122 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28444-2025
Date of decision: 22.09.2025

Gurdip Singh ....Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S.Sandhu, Advocate
for the petitioner.

Mr. Vikas Arora, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order, or direction in the nature of *certiorari* for quashing the impugned speaking order dated 22.07.2025 (Annexure P-2) passed by the Assistant Registrar, which is arbitrary, against the law, and passed without considering the facts and circumstances of the case. Further for directing the respondents to consider the case of the petitioner for promotion to the post of Salesman with all consequential benefits, including Provident Fund, in view of the government policy dated 23.02.2023 (Annexure P-5) upon completion of three years of service and directing the respondents to consider the case of the petitioner for regularization in accordance with his seniority and the law.

2.. Briefly the facts of the case is that the petitioner, an ex-serviceman, retired from the Indian Army was subsequently appointed as a Sewadar (Class-IV) on an ad-hoc and daily wage basis with Respondent

No.5-Society with effect from 01.04.2019. The petitioner asserts that although initially appointed as a Sewadar, he has been performing the duties of a Salesman since 2020, handling clerical work, data entry, and maintaining account books. In support of this, he relies on a resolution dated 04.02.2025 (Annexure P-3) passed by the society members, which commends his work and states no objection to his appointment as a Salesman. Seeking promotion and regularization, the petitioner initially filed CWP-13390 of 2025 before this Hon'ble Court. Vide order dated 13.05.2025 (Annexure P-1), the Court disposed of the petition with a direction to the concerned respondents to decide the petitioner's legal notice and representation in a time-bound manner. In compliance with the court's order, the Assistant Registrar (Respondent) passed the impugned speaking order dated 22.07.2025 (Annexure P-2) rejecting the petitioner's claim for promotion primarily on the grounds that neither his initial appointment in 2019 was not made in accordance with the governing Service Rules nor did he fulfill the requisite criteria and qualifications for the post of Salesman.

3. Learned counsel for the petitioner *inter alia* contends that the impugned order dated 22.07.2025 (Annexure P-2) is *ex-facie* arbitrary, capricious, and suffers from the vice of non-application of mind. The authority failed to consider relevant material, including the resolution (Annexure P-3) passed by the society members affirming the petitioner's dedication and his *de facto* performance of a Salesman's duties since 2020, as evidenced by the account books (Annexure P-4). Further, the action of the respondents is violative of Articles 14 and 16 of the Constitution of India. The petitioner

highlights invidious discrimination, contending that a similarly situated individual, Shri Jagroop Singh, was appointed as a Salesman without following the mandated procedure of advertisement or recruitment rules, which is the very same ground now used to deny the petitioner's claim. It is further contended that the respondent authority erred in concluding that the petitioner lacked qualifications and experience. The petitioner, a graduate with an 'O' Level Computer certificate and a retired army personnel, possesses the necessary skills. The authority acted irrationally by ignoring the practical experience gained by the petitioner over several years while focusing solely on the irregularity of his initial ad-hoc appointment. The Counsel further relies on Government of Punjab policy decisions, particularly those referenced in letters dated 16.05.2023 (Annexure P-5), which outline the regularization of daily wage employees who have completed five years of service. The petitioner, having worked since April 2019, claims to have fulfilled this criterion must be regularized in light of the judgments of the Hon'ble Supreme Court, particularly in the case of Secretary, ***State of Karnataka vs. Umadevi (2006) 4 SCC 1***, and the subsequent policy decisions of the Government of Punjab (Annexure P-5), as the petitioner has completed more than the required number of years in service.

4. *Per Contra* learned Counsel for the respondents submits that the petitioner was appointed in accordance with the governing Service Rules only on 01.04.2019 and thus has not completed the 10 years of service. Further, the Policy (P-5) not applicable on the respondent as respondent does not fall in the definition of instrumentality of State.

5. I have heard the learned Counsels for both the parties and perused the records with their able assistance.

6. The test for an entity to be considered as an instrumentality or agency of the Government was laid down by a Two Judge Bench of the Hon'ble Supreme Court in ***Rajkaran Singh and Ors. vs. Union of India and Ors. 2024 INSC 621***, which while speaking through Justice Sandeep Mehta observed that,

> *"24. This Court in Ajay Hasia (supra) established several tests to determine whether an entity can be considered an instrumentality or agency of the Government, and thus an "authority" under Article 12 of the Constitution of India. These tests include but are not limited to ;*
> *1. Extent of financial support from the government;*
> *2. Deep and pervasive control of the government;*
> *3. Functions performed are of public importance and closely related to governmental functions;*
> *4. Entity enjoys monopoly status conferred or protected by the State; 5. The government department has been transferred to the entity."*

7. Further a Two Judge Bench of the Hon'ble Supreme Court in ***S. Shobha v Muthoot Finance Ltd 2025 INSC 117*** observed that,

"9. We may sum up thus:
(1) ***<u>For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.</u>***
(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

> *(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.*

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

8. The respondent is a society incorporated under the Punjab Co-operative Societies Act, 1961,which typically operate as autonomous entities managed by their members and governed by their elected bodies. Unless it is evidently shown that the government owns the society, significantly finances its expenses, or exerts substantial administrative control in its daily function, such societies remain outside the scope of Article 12.

9. Upon perusal of the facts and circumstances it transpires that the petitioner has not been able to establish that the respondent society is an instrumentality of the state according to the test prescribed in ***Rajkaran Singh(supra)***. Consequently in terms of ***S. Shobha (supra)***, writ filed against the respondent society is not maintainable.

10. Further, the Policy (Annexure P-5) is only applicable for employees with Government of Punjab, in the present scenario as the respondent society does not fall within the definition of Government of Punjab or its agency and is neither an instrumentality of the government, the Policy shall not be applicable on the respondent society.

11. As submitted by the learned Counsel for the Petitioner, the petitioner was employed on 01.04.2019 and even till date he has been in employment for only 5 Years whereas the policy (Annexure P-5) though which is not applicable on the respondent, clearly states that eligibility criteria is a continuous employment for minimum 10 years.

12. In view of the discussion above the, Neither the present petition is maintainable and nor the policy is applicable on respondent society, and the petitioner is also ineligible to claim regularization under the policy (Annexure P-5)

13. Accordingly, the present petition is hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

22.09.2025
Neha

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