

(2015) 04 P&H CK 0397

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 12320 of 1994 (O&M)

Haryana State
Federation of
Consumers'
Co-Operative
Wholesale Stores Ltd.

APPELLANT

Vs

The Registrar,
Co-Operative Societies
Haryana and Others

RESPONDENT

Date of Decision: April 29, 2015

Citation: (2015) 179 PLR 466

Hon'ble Judges: Ajay Tewari, J

Bench: Single Bench

Advocate: Aseem Rai, for the Appellant; Shruti Goyal, A.A.G., Advocates for the Respondent

Final Decision: Disposed off

Judgement

Ajay Tewari, J

This writ petition has been filed against the order of the Registrar, Cooperative Societies whereby the plea of the private respondents for being permitted to join back before the petitioner has been accepted by respondent No. 1. The brief facts are that the petitioner is an apex cooperative society and runs cooperative consumer stores in various part of Haryana. Originally the employees of the petitioner-society and the various cooperative stores being run by it were born on the respective cadre of the society/store. Admittedly, however, in 1979 the petitioner-society and the different stores agreed that all the employees should be encadred in the petitioner-society. Resolutions to this effect were passed by the petitioner society and, after getting approval from respondent No. 1, the action was effectuated and the petitioners were appointed after the common cadre was established. Thereafter in 1993 the petitioner-society decided to decadre some

categories of employees like salesmen, peons and drivers etc. and place them back in the cadre of the stores. Undisputedly no objections were sought from the private respondents at that stage and the exercise was completed after getting approval from the Registrar, Cooperative Societies. The private respondents were consequently encadred with the District Cooperative Consumer Store, Jhajjar. In the year 1993 the District Cooperative Consumer Store, Jhajjar was wound up. It was at that stage that the private respondents agitated that they wanted to revert back to the petitioner-society. Prayer having not been acceded to they filed application before respondent No. 1 who, after noticing that no objections were ever sought from the petitioners, allowed the appeal. That order was challenged in this Court by way of the instant petition. The petition was ultimately admitted and the operation of the impugned order was stayed.

2. The first argument of learned counsel for the petitioner is that respondent No. 1 could exercise right of appeal only in the event of a service dispute and in the present case there was, strictly speaking no service dispute since the private respondents had to lose their job because the store where they worked had been wound up and consequently it had to be held that the posts against which they were working had come to an end.

3. On the other hand the argument of the private respondents is that once admittedly no objections were sought before changing the employer of the private respondents and rather even subsequently there is no record that the decision was ever brought to the notice of the private respondents, they continued to be employees of the petitioner-society and once their services were sought to be brought to an end they had the right to approach the Registrar, Cooperative Societies.

4. In my opinion the determining factor in the present case would be whether the order of 1993 whereby the private respondents came to be employees of the District Cooperative Consumer Store can be considered to be valid. In [Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others](#), AIR 1989 SC 1577 : (1989) 59 FLR 190 : (1989) 2 JT 538 : (1989) LabIC 1526 : (1989) 2 LLJ 586 : (1989) 1 SCALE 1438 : (1989) 1 SCC 679 Supp : (1989) 3 SCR 273 : (1989) 3 SLJ 48 : (1989) 2 UJ 463 the Hon"ble Supreme Court held that an employee could not be transferred from one employer to another without his consent. This judgment was followed by a Division Bench of this Court in Dr. H.K. Jain and others v. The State of Haryana and others 1991 (1) RSJ 27. No contrary judgment has been cited.

5. In the circumstances it has to be held that the private respondents could not be treated to be the employees of the District Cooperative Consumer store without having sought their consent. Once that is so it further has to be held that their petition/appeal before the Registrar, Cooperative Societies and the order passed thereon cannot be held to be without jurisdiction.

6. Consequently the writ petition has to be dismissed and the petitioner has to be treated as employee of the petitioner No. 1. Ordered accordingly. The consequent question which arises is whether the petitioner is entitled to all the consequential benefits which the answering respondents are entitled. In normal circumstances once the order of the petitioner is set aside all consequential benefits would be given to the employees but, as noticed at the very outset, the present is a case where the operation of the impugned order was stayed. In the circumstances the appropriate order to be passed would be for the dismissal of the writ petition. The answering respondents would be entitled to all consequential benefits till today except pay and allowances of the period when they were not able to work.

7. No other point has been argued. Petition disposed of in the above terms. Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.