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**(2024) 03 SHI CK 0083**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 8054 Of 2021**

Deepak Mankotia

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

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**Date of Decision :** 26-03-2024

**Acts Referred:**

**Citation :** (2024) 03 SHI CK 0083

**Hon'ble Judges :** Satyen Vaidya, J

**Bench :** Single Bench

**Advocate :** Vishal Thakur, Y.P.S. Dhaulta, Ajay Sharma, Atharv Sharma

**Final Decision :** Dismissed

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## Judgement

Satyen Vaidya, J

1. The legality of order dated 16.03.2021 (Annexure A-15) issued by respondent No.2, has been questioned by the petitioner by way of instant petition.

2. The case as set-up by the petitioner is that 'The Nakodar Talab Krishi Seva Cooperative Society' Raja Ka Talab, Tehsil Fatehpur, District Kangra, (hereinafter referred to as the 'Society'), is registered under the Himachal Pradesh Co-operative Societies Act, 1968 (for short, 'The Act'). Respondent No.3 was employed as a salesman in the depot run by the Society for distribution of PDS items. It is alleged that respondent No.3 was found to have mis-managed the affairs of depot so much so that certain mis-appropriations were also found. The inspections of the depot were allegedly carried out on 24.12.2019 and 14.08.2020 by the Inspector, Civil Supply and Consumer Affairs. During first inspection dated 24.12.2019, various irregularities were found and respondent No.3 was put under suspension. On tendering of unconditional apology by respondent No.3, he was allowed to resume work. The District Controller Food Civil Supply and Consumer Affairs, Kangra had also issued a show cause notice to respondent No.3.

3. In the second inspection dated 14.08.2020 again various irregularities and illegalities were found and respondent No.3 was again put under suspension. It is further alleged that thereafter various opportunities were given to respondent No.3 to explain his conduct, but he did not respond. On 05.09.2020, the charges of mis- appropriation and misconduct were framed against respondent No.3 and he was again put to notice. As per the petitioner, respondent No.3 again did not respond and as a result, his services were terminated on 9.10.2020.

4. Respondent No.2 vide impugned order dated 16.03.2021 (Annexure A-15), communicated to the petitioner that on the complaint of respondent No.3 an inquiry was got conducted through the Inspector, Co-operative Society, Kandrori and it was found that the termination of respondent No.3 was not in consonance with the prevalent rules. Accordingly, directions were issued to re-instate respondent No.3 on his post as a salesman.

5. The order dated 16.03.2021 passed by respondent No.2 has been assailed on the grounds that respondent No.2 had no jurisdiction to pass the impugned order dated 16.03.2021 as the appeal, if any, against the order of termination of respondent No.3 could be entertained and decided by the Registrar, Co-operative Societies only in terms of Employment and Working Conditions of the Employees of Primary Agricultural Credit Co-operative Societies, 2001 (for short, '2001 Rules'). Secondly, respondent No.2 did not venture into the seriousness and gravity of charges against respondent No.3 and in a very casual or cursory manner issued the impugned communication without even affording an opportunity of being heard to the Society. Thirdly, respondent No.2 did not appreciate that there could be flaw in the order of termination passed by the Society, but the order of suspension of respondent No.3 issued on 14.08.2020 was perfectly legal and the effect of impugned order would be nullification of even the suspension order.

6. Respondents No. 1 and 2 have contested the case of petitioner by alleging that the order of termination of respondent No.3 by the Society was dehors the rules and no such order could have been passed without seeking prior approval of the Assistant Registrar, Co-operative Society in terms of Rule 19 (v) of the 2001 Rules. Respondent No.2 had received a complaint dated 21.10.2020 from respondent No.3 and respondent No.2 had directed the Inspector, Cooperative Society to enquire into the complaint. On inquiry, it was found that the Managing Committee of the Society had acted in contravention of Rules, 18, 19 and 20 of the 2001 Rules. No inquiry at all was held against respondent No.3 despite the fact that respondent No.3 had filed his reply to the notice served upon him. Keeping in view the fact of illegality committed by the Society, respondent No.2 had intervened and had directed the Society to reinstate respondent No.3.

7. Respondent No.3 by way of his separate reply has taken objection to the very maintainability of the petition at the instance of petitioner. It has been submitted that the Society is a body corporate and the petitioner neither had any locus-standi nor right to file the instant petition in his individual capacity. Respondent

No.3 has highlighted the facts that his selection as salesman was made in the year 2015. The Managing Committee of the Society was not happy with his selection as the persons of their choice could not be selected for lack of merit. Despite his selection, respondent No.3 was not given appointment for long time which forced him to approach this Court by CMPMO No.504 of 2018. This Court disposed of the aforesaid petition vide order dated 5.12.2018 whereby respondents No.1 and 2 were directed to take appropriate action against the Society. Consequently, respondent No.2 had taken action under Section 37 of the Act against the Society and it was thereafter only that the appointment was extended to respondent No.3. As per respondent No.3, petitioner and other members of the Managing Committee since then have been nurturing grudge against him and for such reason only, respondent No.3 was firstly suspended and thereafter terminated from service. The legality of termination order has also been challenged on the ground that neither there was any inquiry in accordance with the provisions of the Act and Rules nor the prior permission of the Assistant Registrar was sought before issuing the order of termination. The allegations of irregularity, illegality much less mis-appropriation levelled against respondent No.3 have also been denied.

8. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

9. The first question that arises for determination is whether the petition as filed by petitioner is maintainable?

10. Admittedly, the dispute is inter se the Society and its employee. The impugned order dated 16.03.2021 has also been issued by respondent No.2 in the context of such dispute.

11. The memorandum of parties to the petition clearly discloses that the petition has been filed by the petitioner and the address has been mentioned as President, The Nakodar Talab Krishi Seva Cooperative Society Ltd, Village Raja Ka Talab, Tehsil Fatehpur, District Kangra, H.P. It is specifically mentioned in para-1 of the petition that the petitioner is the President of Managing Committee of the Society and is aggrieved by the order dated 16.03.2021. Admittedly, there is no averment that the petition has been filed by the Society or on its behalf. There is also no mention about the authority, if any, of the petitioner to file the petition on behalf of the Society. No resolution of the Society in this behalf had been annexed alongwith the petition. Noticeably, the petition was filed in the month of December, 2021.

12. Respondent No.3 filed its reply in March, 2022 and came up with a specific objection as to maintainability of the petition, still the petitioner chose to continue the petition in the same form. 13. On 07.10.2023, this Court passed the following order:-

"Heard for some time. Petitioner is an individual, who has filed the petition, challenging the order of respondent No.2 whereby the said respondent has set

aside an order of the Nakodar Talab Krishi Sewa Cooperative Society.

Prima facie an individual cannot be said to have a locus-standi or cause of action for filing writ petition before this Court in such like manner.

Confronted with this, learned counsel for the petitioner seeks time to address the Court on this issue.”

14. Thereafter, an application being CMP No.16242 of 2023 came to be filed in the instant petition with a prayer to substitute the Society as a petitioner. A photocopy of resolution dated 15.10.2023 of the Managing Committee of the Society was also annexed.

15. Learned counsel for the petitioner during the hearing of the case submitted that though the petitioner in the capacity of President of the Society was competent to file the petition, in alternative, the defect, if any, was curable and for such purpose, the permission has been sought by way of CMP No.16242 of 2023.

16. Section 10 of the H.P. Cooperative Societies Act, 1968, reads as under:-

“10. Societies to be bodies corporate:- The registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted.

The section lays down that as result of registration of society becomes a body corporate. It comes entitled to all rights and privileges provided under this section and also those contained in Chapter VI of this Act.”

17. Thus, there remains no doubt that the Society has a separate legal entity as it is registered Society under the Act. That being so, the Society has to act on its behalf through passing of resolution of the body, that is, competent to do so under the provisions of the Act, Rules or Byelaws of the Society. As noticed above, the petition was filed by the petitioner without impleading the Society as a party or for the Society. There is nothing on record to show that the Society had authorized the petitioner to file the petition.

18. By way of CMP No.16242 of 2023 filed during the pendency of the petition, a prayer has been made to substitute the Society as petitioner. Interestingly, the application has again been filed by the petitioner and a copy of resolution of the Managing Committee of the Society annexed therewith also reveals that it has been passed on 15.10.2023 authorizing the petitioner Sh.Deepak Mankotia to prosecute a case before this Court which was proposed to be filed against respondent No.3 Sanjeev Kumar. The resolution does not reflect that the petitioner had filed the instant petition under the authority of the Society or the Society had decided to rectify the action already taken by the petitioner by filing the instant petition. It being so, it cannot be inferred that the petitioner has filed

the instant petition under the authority of the Society. It also cannot be said that the Society had come forward before this Court to be substituted as a petitioner in this petition as there is no such resolution of the Managing Committee or the General Body of the Society.

19. In view of above discussion, the contention raised on behalf of respondent No.3 deserves to be upheld and the petition filed on behalf of the petitioner in his individual capacity is held to be not maintainable.

20. In view of what has been held above, this Court does not deem it necessary to delve upon the other issues arising in the petition which will necessarily touch upon the merits of the rival submissions of the parties.

21. In result, the petition fails and the same is accordingly dismissed, so also the pending application(s), if any.