

(2011) 10 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 949 of 2008

Sonaullah Rather

APPELLANT

Vs

Jk Spl. Tribunal and Others

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Jammu and Kashmir Cooperative Societies Service Rules, 1988 — Rule 5

Citation : (2011) 3 JKJ 75

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, Judge

1. In terms of order dated 03-02-2005, forming annexure (P1) to the writ petition, the respondent No. 4 - Deputy Registrar, Cooperative

Societies (Chairman Recruitment Institution Employees District Kupwara), passed the following order:

Office of the Deputy Registrar Cooperative Societies Kupwara.

Subject : Adjustment of Manager S&S S.S. Moori-Circullay.

ORDER

Keeping in view the retirement of Shri Bashir Ahmad Paray Manager in S.S. Moori-Circullay, Shri Sonaullah Rather Manager Chinar House

Building Society Sogam is transferred and posted as Manager S.S. Moori-Circullay.

This order will have immediate effect.

NO. SS/COOP/1211-14

Dated : 03-02-2005

Sd/

Deputy Registrar,

Cooperative Societies

(Chairman Recruitment Institution Employees District Kupwara).

2. In terms of the order aforementioned, the petitioner was ordered to be transferred and posted as Manager S.S. Moori, Kalaroos, Kupwara. A

reference was filed by the Elected Board through Secretary Sale & Supplies Society Moori, Kalaroos, Kupwara objecting to the transfer of the

petitioner from Housing Society Sogam to Sale & Supplies Society Moori as Manager, before the Registrar Cooperative Societies.

3. The respondent No. 2 - Registrar Cooperative Societies, in terms of order dated 12-07-2007 stayed operation of the transfer order. However,

the said order was vacated vide order 30-07-2007 subject to the condition that the petitioner, who was respondent in the reference before

respondent No. 2, will furnish an undertaking stating therein that he will abide by the decision of the Court at the time of final disposal of the

petition. The petition was finally disposed of on 18-10-2008 and the order of transfer dated 03-02-2005 was cancelled and status quo ante was

restored.

4. The petitioner challenged the said order before the J&K Special Tribunal in a Revision petition and vide order dated 6-12-2008, the

application, seeking interim relief, was dismissed and it is against this order as also against the order of the Registrar Cooperative Societies that writ

petition is filed.

5. Heard learned counsel for the petitioner. Considered the matter.

6. Learned counsel for the petitioner invited attention of the Court to page (6) of the writ petition and submitted that the Deputy Registrar,

Cooperative Societies, who passed the order of transfer on 03-02-2005, was competent to pass the said order. Learned counsel further referred

to J&K Cooperative Societies Service Rules, 1988 (for short rules of 1988), notified vide SRO 233 of 1988. Referring to rule 5 of the rules of

1988, learned counsel submitted that the respondent No. 4, in the facts and circumstances of this case, was competent to issue the transfer order.

It was further submitted that the said respondent, besides being Chairman of the

District Recruitment Board, was also the Administrator of the two Committees of the two Societies, as such, was competent to pass the order of transfer. He further submitted that the view taken by the respondent No. 2 as also by the Special Tribunal that the Deputy Registrar was not the authority competent to pass the transfer order, is not the correct view in law and accordingly prayed for allowing the writ petition.

7. Rule 5 of the rules of 1988, on which a whole hog reliance was placed by the learned counsel for the petitioner to substantiate competence of the Deputy Registrar for issuing order of transfer, however, does not support the submission made at the bar. The said rule provides for appointment by transfer and deputation. Sub rule (1) of rule 5 of the rules of 1988 provides that appointment in a cadre by transfer from another cadre on an equivalent post or otherwise shall be made by the Committee/ Authority on the recommendations of the Selection Board on the terms and conditions mutually agreed upon by the two Committees with the written consent of the employees concerned. It appears that the expression 'with the written consent of the employees concerned' has been deleted vide SRO 220. In order to show that a valid transfer in law has taken place, the contingencies described in sub rule (1) of rule 5 of the rules of 1988 have to be satisfied. The recommendation is to be made by the Selection Board and thereafter the Committee/Authority can pass the order of appointment by transfer from one cadre to another. The recommendations have to be made on the terms and conditions mutually agreed upon by the two Committees. Rule 2(a) of the rules of 1988 define the 'Authority' to mean the 'Authority' constituted u/s 29 of the J&K Cooperative Societies Act, 1960. Rule 2(c) of the rules of 1988 defines 'Committee' to mean a governing body, who manages, under the J&K Cooperative Societies Rules and Bye Laws, the affairs of the Society. It is not pleaded in the writ petition that the consent of the two Committees was obtained after mutually settling the terms and conditions. The fact that the consent was not given by the Sale & Supplies Society, Moori, Kalaroos, Kupwara is writ large on the face of the record as a reference was made by the Elected Board through its Secretary against the order of transfer. One of the fundamental requirements provided in rule 5 of the Rules of 1988 was, thus, lacking in this case. The Selection Board had to

make recommendations. The Selection Board would not mean the Chairman of the District Selection Board alone. As per pleadings at page 6 of the writ petition, constitution of the District Selection Board has been detailed out, which comprises of four other members, besides, the Deputy Registrar Cooperative Society, who is the Chairman of the said Committee. Any action taken by the Chairman of the Committee would not, in law, constitute to be an action taken by the District Selection Board. Rule 6 of the Rules of 1988, specifically, defines the District Selection Board. Though there is no recommendation made by the Chairman District Selection Board, even if it is assumed that such a recommendation has been made, same would be incompetent in law being recommendation of the Chairman alone and not by the Board as defined in rule 6 of the rules of 1988. Thus, there is violation of another essential ingredient as provided by rule 5 of the Rules of 1988.

8. Perusal of the order of transfer reveals that it was a transfer order simplicitor when rule 5 of the rules of 1988 provided for appointment by transfer and deputation. The petitioner was not appointed by transfer. The ultimate order of appointment by transfer has to be made by the Committee/Authority. Neither it is pleaded in the writ petition nor any material is placed on the writ record to show that a Committee/Authority has passed any such order. The Deputy Registrar Cooperative Societies would not substitute himself for a Committee/Authority as defined by rules of 1988 itself.

9. In the aforementioned factual and legal background, no fault can be found with the orders passed by the Registrar Cooperative Societies/Special Tribunal. Writ petition is dismissed along with CMPs and interim direction vacated.