
(2011) 03 SHI CK 0306
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9047 of 2008

Manohar Lal

APPELLANT

Vs

Registrar Cooperative Societies and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0306

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following substantive prayers vide para 7(i) to (iv):

7(i) To quash and set-aside the impugned order at Annexure "PB" dated 28.3.2002 being illegal, wrong, arbitrary and void ab-initio.

(ii) To direct the Respondents to consider the service of the applicant as continuous service w.e.f. 8.1.2000 as rendered by him.

(iii) To further direct the Respondents to clear all the pending dues of the applicant along with interest.

(iv) To declare the removal of the applicant as null and void for all purposes.

2. In reply, Respondents No. 1 to 3 have taken the following stand vide paras 3 and 6(b) and (d) on merits:

3. That the applicant was initially appointed as Honorary Secretary by the Managing Committee of the Kataru Service Society Ltd. Janjehli, Tehsil Thunag, Distt. Mandi. Subsequently, the Managing Committee of the Society appointed the applicant as Salesman vide Resolution dated 8-1-2000 on temporary basis. The services of the applicant were terminated vide Resolution dated 5-3-2001 by the Managing Committee of the Society. Thus, it is evident that neither the Respondents have appointed the applicant as Honorary Assistant Secretary/

Salesman nor they have terminated his services. The applicant in the present O.A. has challenged the impugned order dated 28.03.2002 passed by the Respondent No. 2 whereby the applicant was informed by the Respondent No. 2 that his services have been terminated by the management of the Society vide Resolution dated 5-3-2001. Even if the order dated 28.3.2002 is quashed and set-aside by this Hon''ble Tribunal, the resolution dated 5-3-2001 of the Society still remains operative because the said order has nowhere been challenged by the applicant. Hence, no relief can be granted by this Hon''ble Tribunal to the applicant in the present O.A. unless the Society is impleaded as a party and order dated 5.3.2002 is challenged before the appropriate forum. Hence, the O.A. is liable to be dismissed by this Hon''ble Tribunal.

6(b) That the selection and appointment of Respondent No. 4 as Salesman has been made by the management of the Kataru Service Co-operative Society Ltd. Janjehli. As already submitted, the services of the applicant were terminated by the management of the Society and not by the replying Respondents. It is, however, admitted that the applicant preferred a representation dated 26.2.2002 to the Respondent No. 2, against the selection and appointment of Respondent No. 4 as salesman of the society. Since the applicant did not appear for interview before the Selection Committee, as such he has no right to challenge the appointment of Respondent No. 4 as Salesman of the Society. In fact, the applicant should have challenged his removal order passed by the Society before the appropriate Authority rather challenging the appointment of Respondent No. 4. In so far as reply to the representation filed by the applicant is concerned, the Respondent No. 2 has rightly informed the applicant that he had misled the Managing Committee by informing that a Sub-Depot stands sanctioned at Riyers for distribution of essential commodities among the consumers of the area.

6(d) That the contents of this Sub-para are wrong, hence denied. The Respondent No. 3 had never misled the Respondent No. 2 and supplied all information to him as per record maintained by the Society. The enquiry revealed that the appointment of Respondent No. 4 as Salesman of the Society has been made in accordance with the Rules framed for selection of Salesman. As already submitted, the applicant was not appointed as Salesman by the Respondent No. 2 and he is no authority to pass his removal order. The applicant was removed from Services by the management of the Society.

3. The following averments have been set up on behalf of Respondent No. 4 vide para 6(a), (b) and (d):

6(a) The contents of this para of the application are absolutely misleading and incorrect. The applicant was never appointed as salesman because the Co-operative Society was not sanctioned by the Government as is even apparent from the application of the applicant annexure PA. The Depot was not sanctioned for the above society during the alleged period, hence the application deserves dismissal.

(b) The averments of this Sub-para are wrong, incorrect hence denied. It is denied that the replying Respondent has not been appointed in place of the applicant. In fact after the receipt of the sanction of the alleged depot of the society, the executive body of the society conducted interview for the post of salesman was called after inviting the applications from the desirous persons but the applicant did not apply for the same and the replying Respondent was selected and appointed by the Executive body of the society which was subsequently approved by the Respondent No. 2, hence the application deserves to be dismissed. Rest of the contents are also not admitted which are contrary to the factual position. In fact the applicant has not come to the Tribunal with clean hands. Annexure PB is also very clear in this behalf.

(d) The averments of this Sub-para are denied. It is specifically denied that the Vice President is the uncle of the replying Respondent. Moreover, the replying Respondent was selected by the Committee duly constitution by the Executive body of the society on the basis of interview and then appointed as salesman, hence the appointment of the replying Respondent is valid.

4. Rejoinder to the reply on behalf of Respondent No. 4 has been filed.

5. In view of the above replies, the petition is disposed of with a direction to Respondent No. 1 that subject to the Petitioner making a representation alongwith a copy of this judgment within one month from today, the said Respondent shall consider the same and take a final decision in the matter within next two months in accordance with law by exploring the possibility of adjusting the Petitioner against an existing/likely vacancy in Co-Operative Agricultural Society, Kataru or some other Co-operative Society in Tehsil Thunag, District Mandi, after affording an opportunity of being heard to the Petitioner and President/representative of the said society(s).

6. In view of the above, the petition stands disposed of, so also pending CMP(s), if any.