

(2018) 07 CHH CK 0263

Chhattisgarh High Court

Case No: Writ Appeal No. 147 Of 2018

Gopi Chandrakar And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: July 23, 2018

Acts Referred:

- Chhattisgarh Cooperative Societies Act, 1960 - Section 48C(e)(ii), 55(1)
- Constitution Of India, 1950 - Article 14, 16

Hon'ble Judges: Ajay Kumar Tripathi, CJ; Prashant Kumar Mishra, J

Bench: Division Bench

Advocate: Anoop Majumdar, A.S. Kachhawaha, Harshal Chouhan

Final Decision: Dismissed

Judgement

Ajay Kumar Tripathi, CJ

1. Writ petition of the two appellants came to be dismissed by the learned Single Judge vide order dated 2-2-2018. Since the learned Single Judge

refused to interfere with the terms and conditions of the advertisement dated 6-12-2016 issued by the Chhattisgarh State Cooperative Marketing

Federation Limited (henceforth 'the Federation'), which was for appointment on the post of Field Assistant and Accountant (Class III), the present

appeal has been preferred.

2. As per the assertion made in the writ petition, the two appellants were working as Clerk-cum-Cashier under the Federation and were said to be

working in that capacity for almost 15 years on casual/daily basis. Since in terms of the advertisement these two appellants were overage, they

decided not only to challenge the advertisement but also challenge the rules, which were notified by the Registrar, Cooperative Societies, which had

laid down the parameters and terms & conditions for such recruitment on a regular basis by societies across the State.

3. It was the case of the appellants that keeping in mind the interest of such temporary or casual workers the Federation had made certain rules. In

Rule 11 of the Service Rules certain weightage of marks, etc. was granted to the casual employees. The Federation forwarded the same for approval

to the Registrar, Cooperative Societies who notified a separate set of rules.

4. It is the stand of the counsel for the appellants that the Registrar had limited power and it was open to him to either accept the proposed

amendment in the Rules under Section 48-C (e) (ii) of the Chhattisgarh Cooperative Societies Act, 1960 (henceforth 'the 1960 Act') or if the Registrar

was not willing to accept the proposed amendment to the Service Rules, he should have made known his objections and remitted the matter back to

the Federation for reconsideration, but he did not have powers to make a set of rules which is supposed to be in exercise of powers vested in him

under Section 55 (1) of the 1960 Act.

5. The submissions made on behalf of the appellants as well as the respondents State and the Federation have been duly considered by the learned

Single Judge and taking note of the various judicial pronouncements rendered by the Hon'ble Supreme Court from time to time the Court came to a

considered opinion that the powers vested in the Registrar of Cooperative Societies both under Section 48-C (e) (ii) and Section 55 (1) of the 1960 Act

has to be read in harmony. Section 55 lays down specific power to the Registrar of Cooperative Societies to determine conditions of employment in

societies. This power has been vested by the legislature so as to maintain uniformity in the Rules and policy making about service conditions across the

State in all the societies, registered under the Act. This is interest of protecting and ensuring that the allegation or violation of Article 14 and 16 of the

Constitution of India are not raised against any kind of recruitment, appointment or service conditions of the employees of such society.

6. Section 55 of the 1960 Act reads under :

55. Registrar's power to determine conditions of employment in societies.-(1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

Provided that in the case of cooperative credit structure, the Registrar may frame rules governing the terms and conditions of employment on the basis of the guidelines specified by the National Bank.

Where a dispute, including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees:

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned:

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.

Provided also that the Registrar or the officer referred to above may admit dispute after the expiry of thirty days, if the applicant satisfy the Registrar or officer referred to above that he had sufficient cause for not referring the dispute within the stipulated time.

7. We do not find any fault in the view taken by the learned Single Judge holding that the powers have to be read in harmony and that power of the Registrar in no manner is curtailed while considering proposal of the Federation, which may have been forwarded to him for approval under Section 48-C (e) (ii). To that extent the negation of submission of the counsel for the appellants before the learned Single Judge cannot be said to be erroneous.

8. An argument is made now at the stage of appeal that the learned Single Judge had allowed certain concession with regard to relaxation in age of

the employees who were overage and since examination has already been conducted, the relief or the concession which was granted for the benefit of these appellants has been made redundant since they were neither allowed to participate in the examination nor were they given opportunity to become part of the recruitment exercise.

9. The Court has taken note of the fact that during hearing of the writ petition as early as on 20-1-2017 some kind of interim order and direction was

passed restraining the respondents from finalising the selection process till the next date of hearing. What is of significance in the order dated 20-1-

2017 is that even at that stage these appellants who were petitioners before the writ Court did not pray before the learned Single Judge that there

should be a direction upon the respondents to permit them to join the recruitment process by allowing them to apply and sit in the examination.

10. Since the writ petition now stands dismissed by the learned Single Judge and the appellants having failed to avail the opportunity at the threshold,

the exercise having been completed now, no relief can be extended to them by interfering with the selection process made at this belated stage.

11. In any view of the matter, in totality, no right in favour of these appellants as such has been created because they have failed to make out a case

against the terms and conditions of the advertisement which created impediment in their participation in the very first place.

12. In the result, the writ appeal, sans merit, is liable to be and is hereby dismissed.