

(2020) 12 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4337 Of 2020

Veerta Devi And Another

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 01-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Himachal Pradesh Co-Operative Societies Act, 1968 — Section 93, 94, 94(1)

Citation : (2020) 12 SHI CK 0001

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Ajay Sharma, Anandita Sharma, Suesh Raj, Dinesh Thakur, Sanjeev Sood, Divya Sood, B.C. Negi, Surinder Saklani

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioners have, inter alia, prayed for the following reliefs:

â??(a) That impugned orders dated 30.07.2020 passed by respondent No. 3 available in Annexure PÂ6 may very kindly be quashed and set aside

with directions to respondents No. 2, 3 and the proforma respondent herein, i.e., Assistant Registrar, Cooperative Societies, Nurpur, to look into the

matter as per provisions of the Ac and Rules and allow joining to the petitioners as Secretary and Salesman, respectively, in respondent No. 5Â?

Society.

(b) That respondent No. 1 or in the alternative, learned Chief Secretary of the State of H.P. may very kindly be directed to hold an inquiry or get it

conducted against respondent No. 3 for misconduct as per provisions of service

jurisprudence and take action accordingly and file Action Taken

Report on the records of proceedings of this case.

(c) That incumbents managing the affairs of respondent No. 5 Society may very kindly be banned from participating in the affairs of the Cooperative

Societies, particularly respondent No. 5 Society, for the period as is deemed fit by this Honorable Court and they be fined heavily in terms of money

as is deemed fit by this Honorable Court to be recovered from them and paid to the petitioners.

2. It is not in dispute that impugned order dated 30.07.2020 is an order, which has been passed by the Appellate Authority, in exercise of powers

conferred under Section 93 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter referred to as 'the 1968 Act'). This Court

is of the view that this petition is premature, as there is a statutory remedy available to the petitioners under Section 94 of the 1968 Act against the

order which has been so passed by the Appellate Authority under Section 93 of the 1968 Act, who happens to be the Additional Registrar, Cooperative

Societies exercising powers of Registrar under Section 93.

3. Learned Senior Counsel appearing for the petitioners, while relying upon the statutory provisions of Section 94 of the 1968 Act (supra), has

strenuously argued that there is no statutory remedy available against an order passed in an appeal by the Appellate Authority under Section 93 of the

1968 Act, as the language of Section 94(1) is explicit that revisional power has been conferred upon the State Government in cases 'except in a

case in which an appeal is preferred under Section 93'. On the strength of said statutory language of Section 94(1), Mr. Sharma argued that because

in the present case, an appeal stood preferred under Section 93 by the petitioners, the power of revision, does not vest with the State Government and

the petitioners have rightly approached this Court in writ jurisdiction under Article 226 of the Constitution of India.

4. In my considered view, the contention of learned Senior Counsel for the petitioners cannot be accepted. Section 94(1) of the 1968 Act is to the

effect that the State Government, except in a case in which an appeal is preferred under Section 93, may call for and examine the record of any

inquiry or inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or action on his authority and

may pass thereon such orders as it thinks fit. Thus, what Section 94 envisages is that in a case where an appeal is preferred under Section 93 of the

1968 Act, State Government cannot simultaneously exercise its power of revision so conferred under Section 94 of the 1968 Act. However, the

language of Section 94 cannot be construed that an order which stands passed by the Appellate Authority in an appeal preferred under Section 93 of

the 1968 Act is also not revisable. Had that been the intent of the Legislature, then the language of Section 93 would have been explicit that the State

Government cannot exercise the power of revision in a case in which an order stands passed in an appeal preferred under Section 93 of the 1968 Act.

Further, in my considered view, once an appeal is preferred under Section 93 of the 1968 Act and the same culminates into an order passed by the

Registrar, then the State Government has the power of revision, because then the adjudication of the appeal becomes any proceedings of the

Registrar and these proceedings are revisable as per statutory provisions of Section 94(1) of the 1968 Act.

5. Accordingly, this writ petition is dismissed on the ground that the petitioners have approached this Court without exhausting statutory revisional

jurisdiction. As the writ petition is dismissed on technical grounds, in the interest of justice, it is observed by this Court that in the event of the

petitioners approaching the Revisional Authority within a period of 30 days from today against the order passed by the Appellate Authority under

Section 93 of the 1968 Act, which stands impugned by way of this writ petition, then the Revisional Authority shall treat the revision to be filed within

limitation and decide the same on merit. It goes without saying that such revision petition, if any, preferred shall positively be decided by the Revisional

Authority, after affording reasonable opportunity of being heard to all the parties, within a period of two months from the date of filing of the revision

petition. Miscellaneous applications, if any, also stand disposed of.

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