IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10054-2013
Date of decision : 11.03.2015

Baldev Krishan Gupta ...Petitioner

V/S

State of Punjab and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Raman Mohinder Sharma, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab

Mr. Ashwani Prashar, Advocate
for the respondent No.3

Mr. DPS Randhawa, Advocate
for the respondent No.4

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JITENDRA CHAUHAN, J. (Oral)

This writ petition filed under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or directions in the nature of mandamus directing the respondents to pay the interest @ 18% per annum on the amount of leave encashment and the cash security.

Learned counsel for the petitioner submits that the petitioner was an employee of the Sangrur Central Cooperative Bank and retired as Branch Manager, Branch office, Anaj Mandi, Sangrur on 31.08.2010 (Annexure P-1). The pensionary benefits except the leave encashment and cash security were released at the time of retirement. The petitioner sent a legal notice dated 12.06.2012 for releasing the same along with interest but no action was taken by the respondents.

Feeling aggrieved, the petitioner approached this Court vide CWP No.18623 of 2012 and this Court vide order dated 19.09.2012 (Annexure P-2) issued directions to the respondents to take a final decision on the legal notice of the petitioner. In compliance of this order, his leave encashment of Rs.5,53,631/- and cash security amount of Rs.51,565/- were released.

Learned counsel for the respondent No.3 contends that the writ is not maintainable against the respondents No.3 and 4.

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

The Punjab State Cooperative Bank Ltd. (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 authority within the meaning of Article 12 of the Constitution of India. No department of the Government has been transferred to the Bank. The Bank has it's own elected Board of Directors and share money of the Government in the bank as on 31.03.2014 is 0.14%. 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:-*
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> > *"(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. (Page No.1 to 5 of compilation of judgments) 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 the 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.

Keeping in view the above discussion, it is held that no writ is maintainable against the Sangrur Central Cooperative Bank Ltd., Sangrur.

Hence, this writ petition is dismissed as not maintainable.

It has been brought to the notice of the Court that the petitioner can 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, can be pleaded and asserted before the said Authority under the relevant provisions.

In the circumstances, 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 has been pending in this Court for 11 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.

11.03.2015 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

Whether referred to reporter= yes/no ?