
(1990) 04 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14728 of 1989

Satya Pal Singh

APPELLANT

Vs

The Registrar Cooperative Society and Others

RESPONDENT

Date of Decision : 06-04-1990

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1991) 1 ILR (P&H) 433

Hon'ble Judges : J.V. Gupta, C.J.; M.S. Liberhan, J

Bench : Division Bench

Advocate : Daya Chaudhary, for the Appellant; S.S. Dalal, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, J.—The Petitioner impugned his termination order, dated August 12, 1989, passed by the Hodal Cooperative Credit and Service Society Limited on various grounds which need not be referred in view of the short question raised in this Writ Petition.

2. The short question posed is whether the Hodal Cooperative Credit and Service Society Limited is amenable to writ jurisdiction as being "other authority" envisaged by Article 12 of the Constitution of India. The Petitioner, in spite of the reply having been filed on February 26, 1990 and a preliminary objection having been raised that no Writ Petition is maintainable as the Society is not "other authority" envisaged by Article 12 of the Constitution of India, took adjournment after adjournment to show whether the Society fell within the ambit of the State or other authority under Article 12 of the Constitution of India. Nothing has been placed on the record to point out that the Society is either State or other authority fulfilling the concomitants of Article 12 of the Constitution of India.

3. Learned Counsel for the Petitioner submitted that his only grouse was that he was an employee of the Society who had terminated his services, even when the Petitioner had a right to be regularised in terms of Piara Singh's case 1988 (4)

S.L.R. 739.

4. In order to determine whether a Cooperative Society is a State or other authority within the parameters of Article 12 of the Constitution of India, some of the tests laid down by the Supreme Court from time to time have become axiomatic, viz., whether the entire share capital of the Society is held by the Government, what is the extent of the financial assistance to the Society to meet its expenditure, how pervasive the State control is or whether the functions being discharged by the Society are State functions etc.

5. The Learned Counsel for the Petitioner realised on Malik Singh, Chairman, The Kurukshetra Central Cooperative Bank Ltd. Kurukshetra and Ors. v. The State of Haryana and Ors. 1988 (5) S.L.R. 572, wherein the learned Judge after perusing the material placed before him came to the conclusion that the Kurukshetra Central Cooperative Bank Limited is "other authority" as more than 75 per cent of the share capital of the Bank vests in the Government and its Managing Director who controls the day-to-day working is appointed by the Government and the State has pervasive control over the Bank. Thus, in view of these facts, the Bank was found to be an instrumentality of the State which is not the case here. There is not even an iota of facts averred with respect to the financial investment by the State or regarding pervasive control of the State. None of the prima facie tests spelled out above, is satisfied. The judgment cited has no applicability to the facts of the case in hand.

6. The Learned Counsel for the Petitioner further relied on Punjab State v. Inder Lal 1985 (3) S.L.R. 653. The judgment has been noted only as it was cited at the bar. We are unable to find how the judgment is relevant to the question which is being decided in this writ Petition.

7. The Learned Counsel for the Petitioner further relied on Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . By this judgment, the Supreme Court in view of the facts placed before it came to the conclusion that the Air Port Authority is an "other authority" amenable to writ jurisdiction, further it only corroborated the test spelled out above.

8. The Learned Counsel for the Petitioner further submitted without supporting her contention that the Cooperative Society Rules have been amended and under the amended Rules, it has been made incumbent upon the Society to get the approval of the Registrar which indicates State's control over the Society and makes the Society an instrumentality within the four corners of Article 12 of the Constitution of India. None of the Rules has been pointed out under which any approval is required and even assuming that the rules are there, mere provision for getting approval for certain acts of the Society from the Registrar shall not make the Society an instrumentality of the State or the other authority or the State. It is the sum total of the facts taken in their entirety that can lead to a firm finding that the Society is the instrumentality of State or is other authority amenable to writ jurisdiction. On satisfaction of only one of the numerous tests it

cannot be discerned that the Society is a State or the instrumentality of a State nor such a finding can be returned. Thus, we find no force in the submission of the counsel for the Petitioner that the pure and simple Cooperative Society having come into existence under the Cooperative Societies Act is the instrumentality of the State and the Writ Petition can be maintained against it for violation of any principle of natural justice etc.

9. The Learned Counsel for the Respondents in order to support his contention that the Respondent-Cooperative Society is not a State or the instrumentality of State relied on *Pritam Singh Gill Vs. State of Punjab and Others*, wherein the Full Bench of this Court has held that the Punjab State Cooperative Land Mortgage Bank is not an instrumentality or agency of the State. Consequently, the Society cannot be said to be an authority within the meaning of Article 12 of the Constitution of India, and as such, is not amenable to writ jurisdiction of this Court. In the modern developing society mere holding of some shares by the State in an ordinary business venture would not convert the Cooperative Society running such a venture into an instrumentality of State or other authority within the meaning of Article 12.

10. In this Writ Petition the only relief claimed by the Petitioner is that since he was appointed as a Clerk in the office of the Society at Rs. 300 per month as far back as March 11, 1987 and has completed 240 days, his service cannot be terminated without following the procedure of the law. Further he has claimed salary equal to that of a regular employee along with a prayer for regularisation of his services.

11. In view of the observations made above, no mandamus can be issued restraining the Respondents from terminating the Petitioner's services, though prima facie in peculiar facts of the case, the Petitioner's services should have been regularised. Thus, in view, of the above observations, the Writ Petition against the Cooperative Society is not maintainable and the same is dismissed on this ground alone. There will, however, be no order as to costs.

12. It is made clear that the Petitioner will be at liberty to see the alternative remedy either by way or civil suit or under the Industrial Disputes Act or any other law providing him a remedy to defend his right, if so advised. Any observations made above shall not be taken note of by the appropriate authority if approached by the Petitioner.