
(2019) 02 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17126 Of 2018, Civil Miscellaneous No. 11346 Of 2018

Rohtas Singh

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 08-02-2019

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 29, 31, 31(1)
Haryana Civil Services (General) Rules 2016 — Rule 143, 143(1)

Citation : (2019) 02 P&H CK 0035

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : P.K. Mutneja, Rajesh K. Sheoran, Deepak Balyan, Birender Singh Rana, Divya Bajaj

Final Decision : Disposed Off

Judgement

1. This petition has been filed by a farmer who grows sugarcane on the land, which has been assigned to respondent No. 4-Panipat Co- operative Sugar Mills Limited (hereinafter referred to as 'Sugar Mill'). He is also the share holder of the said Sugar Mill. The grievance of the petitioner is that respondent No. 5-Bir Singh has been appointed as the Managing Director of the Sugar Mill in violation of the provisions of Section 31 of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as 'the Act') on the ground that he has attained super-annuation on 30.04.2018 and, therefore, ceased to be the member of the Haryana Civil Services (Executive Branch) (hereinafter referred to as 'HCS (EB)') and could not have been given extension for a period of six months from 01.05.2018 to 31.10.2018 vide order dated 30.04.2018 (Annexure P-1) with his further appointment as the Managing Director of the Sugar Mill.

2. It is the contention of the learned counsel for the petitioner that respondent No. 5 had earlier worked as the Managing Director of the Sugar Mill from the year 2006 to 2010 when an enquiry was held against him and the vigilance

report also went against him and in pursuance thereto, he had to deposit an amount, which was found to have been wrongly claimed by him. His further contention is that as per Section 31 of the Act, only that person can be appointed as a Managing Director who is a member of the HCS (EB), as provided under Section 31 of the Act. On retirement on 30. 04.2018, respondent No. 5 ceased to be a HCS (EB) officer and, therefore, could not have been re-employed in the said capacity. He further contends that as per Rule 143 (1) Chapter 11 of the Haryana Civil Services (General) Rules 2016 (hereinafter referred to as '2016 Rules'), an Administrative Department has the power to retain a Government employee after the age of super-annuation for a period of two years and such retention in service by way of re-employment has to have the approval of the Council of Ministers. He contends that the retention in service or extension in service or re-employment, after attaining the age of super-annuation, can only be so done in public interest and in exceptional circumstances and there are no exceptional circumstances which would entitle respondent No. 5 to be granted re-employment in the HCS (EB) Cadre. His assertion is that respondent No. 5 does not have exceptional service record nor there existed such a situation which would require his continuation as the Managing Director of the Sugar Mill. Relying upon the judgment of this Court in R.K.Verma and others vs. State of Haryana and others, 2017 (4) SCT 379, he contends that extension in service beyond the age of super-annuation is permissible only in the public interest or in the special exigencies which cannot be taken care of without retaining the retiring employee in service. A subjective satisfaction must be recorded showing application of mind to the requirement of not only the exigencies of service but also to the requirement to the provisions of Rules and Instructions regulating the same. This approval cannot be granted merely on the asking of a retiring employee or on recommendation of a minister in his favour as in the case of the petitioner. He contends that simply because the Minister of the Co-operative Department has recommended re-employment of respondent No. 5 in service can not be a ground in itself for permitting such retention in service. It cannot be said that there is no alternative available to respondent No. 5. He, thus, contends that the impugned order dated 30.04.2018 (Annexure P-1) passed by the Government of Haryana cannot sustain and deserves to be set aside.

3. On the other hand, learned counsel for the State-respondent No. 1 submits that the petitioner has not come to this Court with clean hands as the correct prevalent Section 31 of the Act has not been reproduced. The amendment, which has been inserted in Section 31 of the Act in the year 2006, has not been intentionally reproduced in the body of the writ petition. According to the insertion in Section 31 (1) proviso, a person with professional qualifications and experience can also be appointed as the Managing Director of the Co-operative Society. In the context of Rule 143 of 2016 Rules, counsel for respondent No. 1 has referred to para-4 of the preliminary submissions of the reply to contend that prior to the super-annuation of respondent No. 5, Office Note bearing No. 326 dated 16.03.2018 was received from the Minister of State for Cooperation

recommending re-employment of respondent No. 5 keeping in view the vast experience of more than 10 years which respondent No. 5 had as the Managing Director of the Co-operative Sugar Mill, Panipat, Rohtak and Asandh and also he being well conversant with the working of Sugar Mills and Distillery Units. Further, the project for shifting of Panipat Co-operative Sugar Mill from the existing site to another site for enhancement of capacity, which was under progress and he having handling the project since the very inception, recommendation was made for extending the service of respondent No. 5 for a period of six months or till successful completion of the new Sugar Complex of respondent No. 4-Sugar Mill. The said proposal of re-employment of respondent No. 5 was approved ex-post facto for a period of six months by the Council of Ministers in its meeting dated 25.09.2018 and on re-consideration, as per Rule 31, approval of the Council of Ministers has been obtained. The terms and conditions of re-employment of respondent No. 5 have also been finalized and vide order dated 03/04.10.2018 (Annexure R-1/2) it has been asserted that all the Annual Confidential Reports of respondent No. 5 are good and there were no disciplinary/criminal proceedings or vigilance enquiry pending against him at the time of his retirement with the personnel department. He, on the basis of the above, asserts that keeping in view his experience and his handling of the project of shifting of the Panipat Co-operative Sugar Mill from existing site to the new site at Dahar with enhanced capacity from 1800 TCD to 5000 TCD with Co-generation Plant of 18 MW along with 45 KLPD Distillery/Ethanol Plant, which was under progress, which had been handled by him from the very inception, the exigency was very much there which persuaded the Government to take a decision to re-employ him for a period of six months for the smooth shifting/relocation of the plant. He, thus, contends that the order passed by the State fulfilling the conditions of statutory provisions and the Rules does not call for interference.

4. Counsel for respondent No. 5, apart from reiterating what has been asserted by the counsel for the State, has added that the vigilance enquiry, which has been initiated against respondent No. 5, has ended in certain excess payments received by him, which payments have been deposited by respondent No. 5 on 11.03.2010 after the clarification and advise, as received from the then Managing Director. Nothing illegal or irregular on the part of respondent No. 5 was found by the Enquiry Officer. He contends that the order, as passed by the respondents-State being in consonance with the Rules, does not call for interference by this Court.

5. Counsel for respondent No. 3 has also taken the same stand as that of the State.

6. Having considered the submissions made by the learned counsel for the parties and having gone through the records of the case, what comes out as an issue to be decided is;

"whether the re-employment granted to Sh. Bir Singh-respondent No. 5 after his

super-annuation on 30.04.2018 for a period of six months from 01.05.2018 to 31.10.2018 vide order dated 30.04.2018 (Annexure P-1) is in consonance with Section 31 of the Haryana Co-operative Societies Act, 1984 as also fulfilling the requirement of Rule 143 (1) Chapter 11 of the Haryana Civil Services (General) Rules 2016?"

7. Prior to proceeding further, it would be appropriate to refer to and reproduce Section 31 of the Act, which reads as follows:-

"31. Appointment, powers, functions of Managing Director:-

(1) Where the Government has subscribed to the share capital of a co-operative society to the extent of ten lakh rupees or more, the Government may notwithstanding anything contained in the bye-laws of the society, nominate another member in addition to those nominated under section 29 and appoint him as Managing Director:

Provided that no person shall be appointed as Managing Director of a cooperative society unless he is a member of the Indian Administrative Service or Haryana Civil Service (Executive Branch) or Class I or II Officer of the Cooperative Department, Haryana *[or any other professional having qualifications and experience as may be prescribed], except in the case of the Haryana State Co-operative Labour and Construction Federation Limited, the Haryana Housing Apex Finance Society Limited and the Haryana Cooperative Dairy Development Federation Limited where technical persons may be appointed as Managing Directors:

[Provided further that in case of a cooperative bank, the appointment of Managing Director shall be made in accordance with the guidelines of the Reserve Bank and such Managing Director who does not fulfil the criteria stipulated by the Reserve Bank shall be removed.]

(2) The Managing Director appointed under sub-section (1) shall exercise such powers as are assigned to him under the bye-laws or delegated to him by the committee. He shall also discharge all such functions consistent with the bye-laws as are assigned to him by the Government or the Registrar. He shall work under the superintendence and control of the committee.

(3) The Managing Director of a co-operative society shall be its principal executive officer. All employees of the society shall function and perform their duties under his superintendence and control."

Rule 143 of the 2016 Rules reads as follows:-

"143 (1) Except as otherwise provided in these rules, every Government employee shall retire from service on afternoon of the last day of the month in which he attains the age of retirement prescribed for him or for the post held by him in substantive or officiating capacity, as the case may be. However, a Government employee whose date of birth is the first of a month shall retire

from service on the afternoon of the last day of the preceding month on attaining the prescribed age. The age of retirement on super-annuation is fifty eight years for all groups of employees except the following for whom the same is sixty years:-

- (i) Disabled employees having minimum degree of disability of 70% and above;
- (ii) Blind employees;
- (iii) Group 'D' employees; and
- (iv) Judicial Officers

No Government employee shall be retained in service after attaining the age of super-annuation, except in public interest and in exceptional circumstances, without the approval of Council of Ministers.

Note 1.- One eyed employee shall not be treated as blind or disabled person for the purpose of this rule. Note 2.? When a Government employee is due to retire on super-annuation from service an office order shall be issued on 7th of the month in which he is going to be retired and a copy of every such order shall be forwarded immediately to the Principal Accountant General, Haryana.

(2) No Engineer-in-Chief in the PWD (B & R), Irrigation Department and Public Health Engineering Department shall, without re-appointment, hold the post for more than five years, but re-appointment to the post may be made as often and in each case for such period not exceeding five years, as the competent authority may decide:

Provided the term of re-appointment shall not extend beyond the date of attaining the age of super-annuation.

Note.? The following authorities are competent to retain a Government employee after the age of super- annuation:-

Powers

to

retain

a

Administrative

Full powers subject to a

Government

employee

in

Department

maximum of two years with
public
interest and
in
the approval of Council of
exceptional
circumstances
Ministers.
after
the
age
of
superannuation

8. A perusal of the above Section 31 of the Act deals with the powers of the Government to appoint a Managing Director where the subscribed share capital of the Co-operative Society is ten lakh rupees or more. It further provides that the Government may nominate an additional member over and above the members to be nominated under Section 29 of the Act who would be the Managing Director. The first proviso deals with the qualifications of a person to be appointed as a Managing Director of the Co-operative Society. One of the conditions thereof is that he should be a member of the Haryana Civil Services (Executive Branch) but with the insertion of [or any other professional having qualifications and experience as may be prescribed] in this Section in the year 2006, even a person, who is not a member of HCS (EB) but is a professional having qualifications and experience which may be prescribed, can be appointed as the Managing Director.

9. Respondent No. 5, as per the admitted facts, was earlier working as a Managing Director from the year 2006 to 2010 and thereafter, had been working from 04.10.2016 onwards on the same post. His continuation up to the date of super-annuation i.e. 30.04.2018 has not been challenged by the petitioner but it is the order dated 30.04.2018 (Annexure P-1) whereby he has been granted re-employment for six months from 01.05.2018 to 31.10.2018 and that too after his super-annuation which has been questioned being not in consonance with rather contrary to Section 31 of the Act. Relevant portion of Annexure P-1 reads as follows:-

"1. The Governor of Haryana is pleased to grant re-employment to Sh. Bir Singh, HCS, after his super-annuation on 30th April, 2018 for a period of six months

from 01.05.2018 to 31.10.2018.

2. On re-employment Shri Bir Singh shall remain posted as Managing Director, Panipat Cooperative Sugar Mills, Panipat during above-said period.

3. The terms and conditions of his re-employment will be issued later on. Dated Chandigarh D.S.Dhesi the 21st April, 2018 Chief Secy. to Government, Haryana No. 17/4/2018-7SII Dated Chandigarh. 30th April, 2018"

10. A perusal of the above re-produced order would show that respondent No. 5 has not been given extension in service rather he has been re-employed after his super-annuation for a period of six months.

11. A perusal of Rule 143 (1) of the 2016 Rules would show that every Government employee would retire from service on attaining the age of retirement, as prescribed. The age of super-annuation fixed for all groups of employees is 58 years except for those as specified in the said Rule. It has further been stated that no Government employee shall be retained in service after attaining the age of super-annuation except for in public interest and in exceptional circumstances and that too, not without the approval of the Council of Ministers. Sub-rule (2) of Rule 143 of the 2016 Rules deals with the post of Engineer-in-Chief in the department of PWD (B&R), Irrigation Department and Public Health Engineering Department and, therefore, would not be relevant for the case in hand. So if a Government employee is to be retained in service after attaining the age of super-annuation, the first requirement is public interest followed with exceptional circumstances and that too, with the approval of the Council of Ministers.

12. The basic question, therefore, which needs to be looked into, is whether the provisions of Section 31 of the Act read in consonance with the provisions of Rule 143 (1) of the 2016 Rules, have been fulfilled or not?

13. The provisions of Rule 143 can be said to have been fulfilled by respondent No. 5 keeping in view the reasons assigned as to why he should be re-employed, as is apparent from the reply filed by respondent No. 1.

14. For convenience, Office Note bearing No. 326 dated

16. 03.2018 of the Minister of State for Cooperation, as reproduced in para-4 of the reply, is reproduced herein:-

" Sh. Bir Singh, HCS, presently posted as Managing Director, Panipat Cooperative Sugar Mills Ltd., Panipat is going to retire on 30.04.2018. He has vast experience as M.D. of Co-operative Sugar Mill, Panipat, Rohtak and Asandh for more than 10 years and he is well conversant with working of Sugar Mills & Distillery Unit.

2. The project for shifting of Panipat Co-operative Sugar Mill from existing site to new site at Dahar with Enhanced Capacity from 188 TCD to 5000 TCD with Co-generation Plant of 18 MW along with 45 KLPD Distillery/Ethanol Plant is under progress. He is handling this project since start and he had also got prepared

DPR/DNIT for New Sugar Complex by taking keen interest. For successful shifting and installation of New Sugar Complex of Panipat Sugar Mills, It would request Hon'ble CM that the services of Sh. Bir Singh, HCS, may please be extended as Managing Director, Panipat Cooperative Sugar Mills for six months or till successful completion of New Sugar Complex of Panipat Cooperative Sugar Mills."

15. It is not in dispute that the said request-cum-recommendation of the Minister of State for Cooperation was, after consideration of the Council of Ministers in its meeting dated 25.09.2018 for re-employment of respondent No. 5, approved ex-post facto for a period of six months i.e. from 01.05.2018 to 31.10.2018. A perusal of the above Note would fulfill the requirement of Rule 143 (1) of the 2016 Rules as there are justifiable reasons which can be termed to be in public interest as also exceptional circumstances, which have been duly considered and approved by the Council of Ministers. It is not merely at the recommendation of the Minister but the recommendation has pointed out the exigencies which would be in public interest to re-employ him so that the project of shifting of respondent No. 4 is not adversely affected.

16. The basic question, which still looms large, is as to whether respondent No. 5 continued as a member of Haryana Civil Services (Executive Branch) because this is the basic requirement for being appointed as the Managing Director of respondent No. 4-Sugar Mill. The order dated 30.04.2018 clearly spells out that Sh. Bir Singh was granted re-employment on his super-annuation. It may be noted here that he has not been granted extension in service but has been re-employed for a period of six months. A perusal of the Office Note of the Minister of State for Cooperation would also show that the request is for granting him extension as the Managing Director of Panipat Cooperative Sugar Mill, which proposal has been approved. Even in the order dated 03.10.2018 (Annexure R/1-2) which contains the terms and conditions of re-employment of respondent No. 5, Sh. Bir Singh-respondent No. 5 has been mentioned as HCS (Retd.).He, therefore, ceased to be a member of the Haryana Civil Services (Executive Branch) on the date of his super-annuation i.e. 30.04.2018 and, therefore, would not be fulfilling the requirement of Section 31 of the Act for appointment as the Managing Director of a Cooperative Society.

17. Counsel for respondent No. 5 has emphasized upon the insertions made in the year 2006 where, "any other professional having qualifications and experience, as may be prescribed," has also been made eligible for appointment to the post of Managing Director of a Co-operative Society but it is not even mentioned as to what is the professional qualification of respondent No. 5 which has to be in addition to experience as the word used is 'and' not 'or', as may be prescribed. There is no such professional qualifications and experience prescribed anywhere nor is it so stated by the State of Haryana. No professional qualifications of respondent No. 5 have been culled out or stated in the reply which would make this clause applicable to his case.

18. If that be so, appointment of respondent No. 5 as a Managing Director of

Panipat Cooperative Sugar Mills Ltd.-respondent No. 4, being not in consonance with the Statute, is illegal and, therefore, deserves to be quashed.

Since respondent No. 5 has already completed his term of six months, this Court would not order recovery of the financial benefits which he would have earned during these six months on the principle of he having worked on the post of Managing Director albeit without the authority of law. However, he would not be entitled to any benefit for future.

19. In view of the above, the writ petition is allowed. Order dated 30. 04.2018 (Annexure P-1) appointing Sh. Bir Singh-respondent No. 5 as Managing Director is, hereby, quashed.

In view of the disposal of the main writ petition, the present application has been rendered infructuous and the same is disposed of as such.