

CWP-9591-2020(O&M)

2026:PHHC:049573



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

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CWP-9591-2020(O&M)

Date of decision:16.03.2026

Jaswant Singh

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Rahul Arora, Advocate for the petitioner.

Mr. Vikas Sonak, AAG Punjab-State.

Ms. Shivali Sharma, Advocate for Mr. A.P.S Rehan, Advocate
for respondents No.5 & 6.

HARPREET SINGH BRAR, J. (Oral)

CM-11056-CWP-2025

The present application has been filed under Section 151 of CPC for placing on record cheque bearing No.020971, dated 28.02.2025 along with the copy of cheque returning memo dated 02.05.2025 as Annexures P-6 and P-7.

In view of the grounds mentioned in the application, the same is allowed, Annexures P-6 and P-7 are ordered to be taken on record, subject to all just exceptions.

Registry is directed to place the same at an appropriate place.

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MAIN

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondents to release full and final retiral benefits such as gratuity, leave encashment, arrears of salary etc. as raised in the legal notice dated 05.06.2020 (Annexure P-5) payable to the petitioner on retirement from the service of respondent-Society on 28.12.2018 along with interest and further directing respondent No.2 to initiate proceedings under the provisions of Section 27 of Punjab Cooperative Societies Act, 1961 against the Managing Committee of respondent-Society for being negligent in performance of duties imposed on it and acting prejudicial to the interest of ex-employee (petitioner) who rendered more than 26 years of service.
2. Learned counsel for the petitioner, *inter alia*, submits that the petitioner joined respondent-Cooperative Society on 28.03.1992 as per the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 (in short '1997 Rules) as applicable to the society and has rendered more than 26 years of service and ultimately retired from the service on 28.12.2018. Learned counsel further submits that the service conditions of petitioners are governed by the aforesaid Rules and as per these Rules, an employee become entitled to gratuity as admissible to the Government employees. It is contended that, post-retirement, a pre-audit of his retiral benefits was conducted by the Audit Department in the year 2019 (Annexure P-1). As per the ledger account statement for the period 01.04.2018 to 31.03.2019, sum of Rs.690353/- is payable salary to the petitioner, as is

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discernible from Annexure P-2. Learned counsel further submits that the petitioner submitted representations dated 25.01.2019 and 10.04.2019 (Annexure P-3 and P-4 respectively), followed by a legal notice dated 05.06.2020 (Annexure P-5), seeking release of his retiral dues along with interest. Being aggrieved by the inaction of the respondents, the petitioner has approached this Court by way of the present writ petition.

3. On the other hand, learned counsel for respondents No.6 submits that respondent No.6 is a Cooperative Society duly registered under the Punjab Cooperative Society Act, 1961. It is submitted that the present writ petition is not maintainable and reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in ***General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. versus Satrughan Nishad and others, JT 2003(8) SC 235.***

4. Learned State counsel has also opposed the maintainability of the present writ petition and submits that the petitioner has not approached this Court with clean hands and has concealed material facts.

5. Having heard learned counsel for the parties and upon perusal of the record with their able assistance, it transpires that the petitioner has invoked the 1997 Service Rules to claim retiral benefits, namely gratuity and leave encashment. It emerges from the record that, on 28.08.2024, an amount of Rs. 1,63,071/- was handed over by way of cheque by learned counsel for respondents No. 5 and 6 to learned counsel for the petitioner towards part payment of the petitioner's retiral dues. Additionally, a sum of

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Rs. 94,800/- had already been disbursed to the petitioner on 06.08.2024. It is also borne out from the proceedings that, on 04.03.2025, learned counsel for respondent No. 6 handed over a further cheque amounting to Rs.60,000/- to learned counsel for the petitioner, which fact stands duly recorded in the order passed by this Court on the said date.

6. Nonetheless, 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 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 adverting 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

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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 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. Further, in the event that the respondent-Society is found to be covered by Payment of Gratuity Act, 1972, the petitioner retains the liberty to approach the Controlling Authority under Section 8 of the aforesaid Act.

10. Accordingly, the present the present petition is dismissed being non-maintainable.

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

(HARPREET SINGH BRAR)
JUDGE

16.03.2026
Puneet Chawla

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