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

229 CWP-16622-2022(O&M)

Date of decision:16.03.2026

Balwinder Singh

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Sunny K Singla, Advocate for the petitioner.

Mr. Vikas Sonak, AAG Punjab-State.

Mr. Naginder S. Vashisht, Advocate for respondents No.8 and 9.

HARPREET SINGH BRAR, J. (Oral)

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 the gratuity amount, leave encashment, and other retiral benefits to the petitioner, along with interest @ 18% per annum in terms of the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 (in short '1997 Rules').

2. Learned counsel for the petitioner, *inter alia*, submits that the petitioner joined respondent No.8–Cooperative Society on 19.07.1983 and rendered unblemished service with due diligence till his superannuation on 31.12.2019 while serving as Secretary. It is contended that, post-retirement,

a pre-audit of his retiral benefits was conducted by the Audit Department in the year 2020, wherein the petitioner was found entitled to a sum of Rs.15,49,375/- towards gratuity and leave encashment, which was duly approved by the competent authority, as is discernible from resolution dated 02.12.2019 (Annexure P-1). However, despite such approval, the aforesaid amount has not been released to the petitioner till date. Learned counsel further submits that the petitioner submitted a representation dated 25.04.2022 (Annexure P-4), followed by a legal notice dated 10.05.2022 (Annexure P-5), seeking release of his retiral dues along with interest @ 18% per annum, but no action has been taken thereon. 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 State counsel appearing for respondents No.1 to 5 submits that the respondent No.8 is a Cooperative Society registered under the Punjab Cooperative Societies Act, 1961 and is governed by its own bye-laws and service rules, and the petitioner, having been appointed as a Salesman and subsequently promoted to the post of Secretary, was an employee of the Cooperative Society and not of a Government institution. It is further submitted that no legal notice, as alleged, was ever received by the respondents. Learned counsel submits that an inquiry was conducted on the basis of the petitioner's representation, wherein it was found from the record of the Society that the retiral dues had already been disbursed to the petitioner on different dates through cheques, which were duly encashed by him. In support of his submissions, reliance

has been placed upon the judgments 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**, and ***S.S. Rana versus Registrar, Cooperative Societies and another*, JT 2006(5) SC 186**, to contend that the present writ petition is not maintainable.

4. Learned counsel appearing for respondents No. 8 and 9 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. He further submits that multiple cheques were issued to the petitioner, which were encashed by him, amounting in total to Rs. 11,26,637/- as is discernible from Annexures R-8/3 to R-8/6. It is, thus, prayed that the present writ petition be dismissed on the grounds of non-maintainability as well as suppression of material facts.

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 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 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 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