaid order passed in the connected petition i.e. bearing No.23148-2017 he does not wish to press the present petition and has prayed for withdrawal of the same.

26. Dismissed as withdrawn as prayed for.

(JASGURPREET SINGH PURI)
JUDGE

22.04.2024

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No