

## Puran Chand Tewari Vs Secretary, Cooperative, Government of Haryana and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 28, 2001

**Acts Referred:** Constitution of India, 1950 " Article 14, 226

Haryana Co-operative Societies Act, 1984 " Section 128, 39

**Hon'ble Judges:** Ashutosh Mohunta, J

**Bench:** Single Bench

**Advocate:** Avtar Kaur, for the Appellant; R.C. Chaudhary, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Ashutosh Mohunta, J.

Present writ petition has been filed for quashing the order dated October 7, 1986, vide which the resignation of the

petitioner, who was working as a driver in the Haryana State Cooperative Housing Federation Ltd., Chandigarh, was accepted, and the petitioner

was relieved from his duty with effect from October 7, 1986. A copy of the order has been produced as Annexure P3 with the writ petition.

2. Briefly, the facts of the case are that the petitioner was appointed as a driver on January 7, 1983 in the Haryana State Cooperative Housing

Federation (for short "the Federation") on temporary basis and he was confirmed on September 7, 1984 with effect from February 1, 1984. Vide

letter dated July 28, 1986, the petitioner submitted his resignation from the post of driver. The reason for submission of resignation was given as

that he was suffering from depression. After three days, the petitioner again wrote to the Managing Director of the Federation, whereby he

reiterated his demand for acceptance of his resignation.

3. However, before the relieving order could be passed, the petitioner submitted an application dated September 2, 1986, vide which he

requested for the withdrawal of the resignation letter. No copy of the letter of withdrawal has been placed by the petitioner on record. However,

the respondents filed an application for placing on record copy of the application dated September 2, 1986 for withdrawal of the resignation.

4. The respondents accepted the request of the petitioner for acceptance of resignation vide order dated October 7, 1986.

5. It is pertinent to mention here that strangely enough the respondents moved an application for placing on record the copy of the application

dated September 2, 1986 for withdrawal of the resignation letter. This admission on behalf of the respondents with regard to the withdrawal of the

resignation letter, gave a fresh lease of life to the petitioner.

6. Mrs. Avtar Kaur, learned counsel for the petitioner, cited a series of authorities to contend that once the request for voluntary retirement is

withdrawn before its acceptance, then it is incumbent upon the authorities not to accept the resignation. Reliance was placed on Balram Gupta v.

Union of India and Anr., AIR 1987 Supreme Court 2354; and Keshav Ram Joshi v. Secretary, Ministry of Health and Ors. 1987 (3) S.L.R. 176.

7. There is no quarrel with the above proposition that once the resignation is withdrawn before its acceptance, then the concerned authorities could

not accept the resignation. However, it has to be borne in mind that the petitioner was employed as a driver. He was suffering from depression.

For any good driver, a sound, active and alert mind is a pre-requisite. A driver with an unsound mind would not only endanger his own life, but

also of the commuters on the road. A mentally ailing driver can be a risky proposition for his employer or for the person whom he is carrying in a

car. The petitioners' job is to chauffeur senior officials of the Federation and a person with an unsound mind and depression, cannot fully ensure

the safety of the passengers. Thus, taking into consideration the fact that the petitioner was a driver with an unsound mind, who gets bouts of

depression, I am of the considered opinion that the action of the respondent- Federation in accepting the resignation was just and proper.

8. Moreover, the petitioner was relieved on October 7, 1986. Almost 15 years have passed since then. There is nothing on record to show that

the petitioner has been driving a motor vehicle after 1986. Thus, the petitioner cannot be allowed to come back in service as a driver.

9. Mr. R.C. Chuadhary, learned counsel for the respondent-Federation, has contend that initially the petitioner did not implead the Federation as a

party. When an objection was raised by the respondent, the petitioner amended the writ petition. Again, the petitioner has not impleaded the

Federation by name. The petition has been filed against the Secretary (Cooperation), Registrar, Cooperative Societies, and the Managing Director

of the Federation.

10. As per Section 39 of the Haryana Cooperative Societies Act, 1984, a Cooperative Society is a corporate body. It should be sued in its name.

A Cooperative Society registered under the aforesaid Act is a Corporate body. It has a legal personality. It can be sued in its corporate name

only. The legal personality of a Corporation is different from the personality of the individual members, who constitute the Corporation. In the

present case the petitioner has not impleaded the Haryana State Cooperative Housing Federation as a party. Hence the present petition must fail

on the ground of non-joinder of necessary parties.

11. Mr. Chaudhary also contended that a dispute between a Co-operative Society under the Co-operative Societies Act and its workmen has to

be referred to an Industrial Tribunal set up under the Industrial Disputes Act, 1947. He relied upon a decision of the Full Bench in Sonapat Co-

operative Sugar Mills Ltd. Vs. Presiding Officer, Labour Court, Rohtak and Another, in which it has been held as under:-

3). that the Industrial Disputes Act is a special enactment dealing with a special subject of industrial disputes and special provisions have been

made in the statute for setting up Tribunal qualified for adjudicating upon them. Therefore, an industrial dispute between a Co-operative Society

under the Co-operative Societies Act and its workmen under the law has to be referred to an Industrial Tribunal set up under the Industrial

Disputes Act; and

4) that the provisions made in Section 128 of the Co-operative Societies Act, 1984, to the extent they exclude the jurisdiction of the Industrial

Tribunal and Labour Court are unconstitutional and hit by the provisions of Article 14 of the Constitution.

12. I am bound to accept the ration of the above Full Bench and, therefore, hold that the present writ petition is not maintainable and the petitioner

should have sought his remedy under the Industrial Disputes Act, 1947.

13. Thus, taking into consideration, the above facts, the writ petition is dismissed. However, there shall be no order as to costs.