

Punjab-Haryana High Court

The Hisar Central Coop. Bank ... vs State Of Haryana And Ors. on 3 January, 2002

Author: J L Gupta

Bench: J L Gupta

JUDGMENT Jawahar Lal Gupta, J.

1. The petitioners in these three cases have a common grievance. They complain that the Deputy Registrar, Cooperative Societies, Haryana, has arbitrarily and illegally ordered the "recovery of the amounts paid to them by way of incentives." it is alleged that the petitioners were given no opportunity. The orders have been passed on the wrong assumption that there was "no provision to grant such incentives under the Act/Rules." On this basis, the petitioners pray that the orders passed by the Deputy Registrar and the consequential recovery sought to be made be set aside. Counsel have referred to the facts in C.W.P. No. 3040 of 1999. These may be briefly noticed.

2. The petitioners are working on different posts in the Hisar Central Cooperative Bank. The board of Directors passed a resolution on July 10, 1996 by which it allowed payment of an amount equivalent to one month's salary or Rs. 5,000/-. whichever is less to all the employees. In pursuance to the resolution the payments were made to the petitioners for three successive years viz. 1995-96 to 1997-98. On January 21, 1999 the Registrar informed the managing Director that "there is no provision to grant such incentives under the Act/Rules". Consequently, he was directed to recover "the amounts paid as incentives to the employees within 15 days". Consequential directions were issued by the Managing Director to all the Branches vide order dated February 4, 1999. Copies of these two orders are at Annexures P-9 and P-10 with the writ petition.

3. The petitioners allege that the action taken by the respondents is arbitrary and unfair. It has been pointed out that vide order dated December 22, 1998, a copy of which has been produced as Annexure P-8 with the writ petition, the grant of incentive by way of bonus etc. was allowed in the case of employees of the Rewari Central Cooperative Bank. Thus, the action of the authorities in adopting a different course in case of the petitioners suffers from the vice of discrimination. They further allege that no opportunity having been given, the action is violative of the principles of natural justice. Thus, the petitioners pray that the orders, copies of which have been produced as Annexures P-9 and P-10, be quashed.

4. A written statement has been filed on behalf of the respondents by the deputy Registrar. It has been inter-alia averred that the petitioners have an effective alternative remedy by way of an appeal. On merits, it has been pointed out that the petitioners have no cause of action. Even if the Bank had earned profits, it was not entitled to disburse the amounts to the petitioners by way of ex-gratia grant. In reply to the specific averment that no opportunity had been granted, it has been averred that show Cause Notice dated February 5, 1999 was given to the Managing Director of the Cooperative Bank before the resolution was rescinded. On this basis, it is claimed that the action is legal and valid.

5. A replication has been filed by the counsel for the petitioners.

6. Counsel for the parties have been heard.

7. On behalf of the petitioners it has been contended by Mr. Subhash Ahuja that the impugned order proceeds on a wrong assumption of facts. Rule 16.7 empowers the Board to "grant cash awards or advance" increments to an employee or employees for improving academic qualifications or doing commendable work or for meritorious services'. Thus, the action of the Bank was legal and valid. In any event, no opportunity having been granted the impugned orders are vitiated. On the other hand, learned coun-

sel for the respondents have contended that the issue of notice to the Bank amounted to compliance with the requirements of natural justice. The preliminary objection has not been pressed.

8. The short question is - Have the respondents acted fairly?

9. A perusal of the order issued by the Registrar shows that an exception has been taken to the payments on the ground that "there is no provision to grant such incentives under the Act/Rules". However, it has not been disputed at the hearing that Rule 16.7 specifically empowers the Bank to grant cash awards or advance increments to an employee for commendable work or meritorious services. Thus, the assumption on which the order has been passed is non-existent. In any event, the complaint of the petitioners that they have been condemned unheard appears to be well-founded.

10. It is true that the principles of natural justice cannot be put in a strait jacket. However, these are merely rules of fair play. One of the essential features of natural justice is that nobody's purse or property shall be affected without the grant of an opportunity. In the present case, it is the admitted position that orders for recovery of substantial amounts have been passed against the petitioners without affording them any opportunity whatsoever.

11. Ms. Palika Monga contends that in case of the petitioners who were working in the Kurukshetra Central Cooperative Bank an undertaking had been given that in the event of objection being raised by the Registrar, the amount shall be refunded. Thus, the petitioners had no right to complain that there is violation of the principles of natural justice. Is it so?

12. Admittedly the payment of money to the employees of the Rewari Central Cooperative Bank has been approved by the Registrar. Still further, under Rule 16.7 the Board of Directors has been given the authority to sanction payment by way of incentives. If despite this provision the Registrar thought that the action of the Bank was not legal and valid, the persons who are really affected should have been granted an opportunity. They might have succeeded in persuading the authority to hold that there was nothing to distinguish between the employees of the Rewari and the Kurukshetra Banks. The two were entitled to parity of treatment. No opportunity having been granted the rights of the petitioners have been adversely affected.

13. No other point has been raised.

14. In view of the above, the writ petitions are allowed. The impugned orders are set aside. It is, however, clarified that the respondents shall be entitled to proceed afresh in conformity with law. In the circumstances, the parties are left to bear their own costs.