

CWP-2355-2025

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

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**CWP-2355-2025**

Date of decision:29.04.2026

Gurcharan Singh

.....Petitioner

**VERSUS**

State Of Punjab And Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present : Ms. Jasmine Garg,  
Advocate for the petitioner.

Mr. Vikas Sonak, AAG Punjab-State.

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**HARPREET SINGH BRAR, J. (Oral)**

1. The present petition has been filed under Articles 226 of the Constitution of India seeking issuance of an appropriate writ, order, or direction, particularly in the nature of *mandamus*, directing the respondents to release the pensionary benefits to the petitioner, including leave encashment, death-cum-retirement gratuity, and arrears of pay and allowances, with immediate effect and without any further delay. It further seeks issuance of a writ in the nature of *mandamus* directing the official respondents to pay interest @ 18% per annum on the delayed payment of

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pensionary benefits, including other monetary benefits related to the service rendered by the petitioner as Secretary of respondent No. 5, from the date of their actual accrual till actual realization.

2. Power of Attorney on behalf of respondent No. 5 has been filed by Ms. Shubreet Kaur, Advocate, which is ordered to be taken on record. The Registry is directed to place the same at an appropriate place. She refers to the order dated 17.07.2024 passed in ***Gurcharan Singh vs. Ravneet Kaur and others, COCP-1014-2022*** (Annexure P-10), which was disposed of as having been rendered infructuous after the counsel for the respondents made a statement that the order passed by this Court in CWP-1030-2022 had been complied with. The following order was passed in COCP-1014-2022:-

*“....1. This is a contempt petition filed under Sections 10 and 12 of the Contempt of Courts Act, for punishing the respondents for disobeying the order dated 02.02.2022 passed in CWP-1030-2022.*

*2. Affidavit of Sandeep Kaur, Assistant Registrar, Cooperative Society, Sangrur, filed in the Registry, is taken on record.*

*3. Affidavit dated 17.07.2024 of respondent No.5 filed in the Court today, is taken on record. Registry is directed to scan and tag it at an appropriate place.*

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*4. Counsel for the respondents have submitted that the order dated 02.02.2022 passed in CWP-1030-2022 has since been complied with and necessary payments have been made to the petitioner, as mentioned in the affidavit dated 17.07.2024 of respondent No.5.*

*5. Counsel for the petitioner has not even disputed the aforesaid fact.*

*6. In view of the above, the present petition is rendered infructuous and dismissed, as such.*

*7. However, if any grievance of the petitioner is left unredressed, he would be at liberty to raise the same in any other alternate remedy, but in accordance with law.”*

It is further recorded in paragraph No. 5 that the counsel for the petitioner has not disputed the aforesaid fact; however, no interest was awarded, and CWP-1030-2022 dated 02.02.2022 (Annexure P-7) was disposed of accordingly.

3. In rebuttal, learned counsel for the petitioner submits that the petitioner has specifically sought interest @ 18% per annum on delayed payment of pensionary benefits. However, CWP-1030-2022 was not decided on merits and was only disposed of with a direction to the respondent-authority to consider the representation of the petitioner dated 19.08.2021.

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The entitlement to interest is based upon the judgment rendered by the Full Bench in *A.S. Randhawa, Superintending Engineer (Retd.) vs. State of Punjab, 1998 (1) SCT 343*. He further submits that there is no dispute as to the fact that the retiral dues of the petitioner were paid after a delay of seven years. As such, the petitioner is entitled to interest from June 2017 till 03.07.2024.

4. At the outset, learned State counsel submits that this Court, in *CWP-1422-2026* titled *Samarjit Singh vs. State of Punjab and others*, has considered the issue of maintainability of the writ petition regarding enforceability of the 1997 Service Rules, wherein the affidavit of the Administrative Secretary of the concerned department was sought. In purported compliance, the Administrative Secretary to the Government of Punjab filed an affidavit stating that the said Rules are not statutory in nature and involve double delegation.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner has claimed gratuity and other retiral benefits under the 1997 Service Rules.

6. This Court in *CWP-1422-2026*, titled '*Samarjit Singh vs. State of Punjab and others*' decided on 05.03.2026 has categorically held the 1997 Service Rules to be *ultra vires* the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as 'the 1961 Act'). The rule-making power

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in this regard has been bestowed upon the State Government under Section 85(2)(xxxviii) of the 1961 Act. However, the same has been illegally sub-delegated to the Registrar, Cooperative Societies under Rule 28 of the Punjab State Cooperative Societies Rules, 1963 (in short ‘1963 Rules’). Thus, it was concluded that a writ petition under Article 226 of the Constitution shall not remain maintainable as such Rules cannot create a legally enforceable right. Moreover, the Administrative Secretary, Department of Co-operation, Punjab had filed an affidavit in ***Samarjit Singh (supra)*** wherein it was specifically stated that the 1997 Service Rules are not statutory in nature. The relevant part of the said judgment is reproduced hereunder:

“24. The Administrative Secretary, Department of Co-operation, Punjab, in his affidavit (*supra*), has categorically admitted that the 1997 Service Rules were ***neither framed by the State Government in the exercise of its powers under Section 85 of the 1961 Act, nor were they issued as statutory rules thereunder.*** It was further deposed that the 1997 Service Rules do not possess the character of delegated legislation in terms of Section 85 of the 1961 Act, and consequently, there was no requirement for them to be laid before the State Legislature. It is settled law that where a statute confers a power on a named authority, it is *prima facie* intended to be exercised only by that authority to the exclusion of all others, unless the parent statute permits further delegation expressly or by necessary implication.

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29. *In view of the foregoing discussion and advertent to the facts of the present case, this Court is of the considered opinion that the State Government could not have delegated its rule-making power under Section 85(2)(xxxviii) of the 1961 Act to the Registrar, Co-operative Societies. Such sub-delegation is neither expressly authorized nor permitted by necessary implication under the parent statute. Thus, this Court holds that the 1997 Service Rules are ultra vires the 1961 Act. Accordingly, the claim of the petitioners for leave encashment, gratuity, and other retiral benefits under the said Rules is rendered non-maintainable.”*

7. On similar grounds, a Division Bench of this Court in ***Harpreet Singh and another vs. State of Punjab and others 2011 SCC OnLine P&H 11491*** had held the Punjab Co-operative Marketing-cum-Processing Service Societies Employees Service Rules, 1996, also framed by the Registrar, Co-operative Societies under Rule 28 of the 1963 Rules, to be invalid as they suffer from the vice of excessive delegation.

8. Furthermore, the Hon’ble Supreme Court in ***Shree Bhagwati Steel Rolling Mills (M/s.) v. Commissioner of Central Excise, 2016(3) SCC 643*** has held that the Courts are not precluded from declining to enforce Rules or Regulations that are *ultra vires*, simply because a specific prayer to strike them down or declare them invalid was not made. Speaking through Justice Rohinton Fali Nariman, the following was opined:

**“29. It would be seen that Shri Aggarwal is on firm ground because this Court has specifically stated that rules or Regulations which**

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*are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not to allow Shri Aggarwal to make this submission."*

(Emphasis added)

9. As such, once the applicable Rules are declared non-statutory in nature, tritely, a writ petition under Article 226 of the Constitution shall not remain maintainable as such Rules cannot create a legally enforceable right.

10. Accordingly, the present petition is disposed of being non-maintainable. However, petitioner is at liberty to take recourse to alternate remedy available to him in accordance with law.

11. Pending application(s), if any, shall also stand disposed of.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**29.04.2026**

*Parul Verma*

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