

(2011) 04 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6068 of 2008

H.R. Chauhan

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Himachal Pradesh Co-operative Societies Act, 1968 — Section 67, 67(1)
Himachal Pradesh Co-operative Societies Rules, 1971 — Rule 56

Citation : (2011) 04 SHI CK 0010

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Petitioner has prayed for the following reliefs:

- (a) Quash the impugned order Annexure A-1 issued arbitrarily, malafidely and illegally by the Respondents;
- (b) Direct the Respondents to permit the applicant to continue in the post of Secretary being held by him presently;
- (c) Quash the appointment of the Respondent No. 4 as Secretary;
- (d) Direct the Respondents to produce all the relevant documents alongwith reply for perusal by this Hon'ble Tribunal;
- (e) Allow the cost of this O.A.;
- (f) Pass such other order or directions as deemed fit and proper in favour of the applicant.

2. Annexure A-1 is the office order dated 21.8.1999 of which Petitioner is aggrieved of. The same is reproduced as under:

Whereas Shri S.R. Verma, Secretary retired from the post of Secretary of the Union on 30.11.1994 and due to this Shri H.R. Chauhan, Superintendent/

Accounts Officer was temporarily ordered to take charge of the Secretary of the Union.

Whereas the finding and result of the enquiry report u/s 67(1) of the H.P. Cooperative Societies Act 1968 (Act No. 3 of 1969) is communicated to the Chairman of the H.P. State Cooperative Union by the Registrar, Cooperative Societies, H.P. vide No. 6-252/71-Coop (Edu)-V dated Shimla the 20th October, 1998, the B.O.D. resolution No. 8 dated 29.11.1994 and resolution No. 11 dated 4.10.1996 are violation of the provision laid down in the Rule 56 of the H.P. Cooperative Societies Rules 1971 as well as Service rule adopted by the Union i.e. the H.P. State Cooperative Union recruitment (Promotion and conditions of Service) Rules 1987 and further mentioned that the promotion of the Secretary, the requisite qualification has been laid down in the Service Rules which has not been fulfilled by Shri H.R. Chauhan and Shri H.R. Chauhan does not come from the cadre for promotion and is lacking the academic qualification.

Whereas the Registrar Cooperative Societies H.P. has given the following findings and result of the constitutional enquiry report:

Promotion/ad-hoc/short gap arrangement for Secretary Cooperative Education Officer, Manager Printing Press have been made without proper procedure as laid down in the Service Rule and provision under Rule 56 of the H.P. Cooperative Societies, 1971.

Now, therefore, after careful consideration of the findings and result of the enquiry report as well as in compliance of the Registrar Cooperative Societies letter No. 6-252/71-Coop(Edu)-V dated 20.10.1998, the Executive Committee of the Federation vide resolution No. 2 dated 21.8.1999 decides that Shri H.R. Chauhan be reverted to his original post i.e. Supdt./Accounts Officer.

Sd/- PRESIDENT

3. It is not in dispute that Petitioner was working as Superintendent with Respondent No. 3 Federation. The Board of Directors of the said Federation vide its meeting dated 29.11.1994 (Annexure A-2) resolved to allow the Petitioner to hold charge, on temporary basis, that of the Secretary of the Federation. It was so necessitated due to the retirement of the whole time Secretary w.e.f. 30.11.1994. Pursuant to the said resolution Respondent issued office order dated 30.11.1994 (Annexure A-3) clearly indicating that Petitioner is to discharge the duties of the Secretary of the Federation as per resolution passed by the Board (Annexure A-2).

4. Thus Petitioner was only holding the charge, on temporary basis, that of the Secretary in addition to his whole time duties. He was neither recommended nor appointed as a Secretary on regular basis. The Respondent-authorities subsequently found Petitioner to be lacking in the academic qualification for the post of Secretary as prescribed in the applicable rules. As such an inquiry was instituted and it was found that Petitioner did not fulfill the eligibility criteria.

Noticeably even though there was no inquiry against the Petitioner but none the less he was discharging the duties of a Secretary at the relevant time. The inquiry in fact had been instituted by the Registrar u/s 67 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter referred to as the Act). The impugned action by the Respondent is also on the basis of the findings of such inquiry and the recommendations made there under. It is not the case of the Petitioner that he otherwise fulfilled the eligibility criteria stipulated under the Act/ Rules for appointment to the post of Secretary. Consequently the Respondents were well within their rights to take action of withdrawing the charge of the Secretary from the Petitioner. Even otherwise holding of charge on temporary basis would not confer any right in favour of the Petitioner.

5. The challenge to the impugned order, as made out by Mr. G.S. Rathore, learned Counsel for the Petitioner is on the ground that even though the Petitioner's appointment was on the basis of the resolution passed by the Board of Directors but however the decision withdrawing the same is that of the Executive Committee of the Respondent Federation. The contention needs to be rejected for the simple reason that under the bye-laws of the Respondent Federation, the Executive Committee is specifically empowered "to appoint, suspend, dismiss or punish salaried or unsalaried employees of the Union Subject to the approval of the Board of Directors" and in the instant case the resolution of the Executive Committee dated 21.8.1999 (Annexure R-3/2) specifically stands approved by the Board of Directors in terms of resolution dated 29.9.1999 (Annexure R-3/3).

6. According to Mr. Raman Sethi, learned Counsel for Respondent No. 3 the petition is not maintainable. Due to long pendency of the petition this question is not being adverted to and is left open.

7. No other point urged.

Present petition devoid of merit is thus dismissed.