
(2011) 09 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15699 of 2010

Harpreet Singh and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 226, 311
Punjab Co-operative Societies Act, 1961 — Section 20(i), 85, 85(1), 85(2), 85(2) (xxxviii)

Citation : (2011) 09 P&H CK 0048

Hon'ble Judges : M.M. Kumar, J; Gurdev Singh, J

Bench : Division Bench

Advocate : Balbir Singh Jaswal, Rajinder Sharma, for the Appellant; Suvir Sehgal, Ramesh Sharma and Saurav Khurana, for the Respondent

Judgement

M.M. Kumar, J.—This judgment shall dispose of CWP Nos. 15699 and 20856 of 2010 because common question of law and facts are involved. The common prayer made in these petitions filed under Article 226 of the Constitution is for striking down Rule 4(iv)(a) of the Punjab Cooperative Marketing-cum-Processing Service Societies Employees Service Rules, 1996 (for brevity, "the 1996 Rules"), being ultra-vires Articles 14 and 16(1) of the Constitution because it restricts the expenditure on staff to 50% of the annual income of the Cooperative Marketing-cum-Processing Societies. Additionally, the petitioners in CWP No. 15699 of 2010 have also challenged the Auditor's report, dated 19.8.2010 (P-9), for the period from 1.4.2005 to 31.3.2009. Likewise, in CWP No. 20856 of 2010, orders dated 7.5.2010 (P-4) and 12.11.2010 (P-6 to P-8) have also been challenged whereby recovery is sought to be made from the petitioners on account of implementation of Rule 4(iv)(a) of the 1996 Rules. Since identical facts are involved in both the petitions, the same are referred from CWP No. 15699 of 2010. The petitioners are the employees of the Tarsika, Cooperative Marketing-cum-Processing Service Society Ltd., Tarsika, District Amritsar-respondent No. 4. Petitioner No. 1 is working as a Manager whereas petitioner No. 2 is employed as a Salesman with

Society-respondent No. 4. Under Rule 28 of the Punjab Cooperative Societies Rules, 1963 (for brevity, "the 1963 Rules"), the Registrar, Cooperative Societies, Punjab-respondent No. 2 is empowered to make further rules governing the service conditions of the employees of the Cooperative Marketing Societies/ Cooperative Marketing-cum-Processing Societies in the respondent State of Punjab. Exercising the said power, the Registrar-respondent No. 2 has framed the 1996 Rules. Rule 4 of the 1996 Rules deals with the "Service". Sub-rules (i) and (ii) of Rule 4 prescribes that the "service" would comprise of the posts specified in Rule 7 and the Managing Committee may add or delete posts with the prior approval of the Registrar-respondent No. 2. Sub-rule (iii) of Rule 4 envisages that no employee would be paid salary and allowances in excess of the permissible and if his total salary exceeds the level of salary fixed under the 1996 Rules the same would be treated as his personal pay till it reaches at the level of pay scales fixed under the rules. Sub-rule (iv) further stipulates that the members of the service would be paid dearness allowance equivalent to the rate of dearness allowance being given by the State Government to its employees subject to the prior approval of the Committee and depending upon the financial position of the Society. However, clause (a) of sub-rule (iv) of Rule 4 of the 1996 Rules imposes a restriction that the total expenditure on the maintenance of the staff should not exceed 50% of the total income of the society as indicated in the previous year audited balance sheet. At the same breath clause (b) of sub-rule (iv) of Rule 4 prescribes that the emoluments drawn by an employee before the commencement of the 1996 Rules would be protected. Rule 7 of the 1996 Rules which deals with the staffing pattern prescribes that subject to the financial position of a Society, it may appoint employees as specified in Annexure I. Annexure-I appended to the 1996 Rules in turn contains the classification of Marketing-cum-Processing Societies i.e. category of Society, staff strength and scales of pay.

2. After considering the representation of the Punjab Cooperative Marketing Society Employees Union, Punjab, the pay scales of the employees working in various Societies were revised. On 24.12.1998 (P-3), the Registrar-respondent No. 2 issued a letter to the effect that the existing pay scales given in Annexure-I of the 1996 Rules stands revised and the pay scales as per Punjab Fourth Pay Commission's report were granted w.e.f. 1.1.1998 with notional pay fixation from 1.1.1996 without payment of arrears. It has been further mentioned that the fixation of pay of employees of all Cooperative Marketing Societies in the State of Punjab in the revised scales of pay would be as per the Punjab Civil Services (Revised Pay) Rules, 1998.

3. The grievance of the petitioners is that for a long period of 14 years no action was taken by the authorities to limit the staff expenditure to 50% of annual income of the Society. Suddenly, on 7.5.2010 the Deputy Registrar, Cooperative Societies, Amritsar-respondent No. 3 issued a circular to all the Assistant Registrars of the Cooperative Societies under the circle asking them to adhere to Rule 4(iv)(a) of the 1996 failing which action would be taken (P-4). It has also

been submitted that on account of non-payment of their salaries due since 2005, the petitioners filed CWP Nos. 4679 and 5835 of 2010, which were disposed of by this Court directing the respondents to consider and decide their legal notice/representation. Subsequently, on 30.6.2010/2.7.2010, the Registrar-respondent No. 2 passed an order to the effect that the petitioners have already been paid in excess of the salary in terms of Rule 4(iv)(a) of the 1996 Rules (P-8). The accounts of the respondent No. 4 Society were also re-audited for the period from 1.4.2005 to 31.3.2009 and recommendation has been made to deduct excess salary drawn by the petitioners by enforcing Rule 4(iv)(a) [P-9].

4. In the written statement filed on behalf of respondent Nos. 1 to 3, justifying their action it has been asserted that under Rule 28 of the 1963 Rules, the Registrar of Cooperative Societies Punjab is empowered to frame rules regarding the conditions of service of the employees of the Society(s). It has been stated that the service conditions of the employees of the Society(s) in the State of Punjab are governed by the rules framed by the Registrar-respondent No. 2 under Rule 28 of the 1963 Rules. These rules are in the nature of executive instructions issued by the Registrar and it is within his competence to modify/amend the service rules of the employees. Therefore, there is no legal lacuna either in the action or the rules.

5. We have heard learned counsel for the parties at length and perused the provisions of Rule 28 and the impugned instructions issued by the Registrar, namely, so called 1996 Rules. On the basis of the pleadings of the parties and arguments, the following questions of law would arise for determination of this Court:-

(1) Whether a delegatee of power could further delegate his power to frame rules/instructions concerning service conditions of employees of the Societies. In other words whether 1996 Rules suffer from excessive delegation?

(2) Whether the action of the Registrar is punitive in nature and, therefore, impermissible in law?

RE: QUESTION NO. 1

6. According to Section 85 of the Punjab Co-operative Societies Act, 1961 (for brevity, "the Act"), the State Government is competent to make rules to carry out the purposes of the aforesaid Act. Sub-section (2) of Section 85 of the Act further postulates that the Government may frame such rules which may provide for all or any of the matters specified in sub-section (2). According to clause (xxiv) of sub-section (2) of Section 85 of the Act, the rules could be framed by the State Government with regard to the conditions under which profits may be distributed to the members of a co-operative society with unlimited liability and the maximum rate of dividend which may be paid by a cooperative society. However, clause (xxxviii) postulate framing of rules concerning qualifications for members of the committee and employee of a society or a class of societies and the conditions of service subject to which persons may be employed by societies.

Under sub-section (3) of Section 85 of the Act, the rules framed u/s 85(2) are required to be laid as soon as may be before the State Legislature while it is in session for a total period of 10 days, which may be comprised in one session or in two successive sessions. The provisions of Section 85(1) and relevant provisions of Section 85(2) and (3) are set out below for ready reference:-

85. Rules.- (1)The Government may, for any cooperative society or class of such societies, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) to (xxiii) xxx

(xxiv) the conditions under which profits may be distributed to the members of a co-operative society with unlimited liability, and the maximum rate of dividend which may be paid by cooperative societies;

(xxv) to (xxxvii) xxx

(xxx viii) qualifications for members of the committee and employee of a society or class of societies and the conditions of service subject to which persons may be employed by societies;

(xxxix) xxx.

(3) Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two successive sessions, and if before the expiry of the sessions in which it is laid or the session immediately following the Legislature agree in making any modification in the rules or the Legislature agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

7. It is, thus, evident that the Act has delegated the power of framing the rules to the State Government with regard to determining the conditions under which profit may be distributed to a member of a cooperative society with unlimited liability and the maximum rate of dividend which may be paid by the co-operative society. Likewise, under clause (xxxviii), the rules prescribing the qualifications for employees of a society or a class of societies and conditions of service, subject to which such persons may be employed by such societies, can be framed by the Government. The Act does not contemplate delegation of power beyond the State Government. It was in pursuance of the aforesaid power given u/s 85(2) of the Act that the State Government has framed the 1963 Rules. A perusal of Rule 28 of the 1963 Rules shows that it has been framed in pursuance to the power conferred u/s 85(2)(xxxviii) of the Act. Rule 28 of the 1963 Rules reads as under:-

28. Qualifications and conditions of service of employees. [Section 85 (xxxviii)] -
(1) The qualifications and conditions of service subject to which any person may be employed by a cooperative society or a class of co-operative societies shall be such as may be determined by the Registrar from time to time.

(2) Where the registrar is of the opinion that it is necessary or expedient so to do, he may by order, for reasons to be recorded in writing relax the provisions of this rule with respect to any co-operative society or class of co-operative societies to such extent as he may consider proper.

8. It is in pursuance of sub-delegation given to the Registrar by Rule 28 of the 1963 Rules that the impugned 1996 Rules/Instructions in respect of the employees working in the respondent Societies have been framed. Firstly, most of the employees are working prior to 1996 and have been paid regular scales of pay. Secondly, the provisions of Section 85(2)(xxxviii) of the Act has delegated the power of framing the rules concerning conditions of service to the State Government, which has been further sub-delegated by Rule 28 of the 1963 Rules to the Registrar. The provisions of sub-section (2) of Section 85 of the Act would show that the rules framed by the State Government are to be placed before the Assembly. The instructions issued by the Registrar have not been placed before the Assembly at all.

9. Now the question that arises for consideration is whether a delegatee of power could further delegate. The aforesaid question came up for consideration before Hon"ble the Supreme Court in the case of Life Insurance Corporation of India and Others Vs. Retired L.I.C. Officers Association and Others, . It has been held that a delegatee cannot act outside the scope of his power. There the power to regulate the pay and allowances was delegated. But the Chairman started regulating the gratuity of employees. Hon"ble the Supreme Court held that a sub-delegate cannot exercise any power which is not meant to be conferred upon him by reason of statutory provisions. Similar view has been expressed in the case of The Quarry Owners Association Vs. The State of Bihar and Others, , and Mahe Beach Trading Co. and Others Vs. Union Territory of Pondicherry and Others,

10. The Rule making authority cannot delegate its power unless the power of delegation emerges from the provisions of the Act itself. Such authorisation may be either express or by necessary intendment. If the authority further delegates its lawmaking power to some other authority and retains a general control of a substantial nature over it, there is no delegation as to attract the doctrine of "delegatus non potest delegare", which indicates that sub-delegation of power is normally not allowable though the legislature can always provide for it. It is well settled that sub-delegation is invalid unless authorised by the parent Act. In that regard a classical illustration is available in the cases of A.K. Roy and Another Vs. State of Punjab and Others, . In this case under the Prevention of Food Adulteration Act, 1954, the power to initiate prosecution for offences u/s 20(i) had been conferred on the State Government. The said Act did not authorise sub-delegation of power to Food Inspector. However, under Rule 3 of the Prevention

of Food Adulteration (Punjab) Rules, 1958, the power to initiate prosecution was delegated to the Food Inspector. Accordingly, Hon''ble the Supreme Court held that sub-delegation was ultra vires the parent Act.

11. In the present case, Section 85(2)(xxxviii) of the Act delegate the State Government the power of framing rules which may provide for the qualifications for employees of society or class of societies and the conditions of service to which persons may be employed by the society. However, by Rule 28 of the 1963 Rules, the power to determine qualifications and conditions of service of such employees have been left to the Registrar, who may determine the same from time to time. Once the State Legislature has delegated the power to the State Government then it was impermissible for the State to sub-delegate its power to the Registrar. Even on that score the so called 1996 Rules would not be sustainable in the eyes of law.

RE: QUESTION NO. 2

12. We are further of the view that reduction of salary by co-relating the same to the profit of a society is in the nature of punishment which can be inflicted only after issuance of show cause notice. The principle envisaged by Article 311 of the Constitution would come in play although strictly speaking the provisions of Article 311 may not apply *stricto sensu*. If the aforesaid principles are applied then no employee can be reduced in rank without following the minimum principles of natural justice. The reduction of the salary of an employee has a direct co-relationship with the rank and status of an employee and the same could not be resorted to without following the principles of natural justice.

13. Apart from the two issues we are further of the view that another reason which weigh in favor of the petitioners is that they might be governed by the statutory rules but no onerous condition could be imposed upon them by framing any rule, which would reduce their salary. A contract of employment soon assumes the character of status where terms and conditions of service could be unilaterally changed by the amendment of the rules. But still it would be impermissible for a Public Company or a Society to proceed in a manner so as to violate Article 14 of the Constitution, which require that all Public Companies, Societies and Corporations are expected to act fairly. In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, it has been observed that terminating the service of a permanent employee without giving any reason and by giving three months notice is opposed to public policy and such a rule was held to be ultra vires of Article 14 of the Constitution. The argument that there was a contract between the employee of the Public Corporation with the Corporation has been repelled by holding that in standard form contract, the weaker party has no real freedom of contract because in every organisation weaker party has to face the same consequence of signing on the dotted line virtually leaving the weaker party no option [P.S. Atiayh, "Rise and Fall of Freedom of Contract"]. Such a freedom to contract has been regarded as freedom of a lamb before a lion in jungle. Therefore, we are of the view that

incorporation of Rule 4(iv)(a), restricting the expenditure on staff to 50% of the annual income of the society is absolutely without any justification and cannot be sustained in the eyes of law. Accordingly, Rule 4(iv)(a) cannot meet the approval of Article 14 of the Constitution and as such liable to be set aside.

14. Moreover, as per Rule 7 of the 1996 Rules, staff pattern depending on the financial position of the society has been elaborated, which is depicted in Annexure I appended with the 1996 Rules (P-1) and the same reads as under:-

7. STAFFING PATTERN:

(i) Subject to the financial position of a Society, it may appoint employees as specified in annexure ...I.

ANNEXURE-I

CLASSIFICATION OF MARKETING-CUM-PROCESSING

SOCIETIES

CATEGORY SOCIETY

OF STAFF STRENGTH

SCALE OF PAY

1

Societies with Annual gross income up to Rs. 2lakhs

Manager-cum-Accountant-1

1500-50-2000-60-2060-70-2550-75-2700

Clerk-cum-Salesman-1

900-35-1160-40-1320-45-1500-50-1800

Peon-cum-Chowkidar-1

750-30-950-35-1160-40-1320-45-1410

2

Societies with gross annual income of above Rs. 2lacs but up to or less than Rs. 4lacs.

Manager cum-Accountant-1

1650-50-2000-60-2060-70-2550-75-2925

Clerk-cum-Salesman-2

950-35-1160-40-1320-45-1500-50-1800

Peon-cum-Chowkidar-1

750-30-950-35-1160-40-1320-45-1410

3

Societies with Annual gross income over Rs. 4lacs

Manager-1

1650-50-2000-60-2060-70-2550-75-2925

Accountant-1

1000-50-2000-60-2060-70-2550-75-2700

Clerk-cum-Salesman-2

950-35-1160-40-1320-45-1500-50-1800

Peon-1

750-30-950-35-1160-40-1320-45-1410

Peon-cum-Chowkidar-1

750-30-950-35-1160-40-1320-45-1410

15. The aforesaid pay scales given to the employees were revised by the State Government as per the recommendations made by the Punjab Fourth Pay Commission, vide letter dated 24.12.1998 (P-3) w.e.f. 1.1.1996. The revision ordered by letter dated 24.12.1998 is as under:-

Post

Approved scale of Pay as per IIIrd Pay Commission

Conversion of scale of pay (approved) as per Punjab Fourth Pay Commission

Manager

1800-50-2000-60-2060-70-2550-75-3000-100

5800-2000-7000-220-8100-275-9200

Accountant

1650-50-2000-60-2060-70-3550-75-2925

5480-160-5800-200-7000-220-8100-275-8925

Clerk-cum-Salesman

950-35-1160-40-1320-45-1500-450-1800

3120-100-3220-110-3660-120-4260-140-4400-150-5000-160-5160

Clerk-cum-Salesman who have qualified for the promotion with five years service will be given the scale as per IIIrd Punjab Pay Commission

1200-40-1320-45-1500-50-2000-50-2060-70-2180

4020-120-4260-140-4400-150-5000-160-5800-200-6200

Peon/Peon-cum-Chowkidar

750 with at start of 770-30-950-35-1460-40-1320-45-1410

2520-100-3220-100-3660-125-4140 (with a start of 2620

The above scales of pay are applicable with effect from 1.1.98 with notional pay fixation from 1.1.96 without payment of arrears. The fixation of pay of employees of all Cooperative Marketing Societies in Punjab State in the revised scales of Pays (as per recommendation of Fourth Punjab Pay Commission report), will be as per Punjab Civil Services (Revised Pay) Rules, 1998.

16. It is pertinent to mention that the letter regarding revision of pay scales has been issued by the Registrar, Cooperative Societies to all the Joint/Deputy/Assistant Registrars. However, it would be wholly impermissible for the Deputy Registrar, Cooperative Societies, Amritsar, to send contrary instructions dated 7.5.2010 (P-4) by placing reliance on instruction 4(iv)(a) of the 1996 Rules, which in fact are the instructions issued by the Registrar. There would be no justification whatsoever for the Deputy Registrar to issue an order which run counter to the orders of the Registrar, dated 24.12.1998 (P-3). The aforesaid order was issued in pursuance to the provisions of instruction/Rule 7 of the 1996 Rules framed by the Registrar himself. Once the Registrar has issued the letter dated 24.12.1998 (P-3), it would stand on the same footing as the instructions issued in 1996 because in any case same would be deemed to have been issued under Rule 28 of the 1963 Rules. Therefore, to the aforesaid extent the earlier instructions issued by the Registrar in the form of Rule 4(iv)(a) of 1996 Rules would be deemed to be modified. Therefore, the letter issued by the Deputy Registrar seeking to give effect to the so called Rule 4(iv)(a) would be wholly unsustainable.

17. For the reasons stated above, these petitions are allowed. The impugned 1996 Rules are held to be inapplicable as they suffer from excessive delegation. The petitioners shall continue to get salary as per the recommendations made by the Registrar by adopting the pay scale as proposed by the Fourth Punjab Pay Commission. By the interim order dated 14.9.2010 only recovery of the amount paid in excess was stayed. Therefore, directions are issued to the respondents to restore the salary in accordance with the pay scales recommended by the Fourth Punjab Pay Commission and adopted by the respondent Societies as per order dated 24.12.1998 (P-3). The needful shall be done within four months from the date of receipt of a copy of this order. The writ petitions stand disposed of in the above terms. A photocopy of this judgment be placed on the file of connected petition.