

2024.PHHC.130078



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

242 (15 cases)	CWP-20554-2023
TRICITY CONSUMER COURT BAR ASSOCIATION	... Petitioner
VERSUS	
UNION TERRITORY, CHANDIGARH AND ANR	... Respondents
	CWP-15931-2024
TRICITY CONSUMER COURTS BAR ASSOCIATION (REGD)	... Petitioner
VERSUS	
UNION TERRITORY CHANDIGARH AND ANOTHER	... Respondents
	CWP-16236-2024
AMRITSAR BAR ASSOCIATION REGD.	... Petitioner
VERSUS	
STATE OF PUNJAB AND ORS	... Respondents
	CWP-20773-2024
DISTRICT BAR ASSOCIATION GURDASPUR REGD AND OTHERS	... Petitioner
VERSUS	
STATE OF PUNJAB AND OTHERS	... Respondents
	CWP-27738-2023
DISTRICT BAR ASSOCIATION TARN TARAN	... Petitioner
VERSUS	
STATE OF PUNJAB AND OTHERS	... Respondents



CWP-20554-2023 + 14 cases

-2-

CWP-15668-2024

MOHINDER SINGH BRAR
... Petitioner
VERSUS
STATE OF PUNJAB AND ORS
... Respondents

CWP-27894-2023 (O&M)

TRICITY CONSUMER COURTS BAR ASSOCIATION
... Petitioner
VERSUS
STATE OF HARYANA AND ORS
... Respondents

CWP-28439-2023

JASWANT SINGH DHILLON AND ANR
... Petitioners
VERSUS
STATE OF PUNJAB AND OTHERS
... Respondents

CWP-28933-2023

PARAM PAL KAUR
... Petitioner
VERSUS
STATE OF PUNJAB AND ORS
... Respondents

CWP-29558-2023

GULAB SINGH
... Petitioner
VERSUS
STATE OF HARYANA AND OTHERS
... Respondents



CWP-20554-2023 + 14 cases

-3-

CWP-2963-2024

URMILA KUMARI

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CWP-43-2024

DISTRICT BAR ASSOCIATION JHAJJAR

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CWP-5280-2024

DISTRICT BAR ASSOCIATION SIRSA

... Petitioner

VERSUS

STATE OF HARYANA

... Respondent

CWP-20160-2024

DISTRICT BAR ASSOCIATION FARIDKOT

... Petitioner

VERSUS

STATE OF PUNJAB AND ORS

... Respondents

CWP-6335-2024

Date of Decision: 30.09.2024

NEENA SANDHU

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.



Present: Mr. Nitin Thatai and Ms. Monika Thakur,
Advocates for the petitioners in CWP-27894-2023,
CWP-15931-2024 and CWP-20554-2023.

Mr. Nitin Thatai, Advocate for Mr. I.P Singh,
Advocate for the petitioners in CWP-43-2024 and
CWP-52801-2024.

Mr. A.S. Virk, Advocate for the petitioner(s)
in 29558-2023.

Mr. Sukhandeep Singh, Advocate
for the petitioners in CWP-27738-2023,
CWP-28439-2023, CWP-28933-2023 and
CWP-2963-2024.

Mr. Laxman Choudhary, Advocate
for the petitioner in CWP-6335-2024.

Mr. Jasdeep Singh Gill, Addl. A.G., Punjab and
Ms. Akshita Chauhan, DAG, Punjab.

Mr. Vivek Saini, Addl. A.G., Haryana.

Mr. Amit Jhanji, Sr. Advocate with
Mr. Abhinav Sood, Mr. Nitesh Jhajharia and
Mr. Sayyam Garg, Advocates for U.T., Chandigarh.

VINOD S. BHARDWAJ, J. (ORAL)

Short replies filed on behalf of respondents No.1 to 3 in CWPs-
20773 and 20160 of 2024 are taken on record. Registry is directed to tag the
same at appropriate place of the paper book and page mark the same.

Counsel for the parties contend that no further responses are
required and as only a legal aspect arises, the matters can be heard and finally
decided.

A batch of fifteen writ petitions, involving identical issues, is
hence being decided by a common order, with the consent of counsel for the
parties. Brief reference is, however, being made to the facts from CWP



No.20554 of 2023 titled as Tricity Consumer Court Bar Association Versus Union Territory, Chandigarh and another.

The said writ petition has been filed by the Consumer Court Bar Association for seeking directions to fill up the vacancies of Members of State Consumer Disputes Redressal Commission, U.T., Chandigarh and District Consumer Disputes Redressal Commission, U.T., Chandigarh in terms of the directions given by the Hon'ble Supreme Court of India vide ***order/judgment dated 03.03.2023*** passed in Civil Appeal No.831 of 2023 titled as ***The Secretary Ministry of Consumer Affairs Versus Mahindra Bhaskar Limaye and others*** reported as ***2023 AIR (Supreme Court) 1371*** and to allow the incumbent office holders of various Consumer Fora to continue holding the said office/post till regular appointments are made.

It has been pointed out that the criteria for filling the post of President/Member of State Consumer Disputes Redressal Commission as well as the District Consumer Disputes Redressal Commission has been decided by the Hon'ble Supreme Court vide its order/judgment dated ***03.03.2023 (supra)***. Certain directions were given by the Hon'ble Supreme Court of India to the State/UTs to amend the rules regarding filling up of the vacancies and to fill them up after conducting written test as well as viva-voce. The operative part of the judgment dated 03.03.2023 reads thus:

"8.1 The Central Government and the concerned State Governments have also to come with an amendment in the Rules, 2020 to provide 10 years' experience to become eligible for appointment of President and Member of the State Commission as



well as the District Commission instead of 20 years and 15 years respectively, provided in Rule 3(2)(b) and Rule 4(2)(c) which has been struck down to the extent providing 20 years and 15 years of experience, respectively. Till the suitable amendments are made in Consumer Protection (Qualification for appointment, method of recruitment. procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as above, in exercise of powers under Article 142 of the Constitution of India and to do complete justice, we direct that in future and hereinafter, a person having bachelor's degree from a recognized University and who is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the State Commission. Similarly, a person of a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the District Commissions. We also direct under Article 142 of the Constitution of India that for appointment of President and Members of the State Commission and District Commission, the appointment shall be made on the basis of performance in written test consisting of two papers as per the following scheme-

Paper	Topics	Nature of Test	Max. Marks	Duration
-------	--------	----------------	------------	----------



Paper-I	(a) General knowledge and current affairs (b) Knowledge of Constitution of India (c) Knowledge of various Consumer related Laws as indicated in the Schedule	Objective type	100	2 hours
Paper-II	(a) One Essay on topics chosen from issues on trade and commerce consumer related issues or Public Affairs. (b) One case study of a consumer case for testing the abilities of analysis and cogent drafting of orders.	Descriptive type	100	2 hours"

A Review Petition filed against the said judgment dated 03.03.2023 by the Ministry of Consumer Affairs was dismissed vide order dated 13.07.2023.

It is contended that the chart of vacancies that are to occur in the State Commission and District Commission are as under:

STATE COMMISSION

Sr. No.	Designation/ Vacancy	Name	Period		Remarks	
			From	To	First/ Second	Judicial/ Non-judicial
1.	Member (only for Female)	Mrs. Padma Pandey	13.01.2014	12.01.2019	First Term	Non-judicial
			13.01.2019	12.01.2024	Second Term	
2.	Member	Sh. Rajesh K. Arya	21.09.2018	20.09.2023	First Term	Non-judicial
3.	Member	Vacant	-	-	-	Judicial

DISTRICT COMMISSION-I



Sr. No.	Designation/ Vacancy	Name	Period		Remarks	
			From	To	First/ Second	Judicial/ Non-judicial
1.	Member (only for Female)	Mrs. Surjeet Kaur	23.10.2013	22.10.2018	First Term	Non-judicial
			23.10.2018	22.10.2023	Second Term	
2.	Member	Sh. Suresh Kumar Sardana	06.05.2015	05.05.2020	First Term	Non-judicial
			06.05.2020	15.12.2023	Second Term	

DISTRICT COMMISSION-II

Sr. No.	Designation/ Vacancy	Name	Period		Remarks	
			From	To	First/ Second	Judicial/ Non-judicial
1.	Member (only for Female)	Mrs. Priti Malhotra	27.03.2015	26.03.2020	First Term	Non-judicial (Resignation is consideration with the Chandigarh Administration)
			27.03.2020	26.03.2025	Second Term	
2.	Member	Shri Brij Mohan Sharma	16.03.2020	24.09.2023	First Term	Non-judicial

Note: Ms. Priti Malhotra, member as mentioned at Sr. No.1 in District Commission-II has already been relieved in March 2023 and the said post is lying vacant."

Since no steps had been taken to fill up the vacancies by carrying out requisite amendments in the Rules, as per the directions given by the Hon'ble Supreme Court of India, hence, the President of the State Consumer Disputes Redressal Commission, Chandigarh requested the respondent-State for making a stop gap arrangement, by way of giving extension to the Members of the State Consumer Disputes Redressal Commission, U.T. Chandigarh as well as the District Consumer Disputes Redressal Commission, U.T. Chandigarh for the smooth functioning of the Consumer Fora. It was pointed out that the filling up the vacant posts by conducting a test and following the selection procedure



is a time consuming process and the working of the Consumer Fora would be gravely prejudiced after the completion of the tenure of the existing Members. It was averred that similar recommendations made by the President of the State Consumer Disputes Redressal Commission, Haryana were accepted by the Government of Haryana and that the tenure of the Members has been extended to ensure that the Consumer Fora continue to be functional and the grievances of the consumers/litigants are not compounded by the reason of vacancies that accrue.

Vide order dated 19.09.2023, this Court noticed all the aforesaid aspects and observed that the entire dispute/grievances redressal mechanism under the Consumer Protection Act cannot be put to a standstill and hence extended the tenure of the Members of the Consumer Fora. The operative part of the order dated 19.09.2023 reads thus:

“7. I have considered the aforesaid submissions and am of the view that in a welfare state, it is expected that the Central Government/State Government/Union Territories should take prompt action in making appointments of the President/Members in the State Commissions as well as in the District Commissions for the Redressal of the grievances of the consumers. It is observed that the respondents are bound to fill up the vacancies for the proper functioning of the State Consumer Disputes Redressal Commission as well as the District Consumer Disputes Redressal Commission so as to give effect to the Consumer Protection Act, 2019. Accordingly, in order to ensure that the Consumer Disputes Redressal mechanism does not come to a standstill and purely by way of an interim measure, it is directed that the tenure of Mr.



Rajesh K. Arya, Member (non-judicial), State Consumer Disputes Redressal Commission, U.T. Chandigarh as well as Mr. Brij Mohan Sharma, Member (non-judicial) District Commission-II, U.T. Chandigarh be extended for the time being till the next date of hearing.

8. *In the meantime, the respondents are directed to submit the Status Report regarding the steps being taken/initiated for filling up the already accrued vacancies and also the vacancies likely to arise in the State Consumer Disputes Redressal Commission, U.T. Chandigarh as well as the District Consumer Disputes Redressal Commission, U.T. Chandigarh, by way of an affidavit of Secretary, Department of Food and Supplies and Consumer Affairs and Legal Metrology, Chandigarh Administration.”*

Reply had been filed to the writ petition by the respondent State(s) wherein it was pointed out that after passing of the Consumer Protection Act, 2019, the Ministry of Consumer Affairs, Food and Public Distribution notified “Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of the President and Members of the State Commission and District Commission) Rules, 2020”. Rule 6 of the said Rules of 2020 provides for the procedure of appointment of the President and Members of the State Commission and District Commission, which are to be made by the State Government on the recommendation made by the Selection Committee comprising of the Chief Justice of the High Court or any other Judge of the High Court nominated by him in this behalf, who would be the Chairperson, Secretary In-Charge of Consumer Affairs of the State Government and Nominee of the Chief Secretary



of the State who would be the members of the Committee. It was acknowledged that 4 posts of Members/Presidents in the Consumer Fora are lying vacant and recommendations of the Selection Committee were received by the respondents, however, during the process of selection and appointment of remaining one Member, the Nagpur Bench of the Bombay High Court passed a judgment dated 14.09.2021 quashing Rule 3(2) (b), 4(2)(c) and 6(9) of the Rules of 2020 terming them as arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The aforesaid judgment was subject matter of challenge in the Special Leave Petition No.19492 of 2021 of Dr. Mahindra Bhaskar Limaye (supra). Vide its judgment dated 03.03.2023, the Hon'ble Supreme Court laid down the procedure to be followed in exercise of its powers under Article 142 of the Constitution of India. Rule 10 of the 2020 Rules was also amended by the Hon'ble Supreme Court. The process for selection was accordingly initiated afresh, but a Review Petition was filed by the Department of Consumer Affairs on 04.05.2023, which was also dismissed by the Hon'ble Supreme Court. The Ministry of Consumer Affairs thereafter issued a notification dated 21.09.2023 to introduce amendment in the Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of the President and Members of the State Commission and District Commission) Amendment Rules, 2020, whereby it amended Rule 3(2)(b), thereby substituting the words “not less than twenty years” to words “not less than ten years.” Certain amendments were also made in Rule 4(2)(c) reducing the compulsory



experience from 15 years to at least 10 years and Rule 6(9) to introduce written test and viva-voce as criteria for appointment. A notification dated 21.09.2023 was issued by the State. A fresh process for appointment was thereafter initiated and proposal was sent to constitute the Selection Committee in light of the judgment of the Hon'ble Supreme Court, but the said process could not be completed.

It is, however, pointed out by the learned counsel for the parties that the Review Petition (C) No.1313 of 2024 in Civil Appeal No.831 of 2023 had been filed before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court is seized of the matter afresh and the same was last listed on 26.09.2024. Learned counsel for the respondents contend that the process of selection and recruitment to the post of President/Members in the Consumer Fora is held up for awaiting further directions/orders from the Hon'ble Supreme Court and that the process of selection shall be initiated on receipt of further orders/directions from the Hon'ble Supreme Court and/or on passing of the final judgment in the matter by the Hon'ble Supreme Court. They do not object to continuation of the President/Members of the Consumer Fora.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file as well as the reasons cited by them for their failure to fill up the vacancies, with their able assistance.

Prima facie, there is no prohibition against carrying out any selection/appointment in terms of the directions issued by the Hon'ble Supreme



Court in Civil Appeal No.831 of 2023 as no order of stay against filling up the posts has been produced before this Court, however, as the Hon'ble Supreme Court is already seized of the matter, it would not be appropriate for this Court to venture any further into that aspect.

Still further, ordinarily this Court would not be inclined to grant extension to an officer holding any public office beyond the tenure for which he/she was initially appointed, however, the facts of the present case are peculiar and they relate to the functioning of the entire dispute resolution mechanism under the Consumer Protection Act. It would be evident from a perusal of the tenure, for which the Presidents/Members of various Consumer Fora in the Union Territory have been appointed, that if the extension is not granted to all Presidents/Members except for one female Member who might retire in the meantime, the functioning of the Consumer Fora would thus come to a complete halt, leaving the litigants remediless.

The nature of dispute often brought before the Consumer Commissions is by individual(s)/marginalized consumers for seeking expeditious redressal of their grievance and highlighting the deficiencies/shortcomings in the services offered to them and for which they have already paid the consideration. Such litigants would then be left in a lurch for an indefinite period and with no respite. Such a situation cannot be acceptable to the process of law that a statutory remedy provided and prescribed to a litigant be made non-functional, as any such act would be a denial of speedy justice to a litigant.



This Court is thus faced with a challenge to strike a balance between the entitlement of an officer to continue with the post of Presidents/Members of different Consumer Fora and the rights of a litigant for seeking speedy justice.

Given the peculiar facts as noticed above and observing that the entire working of Consumer Commissions, not only in the Territory of Chandigarh but also in the States of Punjab and Haryana, is likely to come to a complete standstill, the balance of equity and justice and the rights guaranteed to a litigant for speedy adjudication of his grievance/dispute would weigh in favour of a necessity for granting extension to the present incumbent Presidents/Members of the different Consumer Fora in the State of U.T., Chandigarh and the States of Punjab and Haryana.

Taking into consideration the aforesaid circumstances as well as the factual aspects, the present batch of writ petitions is disposed of with the following directions:

- (i) That the respective State Governments as well as the U.T., Chandigarh shall, within a period of two months from the date of receipt of certified copy of this order, move an appropriate I.A. in the pending Review Petition in CA-831 of 2023 for seeking clarification/appropriate orders to initiate the process of selection/appointment to the various posts in the State Consumer Disputes Redressal Commission, Chandigarh as well as various District Consumer Disputes Redressal Commissions.



- (ii) On receipt of such clarification/appropriate orders from the Hon'ble Supreme Court, the selection process for filling up the vacancies shall be initiated expeditiously and be completed within a period of four months of the receipt of such clarification/orders from the Hon'ble Supreme Court.
- (iii) That until such clarification/order are received from the Hon'ble Supreme Court, the present incumbent Presidents/Members of various Consumer Fora in U.T. Chandigarh, State of Punjab and Haryana including State Consumer Disputes Redressal Commission are permitted to continue discharging their duties/functions on their respective posts and on the same terms and conditions.
- (iv) That the above permission shall, however, not operate as a bar for the respective State Governments to initiate action against any incumbent on receipt of any complaint qua his/her misconduct and/or for reasons rendering him/her liable to be removed from such office. At the same time, it shall also not be a restraint against any President/Member for limiting the terms of office and/or tendering voluntary resignation.

It is clarified that the extension in tenure of the present office holders shall operate only till completion of the initial selection process and should not be construed as an order allowing them to continue till such time that a regular selected candidate is appointed. The Presidents/ Members who



are continuing under the interim orders passed by this Court shall have no further subsisting right to continue holding an office merely because in the selection process, all the vacancies were not filled up or for the reason that there was a suboptimal rationalization of the resources by the respondents/State of Haryana, U.T., Chandigarh and the State of Punjab or reorganization of the jurisdiction of the various Consumer Fora in any manner whatsoever.

The present writ petitions are hence disposed of in the above terms.

All other misc. application(s), if any, also stand(s) disposed of accordingly in above terms.

SEPTEMBER 30, 2024

rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No