(1999) 09 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18294 of 1997

Sultan Singh APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 2

Citation : (2000) 2 ILR (P&H) 161 : (2000) 124 PLR 80 : (2000) 1 RCR(Civil) 182

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : S.S. Dalal, for the Appellant; Aman Dahiya, D.A.G. for Respondent Nos. 1 and 2, Jaivir Yadav and S.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—The Sarsa Co-operative Credit and Service Society Limited, Sarsa Tehsil Pehowa District Kurukshetra (for short the society) is a Primary Cooperative Society registered under the Haryana Co-operative Societies Act, 1984 (hereinafter called ''the Act''). Petitioner who is a resident of Village Sarsa applied for the post of a Clerk-cum-Cashier with the society. This application was put up before the Managing Committee of the society in the meeting held on 10.1.1996 and by a resolution passed by the Managing Committee in the said meeting the petitioner was appointed to the post. Prithvi Singh respondent moved a petition before the Registrar u/s 27 of the Act for rescinding the resolution dated 10.1.1996 passed by the Managing Committee appointing the petitioner as Clerk-cum-Cashier. This petition was heard by the Additional Registrar (Credit) Co-operative Societies, Haryana who by his order dated 30.9.1996 dismissed the same holding that the Managing Committee was within its rights to appoint the petitioner. Feeling aggrieved by this order Prithvi Singh filed an appeal u/s 114 of the Act which was heard by the Commissioner and Secretary to Government, Haryana, Co-operative Department, Chandigarh. It was contended before the State Government that the appointment of the petitioner made by the society was in contravention of the provisions of Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the 1959 Act) because the vacancy had not been notified to any Employment Exchange. It was also contended that the appointment contravened bye-law 40(vi) and also the instructions dated 4.4.1994 issued by the Registrar requiring the Co-operative Societies to make appointments only from the surplus pool. After noticing the contentions of the parties, the Secretary by his order dated 12.11.1997 allowed the appeal and made the following observations:

"In view of the above discussion, I agree with the contention made by Ld. counsel for the appellant. The order dated 30.9.1996 passed by the Additional R.C.S., Haryana and resolution dated 10.1.1996 passed by the Managing Committee of Sarsa Co-op. C&S Society are set aside and the appeal is accepted."

2. It is against this order that the present writ petition has been filed.

3. Having heard counsel for the parties, we are of the view that the writ petition deserves to succeed.

4. Section 4(1) of the 1959 Act deals with the notification of vacancies to Employment Exchanges. It requires that an employer before filling up any vacancy in any employment in every establishment in public sector shall notify that vacancy to such Employment Exchanges as may be prescribed. This requirement of notification of vacancies is mandatory in so far as establishments in public sector are concerned. The term ''establishment in public sector'' has been defined in clause (f) of Section 2 of the 1959 Act which reads as under:

(f) "establishment in public sector" means an establishment owned, controlled or managed by -

(1) the Government or a department of the Government;

(2) a Government company as defined in Section 617 of the Companies Act, 1956;

(3) a Corporation (including a co-operative society) established by or under a Central, Provincial or State Act, which is owned, controlled or managed by the Government;

(4) a local authority;

5. A reading of the aforesaid definition makes it clear that a corporation including a Co-operative Society established by or under a Central, Provincial or State Act would be an establishment in public sector provided it is owned, controlled or managed by the Government. In the case before us, the society is a Primary Co-operative Society registered under the State Act but is neither owned nor controlled nor man aged by the Government. It is a Primary Society having its own Managing Committee which is elected in terms of the Act and the Rules

framed thereunder. The society is managed by its Managing Committee and not by the Government and is, therefore, not covered by. clause (3) of Section 2(f) of the 1959 Act. It is also not covered under any clause of Section 2(f) of the 1959 Act. It is, therefore, not a ''establishment in public sector''. Section 4(1) of the 1959 Act is thus not attracted. Section 4(2) of the 1959 Act,, however, deals with establishment in the private sector. This sub section provides that the appropriate Government may by notification in the official gazette require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of, establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed and the employer shall thereupon comply with such requisition. It is clear that establishment in the private sector would be governed by the 1959 Act only if the State Government has issued a notification u/s 4(2) of that Act. It is not the case of the respondents that any such notification has been issued by the State of Haryana u/s 4(2) of the 1959 Act. This being so, the provisions of 1959 Act are not applicable to the society which, as already observed, is a Primary Society registered under the Act and falls in the private sector. In this view of the matter, the Secretary erred in law in allowing the appeal and rescinding the resolution dated 10.1.1996 on the ground that the vacancy had not been notified to the Employment Exchange. Since the provisions of 1959 Act are not applicable, it was not necessary for the society to notify the vacancy to any Employment Exchange. Learned counsel for respondent No.5 referred to various judgments of the Apex Court and also of this Court to contend that the provisions of Section 4 of the 1959 Act are mandatory. There is no quarrel with this proposition but the only question is that provisions of the 1959 Act are not applicable to the society before us. In the cases cited on behalf of respondent No.5 the vacancies had to be notified because those cases pertained to establishments in the public sector. We do not, therefore, think it necessary to refer here to those judgments in detail.

6. It was then contended by the learned counsel for respondent No.5 that appointment of the petitioner was in contravention of Bye-law 40(vi) of the Bye-laws of the society and contrary to the instructions dated 5.4.1994 issued by the Registrar. A copy of the printed Bye-laws and also that of the instructions dated 5.4.1994 was produced at the time of hearing. We have perused the same. Bye-law 40 of the Bye-laws enumerate various powers of the Managing Committee and clause (vi) thereof states that the Managing Committee may make appointments of the staff from time to time subject of course, to the conditions, if any, imposed by the Registrar. The instructions issued on 5.4.1994 have been addressed to all the Co-operative Apex Institutions, all the Co-operative Sugar Mills and all the Central Co-operatives Banks in the State of Haryana. These instructions do not apply to any other institutions. The society in the instant case is neither a Co-operative Apex Institution nor a Cooperative Sugar Mill nor a Central Co-operative Bank. The instructions referred to by the learned counsel

for respondent No.5 were not meant to govern the society. This being so, the appointment of the petitioner cannot be said to be in contravention of Bye-law 40(vi) of the Bye-laws or of any instruction issued by the Registrar.

7. No other point was raised before us.

8. For the reasons stated above, the impugned order cannot be sustained and the same is hereby quashed. The writ petition stands allowed with no order as to costs.