IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7668 of 1997 (O&M)
Date of decision : 20.05.2015

Sudershan Kumari ...Petitioner

V/S

State of Punjab and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Manish Dadwal, Advocate and
Mr. K. S. Dadwal, Advocates
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab

Mr. Harit Sharma, Advocate
for the respondent No.3

****

JITENDRA CHAUHAN, J. (Oral)

This writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of direction to the respondents to grant Special Family Pension to the petitioner w.e.f. 17.01.1988 instead of 01.04.1996 to the petitioner along with arrears of Special Family Pension and interest @18% per annum.

It is submitted that the husband of the petitioner-late Sh. Sohan Singh Parmar, had been working as Senior Clerk with respondent No.3 when, on 17.01.1988, he was killed by terrorists. FIR in this regard was got recorded at Police Station Mahalpur District Hoshiarpur. The Government of Punjab vide its endorsement No.9/7/85-6(E)/899-901, dated 20.01.1987 (Annexure P-1) have decided to grant financial assistance to the families of the Government employees killed by the terrorist action in addition to special ex-gratia grants by way of special family pension equal to last pay drawn till the date of superannuation and thereafter normal family pension as admissible under normal rules. This circular/letter dated 20.01.1987 had been circulated to various offices including Registrar Co-operative Societies, Punjab Chandigarh on 20.01.1987. It carries clear stipulations that the benefit provided therein shall take effect from the date of issuance of the same, i.e.20.01.1987.

The husband of the petitioner was killed by the terrorist on 17.01.1988, therefore, the petitioner had applied for the grant of benefits as per Annexure P-1. Thereafter, petitioner was granted special family pension w.e.f 01.04.1996 but as per the circular the petitioner was entitled for special family pension from the date of the death of her husband i.e. from 17.01.1988 which was not granted. For the redressal of her grievance, the petitioner made representation dated 02.01.1997 (Annexure P-3) and served a legal notice dated 16.03.1997 (Annexure P-4) upon the respondents, but these have not been decided so far.

Hence, this writ petition.

I have heard the rival contentions of the counsel for the parties.

The Hoshiarpur Central Cooperative Bank Limited, Hoshiarpur (in short “the Bank”) is a Cooperative Society registered under Punjab Cooperative Societies Act 1961 (in short the Act). The bank has not been established or constituted by or under the Constitution of India; by any other law made by the Parliament; by any other law made by the State Legislature. The Bank being a cooperative society is not owned, controlled or managed by the appropriate government.

The cooperative society is not an instrumentality within the meaning of Article 12 of the Constitution of India. No department of the Government has been transferred to the Bank. This Court in the case of ***Ranjit Singh Vs. The Registrar Cooperative Societies, Punjab, Chandigarh and another-2010(4) Services Cases Today 750 (Punjab and Haryana)*** held that no writ is maintainable against the Punjab State Cooperative Bank Ltd., Chandigarh. Relevant paras of this judgment read as under:-

> *(8) I am of the considered view that the present writ petition would not be maintainable against respondent No.2/the Punjab State Cooperative Bank Ltd. as the case of the respondent/Cooperative Bank would be covered by the judgments of Hon'ble the Supreme Court in the cases of General Manager Kisan Sahkari Chini Mills, Sultanpur, UP (Supra) and S. S. Rana (supra). In the*

present case, the share money of the State Government in the respondent/Cooperative Bank at the relevant time was merely 0.78%, whereas at present it is only 0.36%. There is nothing on the record to suggest that the control over the Society is of the State Government. The tests as laid down in S.S. Rana's case (supra), Hon'ble Supreme Court has in para-10 held as follows:-

> *"(10) It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one director. It cannot, thus, be said that the State exercises any functional control over the affairs of the society in the sense that the majority directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely (1) How the society was created ?: (2) Whether it enjoys any monopoly character ?: (3) Do the functions of the Society partake to statutory functions or public functions ?: (4) Can it be characterized as public authority ?:"*

(9) None of these tests are fulfilled by the Cooperative Bank."

The Hon'ble Supreme Court of India in a case reported as JT 2003(8) SC 235 – General Manager, Kisan Sahkari Chini Mills Ltd. Sultanpur, UP Vs. Satrughan Nishad and Ors. has held that even if share money of the Government is 50% and government nominates three directors on the Board and appointments a person to be the Managing Director, even then the writ is not maintainable against a cooperative society.

In an another judgment of the Hon'ble Supreme court of India reported in JT 2006(5) SC 186 titled as S. S. Rana Vs. Registrar, Cooperative Societies and another, it has been held by the Hon'ble Supreme Court of India that no writ is maintainable against the Kangra Central Cooperative Bank Ltd. Kangra, wherein it has been held as under:-

> *"(10) It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one director. It cannot, thus, be said that the State exercises any functional control over the affairs of the society in the sense that the majority directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely (1) How the society was created ?; (2) Whether it enjoys any monopoly character ?; (3) Do the functions of the Society partake to statutory functions or public functions ?; (4) Can it be characterized as public authority ? (para 10)"*

Again pertaining to the Hoshiarpur Central Cooperative

Bank Limited a Division Bench of this Court while deciding **Som Nath and others Vs. The Deputy Registrar Cooperative Societies-2012(4) PLR 262** has held that "the Cooperative Bank, Hoshiarpur" is not an authority or an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

Vide separate detailed judgment of even date passed in CWP No.10054 of 2013-Baldev Krishan Gupta Vs. State of Punjab, this Bench has also held that no such writ petition is maintainable against a Cooperative Society.

This case is squarely covered by a bunch of CWPs in judgment dated 15.07.2011, Civil Writ Petition No.11003 of 1993, titled as Tek Chand Vs. State of Punjab and others wherein, it has been held that this Court has no jurisdiction to entertain the present writ petition against the Hoshiarpur Central Cooperative Bank Limited, Hoshiarpur.

The case UP State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey-1999(1) SCT 593=AIR1999 SC 753 cited by the learned counsel for the petitioner is distinguishable on facts.

Keeping in view the above discussion, it is held that no writ is maintainable against the respondents.

Hence, this writ petition is dismissed as not maintainable.

However, the Court feels that the petitioner has an alternate remedy to approach the appropriate/competent authority for redreassal of his grievance under the Punjab Cooperative Societies Act, 1961 and Rules, 1963. All pleas and grounds, which have been pleaded in the present writ petition, could be pleaded and asserted before the said Authority under the relevant provisions.

In view of the above, the petitioner would be at liberty to file such a petition within a period of 45 days from the date of receipt of certified copy of this Order.

In case such a petition is filed within the above stipulated period, the Competent Authority would not raise the pleas of limitation, keeping in view the present petition remained pending adjudication in this Court for 18 years. The Competent Authority will make an endeavour to consider and decide the petition, so filed, expeditiously.

Any observations made herein shall have no bearing on the merits of the case.

(JITENDRA CHAUHAN)
JUDGE

20.05.2015
ashok

whether referred to reporter? Yes/No.