

CWP-21540-2024(O&M)

2026.PHHC.044709



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

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CWP-21510-2024(O&M)

Date of decision:12.03.2026

Balwinder Singh

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Rajeev K. Kapila, Advocate for the petitioner.

Mr. Vikas Sonak, AAG Punjab-State.

Mr. Akhil Dadwal, Advocate for respondent No.4.

HARPREET SINGH BRAR, J. (Oral)

CM-3666-CWP-2026

The present application has been filed under Section 151 of CPC for placing on record the replication to the reply filed by respondents No.1 to 4.

In view of the grounds mentioned in the application, the same is allowed. Replication is ordered to be taken on record.

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

MAIN

1. The present petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus*

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directing the respondents to release/disburse the retirement dues of the petitioner including his gratuity and other benefits along with interest @18% per annum from the date it become due, till its realization and further, directing the respondents to release the security deposit amount along with interest accrued as well as his salary and other dues for the extension period of two years which he served on temporary basis after his retirement.

2. Learned counsel for the petitioner, *inter alia*, submits that the petitioner joined respondent No.4-Cooperative Society as Secretary on 12.05.1979 and rendered unblemished service with due diligence till his retirement on 30.01.2018 upon attaining the age of superannuation. At the time of retirement, he was drawing a basic pay of Rs.12,130/- along with dearness allowance of Rs.16,012/-, totalling Rs.28,142/- per month. The petitioner was, thus, entitled to retiral benefits, including gratuity amounting to Rs.4,64,143/- and leave encashment of Rs.2,81,420/-, aggregating to Rs.7,45,763/- in terms of the Punjab State Co-operative Agricultural Service Societies Service Rules, 1997 (in short '1997 Rules'). It is further contended that, post-retirement, the petitioner was permitted to continue on the post of Secretary on a temporary basis and discharged his duties till the year 2020; however, no remuneration was paid to him for the said period.

2.1 Thereafter, vide resolution dated 03.02.2020 (Annexure P-1), the respondent-Society resolved to release the aforesaid amount of Rs.7,45,763/- in favour of the petitioner and directed respondent No.3 to

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conduct a pre-audit and disburse the same. Despite the said resolution, the retiral dues have not been released to the petitioner till date. Learned counsel further submitted that an amount of Rs.20,000/- was deposited by the petitioner as security at the time of his appointment, which stands duly reflected in the accounts/balance sheet of the Society, along with accrued interest. In this regard, the petitioner submitted representations dated 22.03.2024 and 27.03.2024 (Annexures P-2 and P-3), seeking release of the said amount; however, no action has been taken thereon. Aggrieved by the inaction of the respondents, the petitioner served a legal notice dated 07.05.2024 (Annexure P-4) demanding release of his legitimate dues. In response, reply dated 28.06.2024 (Annexure P-5) was furnished, alleging that a sum of Rs.1,19,165/- is outstanding against the petitioner on account of non-deposit of amounts collected from borrowers. Being left with no efficacious alternative remedy, the petitioner has approached this Court by way of the present writ petition seeking redressal of his grievance.

3. On the other hand, learned counsel for respondent No.4-Society, supported by learned State Counsel, submits that the present writ petition is not maintainable, inasmuch as the relief sought pertains to gratuity, which squarely falls within the ambit of the Payment of Gratuity Act, 1972. It is contended that the petitioner has failed to avail and exhaust the efficacious statutory remedies available under the said Act, which provides a complete mechanism for adjudication of such claims, thereby

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rendering the present petition liable to be dismissed on the ground of non-maintainability. Learned counsel further submits that during the tenure of the petitioner, respondent No.4-Society witnessed a recovery shortfall exceeding 18%. The petitioner, whose primary duty was to recover loan amounts from borrowers, failed to deposit the recovered sums in the Society's accounts, thereby aggravating its financial position. He further submits that the contention raised by the petitioner regarding grant of two years' extension post-retirement is wholly misconceived, baseless, and devoid of any legal foundation, inasmuch as the same is not supported by any provision of the applicable bye-laws or service rules of the Society. He, thus, prays that the present writ petition be dismissed as being not maintainable, as well as on merits.

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.

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 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.”

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.) 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.”

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(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 the present petition is dismissed being non-maintainable.

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

(HARPREET SINGH BRAR)
JUDGE

12.03.2026
Puneet Chawla

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