
(2011) 02 RAJ CK 0111

In the Rajasthan High Court

Case No : Civil Writ Petition No. 103 of 2005

Bikaner Sahakari Upbhokta Wholesale Bhandar Ltd.
Karamchari Sangh and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 32

Citation : (2011) 02 RAJ CK 0111

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—This petition for writ is preferred to assail validity, correctness and propriety of the order dated 8.12.2004 passed by the Joint Registrar, Cooperative Societies, Bikaner Division, Bikaner rescinding the resolution N0.5 dated 9.3.1998 (Annex.-11) pertaining to application of the pay-scales to its staff by Bikaner Sahakari Upbhokta Wholesale Bhandar Limited as per the recommendations made by 5th pay commission and also the orders dated 20.12.2004 and 22.12.2004 (Annex.-25 and 26 respectively).

2. In brief, facts of the case are that Bikaner Sahakari Upbhokta Wholesale Bhandar Limited, Bikaner, a Society registered under the Rajasthan Cooperative Societies Act resolved on 9.3.1998 to revise the pay-scales of its employees w.e.f. 1.9.1996 being in profit and also being capable to bear the recurring burden. The resolution aforesaid was considered and approved on 23.3.1998 by the General House of the Society. Accordingly, under an order dated 25.3.1998, the revised pay-scales, in consonance to the Rajasthan Civil Services (Revised Pay-scales) Rules, 1998 (for short "the Rules of 1998" hereinafter) were made applicable to the employees of the Respondent Cooperative Society.

3. The Joint Registrar, Cooperative Societies, Bikaner Division, Bikaner while exercising powers u/s 32 of the Rajasthan Cooperative Societies Act, 1965 (for short "the Act of 1965" hereinafter) rescind the resolution aforesaid vide order

dated 9.8.1999, but the pay-scales granted were not withdrawn. Therefore, the Joint Registrar, Cooperative Societies, Bikaner Division, Bikaner, therefore, passed consequential orders dated 8.12.2004, 20.12.2004 and acting upon them, the General Manager of the Respondent-Society vide order dated 22.12.2004 withdrew the revised pay-scales and also ordered to effect recovery of the amount said to be paid in excess to the employees. Being aggrieved by the order dated 10.8.1999 and all its consequential orders referred above, this petition for writ is preferred.

4. It is submitted by learned Counsel for the Petitioners that the Cooperative Society after considering its financial position reached at a definite conclusion that it can bear liability arising due to extension of revised pay-scales and also being in profit, thus, there was no need to rescind the resolution dated 9.3.1988. It is urged that the power under Sub-section (2) of Section 32 of the Act of 1965 could have been exercised only in the interest of the Society and that was not at all going to be adversely effected on execution of the resolution rescind.

5. Shri Rajesh Joshi, learned Counsel for the Respondent-Cooperative Society submits that the order impugned dated 22.12.2004 was passed in compliance of the directions given by the Joint Registrar, Cooperative Societies, Bikaner Division, Bikaner and therefore, no wrong was committed atleast on the part of the employer Society. So far as the order dated 10.8.1999 passed by the Joint Registrar, Cooperative Societies to the extent it relates to resolution No. 5 is concerned, it is submitted by Shri Ashwini Gehlot, learned Counsel for the Department of Cooperative Societies that a unanimous decision was taken by the State of Rajasthan for not granting the revised pay-scales to the employees of the Cooperative Society ipse dixit, but the Respondent-Bikaner Sahakari Upbhokta Whole Bhandar Limited, Bikaner without adhering the instructions issued by the Government of Rajasthan granted revised pay-scales to its employees, therefore, the Joint Registrar, Cooperative Societies rightly exercised powers under Sub-section (2) of Section 32 of the Act of 1965 and rescinded the resolution undertaken by the Respondent-Society.

6. Heard learned Counsel for the parties.

7. It is not in dispute that the Respondent-Bikaner Sahakari Upbhokta Whole Bhandar Limited, Bikaner at the time of revising the pay-scales was in profit. The Bhandar was also paying income tax and a conscious assessment was made that in the event of revision of the pay-scales as per the Rules of 1998, the Society's interest shall not be adversely effected. It was also noticed by the Board of Directors of the Society that whatever liability occurring shall be easily borne by the Society. The resolution undertaken by the Board of Director was also approved by the General Counsel of the Society. The Joint Registrar rescinded the resolution merely on the count that some instructions issued by the Government were not adhered. The issue as to whether such a decision undertaken by the Cooperative Society can be interfered by the Registrar, Cooperative Societies (Joint Registrar in the present case exercising powers of

the Registrar) was considered by the Division Bench of this Court in the State of Rajasthan v. Jaswant Singh Panwa and Ors. In the case aforesaid, the Division Bench held as under:

14. The principle propounded by the Supreme in above referred three judgments is not applicable to the facts of the instant case as in the instant case recommendation is not been made by the Pay Commission. On the contrary, the recommendation is made by Respondent No. 3 for getting approval for giving benefit to its employees of the pay scales and the expenses are also to be borne by the Respondent No. 3 Jodhpur Upbhokta Wholesale Bhandar. Here, the question is only of getting approval of the Government and when Respondent No. 3 is ready to bear the expenditure looking to its financial condition, there is no earthly reason for the Registrar to refuse grant of approval.

15. It may also be advantageous to refer here the Circular dated 31.10.2008, issued by Registrar, Cooperative Societies, Rajasthan, Jaipur.

Office of the Registrar Cooperative Societies Rajasthan, Jaipur No. F.112()CDR/Mktg/Pay scales/Apex Soc./08 Date:31.10.2008 Subject: Revision of prevailing pay scales of employees of Apex Cooperative Societies separated from the Bureau of Public Enterprises and grant of Sixth Pay Commission benefits.

The following guidelines are being issued in consequence of the decisions taken in the Standing Committee under the Chairmanship of Chief Secretary for the 13 Apex Cooperative Societies deleted from the list of Bureau of Public Enterprises.

1. Those societies which have been in annual profits consecutively for the last three years and are also currently in accumulated profits may take a decision approved by its Board of Directors for payment of the benefits of Sixth Pay Commission, provided that the society does not come under loss after revision of such pay scales. Such societies, however, should give effect to of pay-scales after due approval from the competent authority/level.

2. Those societies which have been in annual profits for the last three consecutive years but are currently in a position of accumulated losses shall analyse their financial resources, business prospects and economic viability with respect to the burden to be incurred due to implementation of the recommendations of the Sixth Pay Commission. After such analysis, if the Board of Directors of the society takes a decision for implementation of the recommendations of the Sixth Pay Commission, the society will seek approval of the competent authority/level alongwith with complete financial analysis.

3. As far as loss making societies are concerned, they may assess their resources position along with the additional resources which could be mobilized, prepare a plan and take a decision regarding implementation of the benefits of the Sixth Pay Commission and furnish proposals to the competent authority/level for approval. The proposals should contain a detailed plan of action to meet the additional financial burden. The proposal shall also include specific with the

provisions regarding payment or non-payment of arrears.

4. Under no circumstances shall any society grant pay scales higher than those granted by the State Government to its employees vide the State Government's notification No. F.11(7)FD/Rules/ 2008 dated September 12, 2008. The procedure for fixation of pay in the new pay scales shall be followed mutatis mutandis as given in the aforesaid notification of the State Government.

Sd/-Registrar

16. On a perusal of Clause 1 of the circular, there is no manner of doubt that those societies which have been in annual profits consecutively for last three years and also currently in accumulated profits may take a decision approved by its Board of Directors for payment of benefits of Sixth Pay Commission, provided that the society does not come under loss after revision of such pay scales. Such societies, however, give effect to revision of pay scale after due approval from the competent authority. According to us, the circular has the binding force when Respondent No. 3, General Manager, Jodhpur Sahkari Upbhokta Wholesale Bhandar, Jodhpur has decided to confer benefit of revised pay scale to the Petitioners and sought approval and there is no justifiable ground for the Government to refuse the approval sought for by Bhandar when Respondent No. 3 is ready to bear the burden of revised pay scale.

17. The upshot of the aforesaid discussion is that the the reasons which have been disclosed in order Annex.14 are illegal and discriminatory because the employees of various local bodies of the State Government and many other cooperative societies are allowed the benefit of revised pay scales under the Rules of 1998. Besides this, the State Government is not required to release any finance or to grant aid for approval of the matter referred by Respondents No. 3 after passing resolution but without any lawful reason the approval has been denied which is discriminatory action of Respondent No. 2.

In the instant case too, as already stated earlier, the Respondent-Society is ready to bear the liability. The Respondent-Society is earning profit and it is not going to demand any finance from the State Government, therefore, the law laid down in the case aforesaid applies in the present case too with its all vigor. No substantial reason was available with the Registrar to rescind the resolution undertaken by the Respondent Cooperative Society.

8. The necessary upshot of the consideration made above is acceptance of this petition for writ. Accordingly, the same is allowed. The impugned order dated 10.8.1999 passed by the Joint Registrar, Cooperative Societies, Bikaner Division, Bikaner, and also the orders dated 8.12.2004 and 20.12.2004 passed by the Joint Registrar, Cooperative Societies, Bikaner Division, Bikaner and the consequential order dated 22.12.2004 passed by the General Manager, Cooperative Societies are hereby quashed. The Petitioners No. 2 to 46 and also the other employees of Respondent-Bikaner Sahakari Upbhokta Whole Bhandar Limited, Bikaner are declared entitled to receive the revised pay-scales as per

resolution dated 9.3.1998.

No order as to costs.