
(2001) 03 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10177 of 1999

Mohinder Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Citation : (2001) 03 P&H CK 0030

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Mr. Nirmaljit Kaur, for the Appellant; Mr. J.P. Dhull, Assistant A.G., Mr. Gobinder Singh Sandhu and Mr. Ravi Kant Sharma, for the Respondent

Judgement

Mehtab S. Gill, J.—The petitioner has prayed for issuing of a writ in the nature of certiorari for quashing of order dated April 20, 1999 (Annexure P-7) passed by the Joint Secretary, Cooperation Department, Haryana and further to uphold the order dated November 5, 1977 (Annexure P-3) passed by the Deputy Registrar, Co-operative Societies, Kurukshetra, Haryana and the order dated October 6, 1998 (Annexure P-16) passed by the Addl. Registrar (Stores), Co-operative Societies, Haryana, Chandigarh,

2. The petitioner has averred that he applied for the post of a Clerk in the Chhoti Kohri Credit and Service Society Limited Chhoti Kohri (respondent No. 8) (hereinafter referred to as "the Society"). He submitted an application for the said post to the President of the Society. He fulfilled all the qualifications for the appointment to the post of a Clerk and the President of the Society recommended the appointment of the petitioner. A meeting of the members or a Managing Committee of the Society was called for January 31, 1997. The agenda of the meeting was sent to all the members of the Society vide UPC post and was also circulated amongst the members, a copy of which is annexed with the writ petition as Annexure P-1, The meeting of the members of the Society was held on January 31, 1997 under the Chairmanship of Shri Mam Chand. In the meeting, the appointment of the petitioner was unanimously approved and thus,

he was appointed as a Clerk in the Society. A copy of the proceedings of the meeting of the Society dated January 31, 1997 is annexed with the writ petition as Annexure P-2. After about two months, the members of the Society challenged the appointment of the petitioner by filing a petition before the Assistant Registrar, Narain-garh. In response to this petition, a meeting of the members of the Society was called for on April 21, 1997 and the agenda of the meeting was regarding the cancellation of appointment of the petitioner as a Clerk. Against this meeting/agenda, the petitioner filed case No. 63 of 1997 before the Registrar, Co-operative Societies, Haryana, Chandigarh and Registrar ordered status quo qua the appointment of the petitioner. The case was subsequently dismissed by the Registrar Co-operative Societies, Haryana vide order dated April 29, 1997 on the ground that no meeting was held on April 21, 1997. The Society (respondent No. 8) again fixed the meeting for May 23, 1997. The petitioner again filed a petition before the Registrar, Co-operative Societies, Haryana. This petition was sent to the Assistant Registrar, Ambala vide letter dated May 20, 1997. A meeting was held on May 23, 1997 and a decision was taken to remove the petitioner and also that the salary to the petitioner should not be paid. However, no action was taken on this resolution.

3. It has been further averred that Faquir Chand (respondent No. 2) filed a case before the Deputy Registrar, Co-operative Societies, Kurukshetra for rescinding the resolution No. 3 dated January 31, 1997, whereby the petitioner had been appointed as a Clerk of the Society. This petition so Faquir Chand was dismissed by the Deputy Registrar, Co-operative Societies, Kurukshetra vide order dated November 5, 1997, a copy of which is attached with the writ petition as Annexure P-3. While dismissing this petition, the Deputy Registrar, Co-operative Societies, Kurukshetra, Haryana, directed that the appointment of the petitioner be reviewed keeping in view the weak financial position of the Society. In view of the order dated November 5, 1997 (Annexure P-3) passed by the Deputy Registrar, Kurukshetra, another meeting of the Society was called for on January 1, 1998. The Board of administrators of the Society reconsidered the matter and decided to keep the petitioner on the post of clerk. The members of the Society kept the petitioner keeping in view this fact that he had already worked for 11 months in the society. Moreover, balance sheet of the Society upto December 31, 1997 showed a profit of Rs. 90,000/-. Thus, keeping in view the improved financial position, the appointment of the petitioner was upheld. A general meeting of the Society was called for on February 17, 1998. In this general body meeting, the appointment of the petitioner as a Clerk on the pay of Rs. 12007-per month was unanimously resolved. A copy of the agenda dated January 28, 1998 and a copy of the proceedings of the meeting of the general body dated February 17, 1998 are annexed with the writ petition as Annexures P-5 and P-6 respectively.

4. Shri Faquir Chand (respondent No. 2) filed an appeal against the order dated November 5, 1997 passed by the Deputy Registrar, Kurukshetra before the Addl. Registrar (Stores) Co-operative Societies, Haryana. The Additional Registrar

exercising the powers of the Registrar, Co-operative Societies, Haryana dismissed the appeal of respondent No. 2 vide order dated October 6, 1998 a copy of which is annexed with the writ petition as Annexure P-16.

5. Respondent No. 2 then filed a revision petition against the orders dated November 5, 1997 and October 6, 1998 passed by the Deputy Registrar, Co-operative Societies, Kurukshetra, Haryana and the Addl. Registrar (Stores), Co-operative Societies, Haryana, Chandigarh before the Joint Secretary, Cooperation Department, Haryana, Chandigarh, who accepted the revision petition of respondent No. 2 and set aside the orders dated November 5, 1997 passed by the Deputy Registrar, Kurukshetra, Haryana and the order dated October 6, 1998 passed by the Addl. Registrar (Stores), Co-operative Societies, Haryana Chandigarh and further cancelled the resolution No. 3 dated January 31, 1997. A copy of the order dated April 20, 1999 by the Joint Secretary, Cooperation Department, Haryana, Chandigarh, is attached with the writ petition as Annexure P-7. This is the order which is under challenge.

6. Notice of motion was issued to the respondents.

7. Respondent Nos. 2 to 6 and 8 filed their respective replies. In the reply submitted by respondent Nos. 2 to 6, it has been averred that the petitioner had not fulfilled the qualifications for the post prescribed by the Registrar, Co-operative Societies, Haryana under the rules known as Staff Services Rules for Primary Cooperative Credit and Service Society Staff.

8. The Society (respondent No. 8) has averred that the agenda dated January 10, 1997 circulated vide Annexure R-1 was only for the creation of a post of a Clerk in the Society and was not for the appointment of a Clerk. The agenda/resolution dated January 10, 1997 is annexed with the statement submitted by respondent No. 8 as Annexure P-1.

9. I have heard the learned counsel for the petitioner and respondent Nos. 2 to 6 and 8.

10. Learned counsel for the petitioner has vehemently argued that as per agenda circulated on January 10, 1997 (Annexure P-1), the 3rd item mentioned therein is regarding the appointment of a Clerk in the Samiti. This has been signed by 08 members of the Society and the 9th is the Executive Officer. The resolution was passed on January 30, 1997 appointing the petitioner and thus, there is no valid ground for the Society now to retract from a decision unanimously taken by the members of the Managing Committee of the Society and later on, this very resolution was endorsed by a general body meeting of the Society.

11. Learned counsel for respondent No. 8 has stated that as per the agenda dated January 10, 1997 (Annexure P-1) a copy of the translation of which is attached with the written statement as Annexure R-1, in item No. 3 thereof, the words used are : "To consider the creation of a post of clerk in the Society." I asked the learned counsel for respondent No. 8 to show me the original copy of

the agenda dated January 10, 1997. After going through the same, it comes out that the sentence at item No. 3 of the agenda items dated January 10, 1997 (though it is in Hindi language) is for the appointment of a Clerk in the Samiti and not for the creation of a post as a Clerk in the Society.

12. Learned counsel for respondent No. 8 has further drawn my attention to documents, Annexures R-2 and R-3. Annexure R-2 is regarding Profit and Loss Account for the period from April 1, 1995 to March 31, 1996 and Balance Sheet as on March 31, 1996 and Trading Account for the period from April 1, 1995 to March 31, 1996.

13. The Managing Committee of the Society, who had unanimously resolved vide Annexure P-2 dated January 31, 1997 to appoint the petitioner as a Clerk on a vacant post now cannot be permitted to resile from an unanimous resolution which they had passed, which was further endorsed by the general body of the Society. The argument put forward by learned counsel for respondent No. 8 that item No. 3 is for the creation of a post of Clerk, is not tenable as the words used in item No. 3 (Annexure P-1) are very clear, that it is for the appointment of a Clerk in the Society.

14. Going through the Proceeding Book dated January 31, 1997 (Annexure R-3), again it has been mentioned therein that the President of the Society has written a note that Shri Mohinder Singh be appointed on "a vacant post" and agenda be issued to that effect. This document (Annexure R-3) has been signed by the President, Vice-President and 05 members of the Managing Committee. It is nowhere mentioned that it is for the creation of a post.

15. Learned counsel for respondent Nos. 2 to 6 has argued that the agenda dated January 10, 1997 (Annexure P-1) was circulated through U.P.C. and thus, it was not a proper circulation. This argument does not cut any ice as the Managing Committee of the Society knew of the meeting and passed resolution dated January 31, 1997 (Annexure P-2). Now coming forward with this technical argument that the agenda of the meeting of the Society should have been sent through registered post, cannot be taken into consideration. To support this arguments, learned counsel for respondent Nos. 2 to 6 has relied on a decision in the case of the Panchkula Urban Co-operative Bank Ltd. v. State of Haryana and others 1998(1) PLJ 315, wherein it is held as under :-

"(a) Haryana Co-operative Societies Rules, Rule 110 - Notice of meeting of Committee sent under Certificate of Posting (U.P.C.) - Receipt of notice specifically denied - Amounts to giving no notice..."

The authority, as cited above, does not apply to the facts of the present case because the respondents in the instant case did not deny the receipt of the notices as they were very much aware of the meeting, where a resolution was passed unanimously to appoint the petitioner.

16. Learned counsel for respondent Nos. 2 to 6 has further placed reliance on a

decision in the case of Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others, .

17. This authority also does not apply to the facts of the case in hand as the members of the Society in the present case were duly informed of the meeting; they attended the same and passed several resolutions.

18. Learned counsel for the respondents has further relied on a decision of the Apex Court rendered in *Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappa and Others*, , in which the powers of the administrator appointed by the Registrar, Co-operative Societies, were challenged and the Apex Court has observed that the administrator is not entitled to enroll new members in a Society. The facts of this authority do not apply to the facts of the case in hand, as the present case does not pertain to enrolment of new members. The facts of the present case relate to an appointment of the petitioner as a Clerk in the Society, which was duly done by a resolution passed by the Managing Committee and then endorsed by the members of the governing body.

19. The argument of the learned counsel for respondent Nos. 2 to 6 regarding permission of the Registrar, Co-operative Societies, Haryana, being not taken, before and after appointment of the petitioner, is again not valid as the Registrar, Co-operative Societies, Haryana himself knew of the appointment of the petitioner, as appeal had been filed before him and nowhere has he mentioned this in his order.

20. The petitioner has challenged the order of the Joint Secretary on the ground that the petitioner's appointment has been cancelled absolutely on additional and new grounds i.e., the petitioner was over age at the time of appointment. The learned counsel for the petitioner argued that this has been raised for the first time and hence cannot be looked into. She further argued that the rules as relied upon by the respondents for declaring the petitioner ineligible are not in accordance with Section 131(3) of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as "the Act") i.e. they have not been put up before the House of State Legislature and hence cannot be adopted by the Society. Hence, the instructions of the Haryana Government vide Circular No. 53/97/1202 annexed as P/14 vide which the recruitment to class III and IV posts is 17-35 and 16-35 years respectively are applicable. Moreover, even if the 1992 Rules are relied upon, the petitioner belongs to Economically Backward Class and hence entitled for relaxation upto 5 years, it was further submitted that there was no fraud as the respondents themselves had signed the resolution dated January 31, 1997. The matter was sent back by the Deputy Registrar and appointment was reaffirmed by the Boards on January 1, 1998 and the General Body of the Society on February 17, 1998. There appears to be force in the arguments of the learned counsel for the petitioner.

21. The appointment of the petitioner as a Clerk in the respondent-Society was challenged before the Deputy Registrar on the following grounds only :-

(a) The Society is in loss and the appointment of the petitioner was, therefore, not in the financial interest of the Society.

(B) Agenda dated January 10, 1997 for the meeting dated January 30, 1997 vide which the petitioner was appointed was not circulated through Regd. post but through UPC.

The evidence was led before the Deputy Registrar on these grounds. Statements were recorded and the record was seen. After a perusal of the same, the Deputy Registrar dismissed the petition on the ground that since the resolution dated March 31, 1997 had been signed by the members, they were responsible for the resolution so passed. However, on the question of financial loss, the matter was sent back before the Managing Committee for reconsideration. The Board of Administrator in its meeting dated January 1, 1998 unanimously upheld the appointment of the petitioner and held that the societies upto April 31, 1997 showed a profit of Rs. 90,000/-. Hence, the appointment of the petitioner was upheld. Thereafter, a meeting of the General Body of the Society was fixed for February 17, 1998 wherein the appointment of the petitioner was unanimously upheld. The very members who had filed the petition against the appointment of the petitioner did not raise any objection to the appointment of the petitioner in these meetings.

22. Aggrieved by the order dated November 5, 1997 (Annexure P-3) passed by the Deputy Registrar, Cooperative Societies, Kurukshetra, Haryana, an appeal was filed by the respondents before the Additional Registrar on the same two grounds once again, i.e., (i) no agenda was issued for the meeting alleged to have taken place on January 31, 1997 and (ii) the same was sent through U.P.C. and not vide Registered letter. This fact is clear from the appeal annexed with the writ petition as Annexure P-11. The Additional registrar re-appreciated the evidence and dismissed the appeal.

23. The respondents, thereafter, filed revision petition before the State on absolutely new grounds, i.e., the petitioner was only 34 years of age at the time of appointment, the post was neither advertised nor notified to the Employment Exchange.

24. The question whether the petitioner was over age and whether he was entitled to the relaxation of 5 years of age in the appointment is a question of fact. The petitioner had duly submitted the Economically Backward Class certificate along with his application. Whether the certificate was taken into account to ascertain the fact that he was eligible or not is a question of fact. Whether the Primary Cooperative Credit and Service Societies Staff Service Rules, 1992 relied upon by the respondents for declaring the petitioner ineligible were ever adopted by the Society in accordance with the Rule 29 of the Haryana Co-operative Societies Rules, 1989 and whether these rules had been made in accordance with Section 131(3) of the Act or not was never gone into. Since these questions were not raised before the Deputy Registrar where the evidence

was led, the petitioner was not granted any opportunity to prove that he was eligible. This has caused prejudice to the petitioner. In fact, it has been categorically recorded in the proceedings dated January 31, 1997 and February 17, 1998 that the petitioner fulfills all the requisite qualifications for appointment to the post of a Clerk. Thus, the appointment of the petitioner could not have been set aside on the ground that he was over age which was raised for the first time in revision petition and a finding recorded without permitting the petitioner to prove his eligibility at the time of evidence led before the Deputy Registrar.

25. With these observations, this writ petition is allowed. The order dated April 20, 1999 (Annexure P-7) passed by the Joint Secretary, Cooperation Department, Haryana is set aside. The respondents are directed to take the petitioner back in service with all consequential benefits. No order as to costs.

26. Petition allowed.