

(2000) 11 P&H CK 0243

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 156 of 2000

Amar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Nov. 13, 2000

Citation: (2001) 4 RCR(Civil) 724

Hon'ble Judges: Mehtab S. Gill, J

Bench: Single Bench

Advocate: K.S. Hoti, for the Appellant; Lakhinder Bir Singh, Addl. A.G., Anupam Singh and S.S. Bhinder, for the Respondent

Final Decision: Dismissed

Judgement

Mehtab S. Gill, J.

By this common judgment, I am disposing of Civil Writ Petition Nos. 156 and 157 of 2000 collectively as the point involved therein is identical in nature. However, for the sake of convenience, the facts are being extracted from Civil Writ Petition No. 156 of 2000.

2. Petitioner has prayed for issuance of a writ in the nature of certiorari for setting aside the order dated August 26, 1999 (Annexure P-7) passed by the Additional Secretary, Cooperation, Punjab.

3. It has been averred that the petitioner served as an Inspector in the Co-operative Societies, Vanieke, Tehsil Ajnala, District Amritsar and retired from service on October 31, 1993. The job of the petitioner was to supervise the working of the Co-operative Societies falling in the area of his jurisdiction. The petitioner has averred that there was no Managing Committee of the Kotla Doom Agricultural Service Co-operative Society. The Registrar had the power to appoint a Government official as an Administrator of such a Society u/s 26(1D) of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as "the Act"). 4. It has been further averred that the Kotla Doom Cooperative Agricultural Service Society Ltd.

(hereinafter referred to as "the Society") came into existence in October, 1987. The petitioner was appointed as the Administrator of the Society by the Assistant Registrar. The petitioner continued to be the Administrator of the Society for the period from June 1, 1988 to June 30, 1988. For the purpose of running the Society and to make it functional, the petitioner appointed Shri Gur Avtar Singh son of Mukhtiar Singh resident of village Qila Mehka as a Salesman in the Society at a monthly salary of Rs 800/-. Thus, he exercised the powers of the Managing Committee u/s 27(3) read with Section 26(IE) of the Act. Sections 26(IE) and 27(3) of the Act are reproduced as under:

"Section 26(IE) - The provisions of Sub-section (3) and Sub-section (4) of Section 27 shall apply to the Administrator appointed under Sub-section (ID) as if the Administrator had been appointed under that section."

"Section 27(3) - The administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to perform all or any of the functions of the committee or of any officer or the society and take all such action as may be required in the interest of the society."

5. On October 24, 1988, the Managing Committee admitted Shri Gur Avtar Singh as a Member of the Society and also approved the maximum credit limit for him. He was issued an identity card by the Manager of the Bank and also a cheque book to operate his account in the Society. It has been further averred that the tenure of the petitioner had already come to an end on June 30, 1988 and he had nothing to do in admitting Shri Gur Avtar Singh as a Member of the Society. After issuing of the cheque book, Shri Gur Avtar Singh took loan on four occasions by presenting the cheques to the bank at Branch Khasa. The details of the loan withdrawn by him are as under:

Cheque No.	Date	Amount of loan	Nature of loan
359661	8.12.1988	Rs. 4,,00.00	"B" Component
359663	13.2.1989	Rs. 1,,00.00	"A"Component (cash)
359662	14.2.1989	Rs.2.853.10	"B"Component
359664	27.2.1989	Rs. 1,440.00	"B" Component
	Total :	Rs. 9,793.	
		10,	

6. Respondent-Society raised a dispute before the Inspector, Co-operative Societies, Vaniyake (Arbitrator) and an ex parte award dated May 23, 1994 (Annexure P-4) was passed against Gur Avtar Singh as he had defaulted in the repayment of the loan and a warrant of arrest was also issued against him. It has been further averred that the respondent-Society filed an appeal before the Assistant Registrar against the award dated May 23, 1994 (Annexure P-4) which, though, was in favour of the Society. The Assistant Registrar set aside the award with the direction that the petitioner be made a party to the dispute. The petitioner further averred that the Assistant Registrar has illegally accepted the appeal filed by the respondent-Society with the motive to involve him in the proceedings before the arbitrator. Shri Joginder Singh was appointed as an arbitrator on February 13, 1996 and after giving a notice on February 16, 1996 to the petitioner, an ex parte award was passed on February 28, 1996 (Annexure P-3) against the petitioner without giving him an opportunity. Against the award dated February 28, 1996, the petitioner filed an appeal before the Assistant Registrar, Co-operative Societies, Tarn Taran. The Appellate Authority set aside the award dated February 28, 1996 and passed an order that the petitioner had not admitted Shri Gur Avtar Singh as a member of the Society and the loan was also not advanced to him by the petitioner. The respondent-Society then filed revision petition on November 16, 1998 (Annexure P-6) against the order of the Appellate Authority dated June 20, 1996 (Annexure P-5) before the Deputy Secretary to Government Punjab, Cooperation Department at Chandigarh. The revision petition was accepted by the Additional Secretary, Cooperation, Punjab vide order dated August 26, 1999 (Annexure P-7) and the order passed by the Assistant Registrar, Co-operative Societies, Tarn Taran, was set aside.

7. Notice of motion was issued to the respondents. Respondents No. 3 and 5 filed their separate replies to the writ petition.

8. I have heard learned counsel for the parties, perused the petition, replies and the annexures attached. Learned counsel for respondent No. 3, the main contesting respondent, has drawn my attention to the Circular dated September 26, 1986 (Annexure R-3/1), copy attached to written statement of this respondent filed in the connected Civil Writ Petition No. 157 of 2000, which was circulated to all the concerned officers that Administrators appointed by the Registrar have no authority to appoint, remove and increase the pay scales of the staff of the Primary Cooperative Agricultural Service Societies. Annexure R-3/1 issued by the Registrar, Punjab, Chandigarh is reproduced as under:

"From The Registrar, Cooperative Societies, Pb., Chandigarh.

To 1. All the Joint Registrars, Cooperative Societies in the field.

2. All the Deputy Registrars, Cooperative Societies in the field.

3. All the Assistant Registrars, Cooperative Societies in the field.

Subject : Regarding appointments, removal and increasing the pay scales of staff of PACs by the Administrators.

MEMORANDUM

It has been brought to the notice of this office that the Inspectors Cooperative Societies when appointed as Administrators in the Primary Coop. Agri. Service Societies allow undeserved and untimely benefits to staff such as appointments, removals and increase the pay scales. In order to curb this unhealthy practice by the Administrators the matter has been considered and it has been decided that the appointments, removals and increase of pay scales of the staff of the Primary Cooperative Agricultural Service Societies should not be made by them.

These instructions shall come into force with immediate effect and be brought to the notice of all concerned for strict compliance. It would be proper that such conditions imposed while making appointments of Administrators in the PACs.

Sd/-

Deputy Registrar Banking, for Registrar Cooperative Societies, Pb.

No. Credit/CA 4/2326 Dt. 24.9.1986. Copy of the above is forwarded to :

1. All Gazetted Officers in H.O. for information.
2. All the Chief Executive Officers in the Central Coop. Banks in the State for information and action.

Sd/-

Deputy Registrar Banking, for Registrar Cooperative Societies, Pb., Chandigarh."

9. The aforementioned Circular was issued on September 26, 1986 to all the concerned authorities, while the dispute between the petitioner and the Society arose in the year 1988. Petitioner was aware of the Circular and knew that he did not have the power to appoint any employee in the Cooperative Society. By appointing Shri Gur Avtar Singh as a Salesman, he had acted in clear violation of the Instructions given in the said Circular. After appointing Shri Gur Avtar Singh as a Salesman by the petitioner, a salary of Rs. 12,000/- (total amount shown) to be paid for 15 months, i.e., Rs. 800/- per month was withdrawn. It comes out that there was a close nexus between the petitioner and Gur Avtar Singh, whereby money was withdrawn by way of salaries and loans, which was being distributed between the Salesman and the petitioner. The petitioner appointed Gur Avtar Singh as a Salesman with mala fide intentions.

10. For the reasons recorded above, both these petitions are dismissed. However, parties are left to bear their own costs.

11. Petitions dismissed.