

CWP-33903-2024(O&M)

2026:PHHC:054504



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

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CWP-33903-2024(O&M)

Date of decision:08.04.2026

Kashmir Singh

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Vineet Sachdeva, Advocate for the petitioner.

Mr. Vikas Sonak, AAG Punjab-State.

HARPREET SINGH BRAR, J. (Oral)

CM-4234-CWP-2025

The present application has been filed under Section 151 of CPC for placing on record short reply by way of affidavit of Sukhjit Singh Brar, Assistant Registrar Cooperative Societies Zira, on behalf of respondents No.1 to 5.

In view of the grounds mentioned in the application, the same is allowed, short reply by way of affidavit is ordered to be taken on record.

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 arrears of salary for 5 months i.e. Rs.202995/- along with interest on the delayed payments as raised in legal notice dated 17.08.2023 (Annexure P-6) as payable to the petitioner on his retirement from the services of respondent-Society in view of the judgment passed by Full Bench of this Court in ***AS Randhawa Vs. State of Punjab and others, cited as 1997(3) SCT 468***. Further, directions may be issued to respondents to release the arrears of salary along with interest on the delayed payments in time bound manner.

2. Learned counsel for the parties are *ad idem* that the issue involved in the present case is governed by the Punjab State Cooperative Agriculture Service Societies Service Rules, 1997 (hereinafter referred to as the '1997 Service Rules').

3. Having heard the learned counsel for the parties and upon perusal of record with their able assistance, this Court finds that the petitioner has sought to invoke the provisions of the 1997 Service Rules for the purpose of claiming retiral benefits.

4. Moreover, 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 advertng 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.”*

5. 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.

6. 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

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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)

- 7. 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.
- 8. Accordingly, the present the present petition is dismissed being non-maintainable.
- 9. Pending application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

08.04.2026
Puneet Chawla

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