2026:PHHC:080112

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

218+231

Date of decision: 21.05.2026

1. CWP-9663-2020 (O&M)

Baljit Singh

....Petitioner

Versus

The Registrar, Cooperative Societies, Punjab and others

....Respondents

2. CWP-25667-2022 (O&M)

Amarjeet Kaur

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shiv Kumar, Advocate
for the petitioner in CWP-9663-2020.

Mr. Rahul Arora, Advocate
for the petitioner in CWP-25667-2022.

Ms. Pratibha Bali, AAG, Punjab in both the cases.

Mr. Ashwani Prashar, Advocate
for respondent No.4 in CWP-9663-2020.

Mr. Jatinder Singh, Advocate
for Mr. H.S. Bedi, Advocate
for respondents No.6 and 7 in CWP-25667-2022.

<u>HARPREET SINGH BRAR J. (Oral)</u>

1. With the consent of all the parties, the aforementioned writ petitions are taken up together and are being decided by this common

judgment. However, for the sake of brevity, the facts are taken from CWP-9663-2020.

2. Prayer in the writ petition (CWP-9663-2020) filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of mandamus, directing the respondents No.1 to 3 to hear and decide the legal notice dated 26.08.2019 (Annexure P-2). Further prayer has been made to direct the respondents to release the gratuity, leave encashment and other payable dues to the petitioner along with interest @ 18% per annum.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner retired on 31.10.2015 and he served up to 31.10.2017 after the extension was granted by the respondent/Society. Furthermore, a resolution was passed on 30.10.2017 that due benefits of the petitioner would be released after conducting the pre-audit. Despite the aforesaid resolution, the gratuity and leave encashment has not been accorded to the petitioner.

4. *Per contra*, learned counsel for respondent No.4 submits that the present petition is not maintainable as the petitioner is seeking gratuity and leave encashment in terms of the Punjab Co-operative Marketing-cum-Processing Service Societies Employees Service Rules, 1996.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

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6. This Court in ***Samarjit Singh and others vs State of Punjab and others, 2026 NCPHHC 43839*** has already examined the enforceability of the aforesaid Rules and after calling upon the affidavit of the Administrative Secretary to Government of Punjab, it has been concluded that the aforesaid Rules were not framed by the competent authority and it suffers from the vice of excessive legislation. The State of Punjab has taken a categorical stand that these Rules are not statutory in nature. As such, this Court in ***Samarjit's case (supra)*** has concluded that the aforementioned Rules are not enforceable and the writ would not be maintainable. However, the Rules on which the petitioner is claiming his rights have been examined by the Division Bench of this court in ***Harpreet Singh and another vs. State of Punjab and others, 2011 SCC OnLine P&H 11491***, and this Court has also relied upon the said judgment and by following the same principle, has observed as under:-

> *27. Nonetheless, the question of excessive delegation under the 1963 Rules came up again before another Division Bench of this Court in* ***Harpreet Singh and another vs. State of Punjab and others, 2011 SCC OnLine P&H 11491****. In this case, the petitioners-employees of a Co-operative Marketing Society had challenged the validity of Rule 4(iv)(a) of the Punjab Co-operative Marketing-cum-Processing Service Societies Employees Service Rules, 1996 (hereinafter referred to as "the 1996 Rules"), which imposed a restriction that total expenditure on staff could not exceed 50% of the Society's annual income. The 1996 Rules were framed by the Registrar, Co-operative Societies while exercising powers under Rule 28 of the 1963 Rules. Thus, the Division Bench was called upon to answer the seminal legal question -*

whether the State Government, having been delegated the power to frame rules under Section 85 of the 1961 Act, could further sub-delegate that authority to the Registrar through Rule 28 of the 1963 Rules.

28. Upon examining the statutory framework, the Division Bench in ***Harpreet Singh (supra)*** *observed that Section 85(2)(xxxviii) of the 1961 Act specifically delegates the power to prescribe qualifications and service conditions to the State Government. The Court noted that the parent Act does not contemplate any delegation of power beyond the State Government. Since sub-delegation of legislative power is invalid unless expressly or by necessary implication authorized by the parent statute, the State Government could not have sub-delegated its rule-making power to the Registrar. Consequently, it was concluded that the 1996 Rules were unsustainable in the eyes of law as they suffered from the vice of excessive delegation. The relevant extracts of the judgment are reproduced hereunder:*

> *"(8)* ***It is, thus, evident that the Act has delegated the power of framing the rules to the State Government with regard to determining the conditions under which profit may be distributed to a member of a cooperative society with un-limited liability and the maximum rate of dividend which may be paid by the co-operative society. Likewise, under clause (xxxviii), the rules prescribing the qualifications for employees of a society or a class of societies and conditions of service, subject to which such persons may be employed by such societies, can be framed by the Government. The Act does not contemplate delegation of power beyond the State Government. It was in pursuance of the aforesaid power given under Section 85(2) of the Act that the State Government has framed the 1963 Rules. A perusal of Rule 28 of the 1963 Rules shows that it has been framed in pursuance to the power conferred under Section 85(2)(xxxviii) of the Act.*** *Rule 28 of the 1963 Rules reads as under:—*

xx xx xx

(9) ***It is in pursuance of sub-delegation given to the Registrar by Rule 28 of the 1963 Rules that the impugned 1996 Rules/Instructions in respect of the employees working in the respondent Societies have been framed.*** *Firstly, most of the employees are working prior to 1996 and have been paid regular scales of pay.* ***Secondly, the provisions of Section 85(2)(xxxviii) of the Act has delegated the power of framing the rules concerning conditions of service to the State Government, which has been further sub-delegated by Rule 28 of the 1963 Rules to the Registrar. The provisions of sub-section (2) of Section 85 of the Act would show that the rules framed by the State Government are to be placed before the Assembly. The instructions issued by the Registrar have not been placed before the Assembly at all.***

(10) ***Now the question that arises for consideration is whether a delegatee of power could further delegate.*** *The aforesaid question came up for consideration before Hon'ble the Supreme Court in the case of* ***Life Insurance Corporation of India v. Retired L.I.C. Officers Association****.* ***It has been held that a delegatee cannot act outside the scope of his power. There the power to regulate the pay and allowances was delegated. But the Chairman started regulating the gratuity of employees. Hon'ble the Supreme Court held that a sub-delegate cannot exercise any power which is not meant to be conferred upon him by reason of statutory provisions.*** *Similar view has been expressed in the case of* ***The Quarry Owners Association v. State of Bihar, and Mahe Beach Trading Company v. Union Territory of Pondicherry****.*

(11) ***The Rule making authority cannot delegate its power unless the power of delegation emerges from the provisions of the Act itself. Such authorisation may be either express or by necessary intendment. If the authority further delegates its lawmaking power to some other authority and retains a***

general control of a substantial nature over it, there is no delegation as to attract the doctrine of 'delegatus non potest delegare', which indicates that sub-delegation of power is normally not allowable though the legislature can always provide for it. It is well settled that sub-delegation is invalid unless authorised by the parent Act. *In that regard a classical illustration is available in the cases of* ***A.K. Roy v. State of Punjab****. In this case under the Prevention of Food Adulteration Act, 1954, the power to initiate prosecution for offences under Section 20(i) had been conferred on the State Government. The said Act did not authorise sub-delegation of power to Food Inspector. However, under Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958, the power to initiate prosecution was delegated to the Food Inspector. Accordingly, Hon'ble the Supreme Court held that sub-delegation was ultra vires the parent Act.*

(12) ***In the present case, Section 85(2) (xxxviii) of the Act delegate the State Government the power of framing rules which may provide for the qualifications for employees of society or class of societies and the conditions of service to which persons may be employed by the society. However, by Rule 28 of the 1963 Rules, the power to determine qualifications and conditions of service of such employees have been left to the Registrar, who may determine the same from time to time. Once the State Legislature has delegated the power to the State Government then it was impermissible for the State to sub-delegate its power to the Registrar. Even on that score the so called 1996 Rules would not be sustainable in the eyes of law.***

xx xx xx

(18) ***For the reasons stated above, these petitions are allowed. The impugned 1996 Rules are held to be inapplicable as they suffer from excessive delegation****…"*

(Emphasis added)

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.

30. It is trite law that Rules or Regulations constituting subordinate legislation are bound to be ignored by the Courts if they are found to be ultra vires. When the enforcement of such provisions is at issue, the Court is not precluded from declining to enforce them simply because a specific prayer to strike them down or declare them invalid was not made. Reliance in this regard can be placed on the judgment rendered by a two-Judge Bench of the Hon'ble Supreme Court in ***Shree Bhagwati Steel Rolling Mills (M/s.) v. Commissioner of Central Excise, 2016(3) SCC 643*** *wherein, speaking through Justice R.F. Nariman, the following was observed:*

> *"28. Shri Aggarwal in order to buttress his submission that he ought to be allowed to raise a pure question of law going to the very jurisdiction to levy interest cited before us the judgment in* ***Bhartidasan University and Anr. v. All-India Council for Technical Education, 2001(4) S.C.T 704 : 2001 (8) SCC 676****, and in particular paragraph 14 thereof which reads as follow:*
>
> > ***The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make***

> ***Regulations are confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a Respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack.*** *It would, therefore, be a myth to state that Regulations made Under Section 23 of the Act have "Constitutional" and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which the AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind an University in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.*

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)

31. As a matter of fact, the Administrative Secretary, Department of Co-operation, Punjab, in his affidavit (supra), has categorically stated that Co-operative Societies registered under the 1961 Act are autonomous bodies, comprising of individuals who have voluntarily entered into an association for mutual economic benefit. These entities are managed by elected committees and are governed by their respective bye-laws, within the broader statutory framework. Thus, this Court holds that such Co-operative Societies are at liberty to frame their own Service Rules and determine the pay scales and emoluments of their employees, keeping in view their financial health and operational viability.

32. Furthermore, regarding the applicability of the Gratuity Act, Section 1 thereof stipulates that the Act applies to every shop or establishment wherein ten or more persons are employed, or were employed, on any day of the preceding twelve months. Section 1 of the Gratuity Act is reproduced below for ready reference:

"1. ***Short title, extent, application and commencement****.—*

(1) This Act may be called the Payment of Gratuity Act, 1972.

(2) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to—

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) ***<u>every shop or establishment within the meaning of any law</u>***

> *<u>**for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months**</u>;*
>
> *(c) <u>**such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.**</u>*
>
> *(3A) <u>**A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten**</u>.*
>
> *(4) It shall come into force on such date as the Central Government may, by notification, appoint."*
>
> *(Emphasis added)*

*33. Learned counsel for the petitioner(s)-employees and the respondent-State were unable to controvert the fact that a majority of Co-operative Societies in the State of Punjab employ less than ten persons. Furthermore, learned counsel failed to demonstrate the existence of any of the aforementioned circumstances that would bring the specific Co-operative Societies involved in the present writ petitions, within the ambit of the Gratuity Act. Moreover, the Administrative Secretary, in his affidavit (supra), has specifically brought to the notice of this Court that the respondent-Society in **CWP No.1422 of 2026** currently has only a single employee on its rolls. Consequently, this Court is of the considered view that the provisions of the Gratuity Act are also inapplicable to the present cases.*

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7. Learned counsel for the petitioner(s) are not in a position to controvert the ratio of law as culled out by this Court in ***Samarjit Singh's case (supra)*** and the judgment rendered by the Division Bench of this Court in ***Harpreet Singh's case (supra)***. Consequently, both the writ petitions are dismissed.

8. It is made clear that in the order dated 19.12.2025 passed in IOIN-1-CWP-25667-2022 filed in CWP-25667-2022, the date of order has been wrongly has been wrongly and inadvertently mentioned as 20.11.2015 instead of 20.11.2025. The said clerical and inadvertent error stands rectified accordingly.

9. Pending miscellaneous application, if any, also stands disposed of.

10. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

21.05.2026
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No