

CWP-16064-2023

2026:PHHC:052570



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

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CWP-16064-2023

Date of Decision: 06.04.2026

Shamsher Singh

.....Petitioner

VERSUS

Registrar Agricultural Co-Operative Societies and Another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present:- Mr. Saurabh Kaushik, Advocate
for the petitioner.

Mr. Vikas Arora, DAG Punjab.

Mr. Tejveer Singh Saggu, Advocate and
Mr. Jodh Singh Sidhu, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction, more particularly in the nature of *certiorari*, for quashing the impugned resolution dated 20.06.2018 (Annexure P-4), passed by the respondents, whereby his claim for retiral dues was not considered for lack of supporting documents. Further, for issuance of a writ in the nature of *mandamus* directing the respondents to release the retiral benefits of the petitioner, including leave

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encashment and gratuity, as well as wages for the period w.e.f. 01.05.2015 to 15.06.2015 (till retirement), along with interest.

2. Learned counsel for the petitioner submits that the petitioner retired on 30.04.2015 after serving the respondent No.2- Society for 33 years and 10 months. However, the respondent-Society has not paid the gratuity and the leave encashment to the petitioner, in terms of the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 (hereinafter for short called as the “1997 Rules”). As such, the petitioner is also entitled to interest on account of delay in releasing the gratuity and leave encashment.

3. *Per contra*, learned counsel for respondent No.2 submits that the present writ petition against respondent No.2-Society, deserves to be dismissed as the 1997 Rules have not been adopted by it. Therefore, present writ petition is not maintainable before this Court in view of the judgment rendered by the Hon’ble Supreme Court in “**General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. vs. Satrughan Nishad and others, JT 2003(8) SC 235**”. Reliance is also placed on the judgment rendered by this Court in “**Samarjit Singh vs. State of Punjab and others, CWP-1422-2026, decided on 05.03.2026**”, wherein the 1997 Rules were concluded to be invalidly enacted and therefore, not enforceable.

4. 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.

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5. 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 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.”*

6. 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.

7. Furthermore, the Hon’ble Supreme Court in ***Shree Bhagwati Steel Rolling Mills (M/s.) vs. 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)

8. 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.
9. Accordingly, the present petition is dismissed being non-maintainable.
10. Pending application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

06.04.2026
Parul Verma

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