
(2000) 12 P&H CK 0067
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11091 of 2000

Mohd. Isrial

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 131, 2, 237, 27, 27(1)

Citation : (2000) 12 P&H CK 0067

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Mr. R.K. Malik, for the Appellant; Mr. Surya Kant, A.G., Mr. J.P. Dhull, AAG, Mr. S.S. Ahlawat and Mr. Manjit Dalal, for the Respondent

Judgement

Mehtab S. Gill, J.—Counsel for the parties have agreed that in this writ petition and the connected Civil Writ Petition Nos. 9562, 10188, 10365, 10679, 10960, 10966, 11082, 11090, 11092 to 11098, 11531, 11595 to 11603 and 11884 of 2000, common questions of fact and law are involved and as such all these cases may be disposed by this common judgment. However, for the disposal of these cases, facts are being extracted from Civil Writ Petition No. 11091 of 2000.

2. The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing order dated 21.7.2000, Annexure P4.

3. Petitioner No. 1 has averred that he was appointed as a Clerk-cum-Cashier vide resolution dated 1.12.1978 by Sakras Co-operative Credit & Service Society Limited (hereinafter to be referred to as the Society). He joined his duty on 1.12.1978 and was confirmed on this post on 21.11.1991. Petitioner No. 2 has averred that he was appointed a Salesman vide resolution dated 16.8.1996. He joined his duty on 1.8.1996 and was confirmed as such on 20.1.1997. Petitioner No. 3 has averred that he was appointed as Peon-cum- Chowkidar vide resolution dated 30.6.1980 and he joined his duty on 1.7.1980. He was confirmed on the said post on 21.11.1991.

4. The petitioners have further averred that they are, thus, employees of respondent No. 5, society. The functions of the said society are to grant loan to its members and earn profit from the interest of these loan advances. Apart from that, the Society also sells fertiliser, seeds and other pesticides etc. to the farmers and earn profit. As the respondent-Society is a commercial establishment, hence they are governed by the Minimum Wages Act, 1948. The Registrar, Co-operative Societies framed Primary Co-operative Credit & Service Societies Staff Services Rules, 1992 (hereinafter to be referred to as the Rules) while exercising powers u/s 131 of the co-operative Society Act. Under the said Rules, the Committee of Co-operative Society is competent to make appointment and fix pay of its employees. In the year 1992, the pay scales were fixed under the said Rules by taking into consideration the minimum wages prevailing at that time.

5. The petitioners have further averred that some regular employees of other co-operative Credit Societies approached the High Court with a grievance that their qualification, duties and responsibilities are like other employed of Central Co-operative Societies and they were not being granted regular scales. The writ petitions were allowed. Copy of the judgment has been attached as Annexure P1. Some more employees of other Co-operative Societies also approached the High Court and sought relief as per judgment Annexure P1. The respondent-Society where the petitioners are working also took a decision to grant scale of Rs. 3050-4590 to the Salesman, Clerks and Cashiers and Rs. 2550-3200 to the Peons-cum-Chowkidars with effect from 1.1.1986. The resolutions of the Society dated 21.1.1999 and 10.5.1999 have been attached as Annexure P-2 and P-3 respectively. In pursuance of decision taken vide Annexures P2 and P3 of the society, the petitioners were granted all the arrears with effect from 1.1.1996. The Deputy Registrar, Cooperative Societies, Gurgaon issued directions that the petitioners were not entitled to the revised scale and in compliance with Deputy Registrar's orders, the Managing Director of the Gurgaon Central Co-operative Bank has issued directions to the Executive officer, Ferozepur Jhirka to withdraw the revised, scale granted to the petitioners and also to make recovery from them. A copy of the order is attached as Annexure P4. In compliance with the order, Annexure P4, Rs. 39,678, Rs. 43,344/- and Rs. 44,992/- are being recovered from petitioners No. 1, 2 and 3 respectively. It is this order, Annexure P4, which is under challenge in this writ petition.

6. Notice of motion was issued.

7. Respondents No. 1 to 3 filed written statement.

The plea taken by these respondents was that Primary Co-operative Credit & Service Societies are governed under Rule 9 of the Rules. As per this Rule, the committee of the Society cannot fix the salary of any employee beyond the Service Rules. The relevant portion of Rule 9 is reproduced hereunder :-

"9. Scale of pay : Emoluments.

The classification of the Societies on business turn over basis and the staff strength approved or each category has been shown in Annexure-1. The salary and consolidated emoluments of various categories of employees shall be as under :-

9.1 Category: Salesman a) Society under Categories III & IV of Annexure. 1.

Consolidated Salary. Consolidated salary of Rs. 875/- p.m. with annual increment of Rs. 20/- for 1st 5 years, Rs. 25/- p. a. for next 7 years and Rs. 30/- p.a. for next 10 years.

b) Society under Category V of Annexure

Consolidated salary of Rs 1000/- p.m. with annual increment of Rs. 25/- for first 6 years, @ Rs. 30/- p.a. for next 10 years, and @ Rs. 507-p.a. for next 6 years.

c) Society under Category VI & VII of Annexure 1

Consolidated salary of Rs. 1,200/- p.m. with annual increment of Rs. 30/- p.a., for first 10 years, Rs. 50/- p.a. for next 10 years, The amount of annual increment would be raised to Rs. 100/-p.a. if there is an increase in fertilizers sale of 100 MT over & above the minimum level of 500 MT for category (VI) & (VII) during preceding year.

8. It has been further stated in the written statement that the validity of Rule 9 has been upheld by the High Court in Civil Writ Petition No. 13243 of 1999 on January 24, 2000. A copy of the judgment has been attached as Annexure R1.

Respondent No. 4 also filed separate written statement almost on the same lines.

9. I have heard counsel for the parties and perused the paper book carefully.

10. Going through judgment in Civil Writ Petition No. 13243 of 1999 and the main order in Civil Writ Petition No. 14244 of 1999, there is no dispute as to the question of law and validity of Rule 9 as decided by the Division Bench. In the said judgment, it has been held that there was no ground to quash Rule 9 of the Rules.

11. Section 237 of the Haryana Co-operative Societies Act, 1984 which is relevant in this case is reproduced hereunder :-

"27. Rescinding, of resolutions. - (1) The Registrar may by order in writing, suspend the resolution of a managing committee or of a sub-committee of a co-operative society if in his opinion the resolution is in excess of the powers conferred by this Act, rules or bye-laws or the execution of the resolution will be contrary to the interest of the society or the interest of the members thereof or is likely to cause waste or damage of the funds of the society.

(2) When the Registrar makes any order under sub- section (1), he may after giving the committee or sub-committee, as the case may be, an opportunity of being heard, rescind such resolution or may order that such resolution may

continue in force with or without modification permanently or for such period as he may think fit :

Provided that such resolution may be, rescinded or modified even if the same could not be suspended because of its having been acted upon."

Section 27 pertains to rescinding of resolutions made by the managing committees of Co-operative Societies. It is clear from this section that in case any excess power is exercised by the co-operative societies, the Registrar may rescind that resolution with the stipulation as mentioned in Section 27(2) where it has been mentioned that the Registrar may rescind any resolution after giving the committee or sub-committee, as the case may be, an opportunity of being heard. In the instant case, no notice was issued to the Managing Committee of the Society. Further, when we go through the impugned order, Annexure P4, it comes out that the Managing Director has rescinded the resolution of the Society on the orders of Deputy Registrar, Co-operative Societies. It is not even mentioned in the impugned order, Annexure P4, that the Deputy Registrar, Co-operative Societies Gurgon was exercising the powers of Registrar. The impugned order, Annexure P4, is signed by the Managing Director who is not even authorised to pass such an order as per Haryana Cooperative Societies Act, 1984. The resolution can only be rescinded u/s 27 of the Haryana Co-operative Societies Act by the Registrar.

12. Resultantly, impugned order, Annexure P4, is quashed. However, it will be open to the Registrar to rescind resolution as envisaged u/s 27 of the Haryana Co-operative Societies Act, 1984 if he so desires to do so.

This writ petition and the connected writ petitions, as mentioned above, are disposed of in the above terms.

13. Writ petition disposed of.