IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No. 18491 of 2011 (O&M)
Date of decision: 07.05.2015

Davinder Singh Bajwa

...Petitioner

Versus

State of Punjab and another

...Respondents

(2) CWP No. 17758 of 2013 (O&M)

Sewa Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

Date of decision: 07.05.2015

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. D.K. Raheja, Advocate for the petitioner(s).

Mr. Luvinder Sofat, AAG, Punjab.

Mr. I.S. Saggu, Advcoate
for respondent No.2.

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Jitendra Chauhan, J. (Oral)

The aforementioned two petitions are being decided by way of common order, as the same issues have been involved in the matter.

By way of instant writ petitions, under Articles 226/227 of the Constitution of India, the petitioner(s) seek issuance of directions to the respondents to release the full gratuity to the petitioner as has been done to other similarly situated employees along with interest.

It is contended that the petitioner(s) retired from the services of respondent No.2 and they were paid Rs. 3,50,000/- towards gratuity amount. Thereafter, on the implementation of 5th Punjab Pay Commission, the maximum gratuity amount has been raised to Rs.10 lacs. The similarly situated persons have been paid gratuity of Rs. 10 lacs by the respondent-Bank but the petitioners were deprived of this benefit.

On the other hand, the learned State counsel as well as learned counsel for respondent No.2 state that the present writ is not maintainable as the bank is neither an instrumentality of State nor any other authority as defined in Article 12 of the Constitution of India. The gratuity was paid as per the provisions of the Payment of Gratutity Act, 1972. The said Act has been amended on 17.05.2010, whereas the petitioner(s) were retired before 17.05.2010, therefore, they are not entitled to the relief sought by them.

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

Respondent No.2- The Jalandhar Central Cooperative Bank Ltd. (fort short 'the Bank') is a Cooperative Society registered under Punjab Cooperative Societies Act 1961 (for brevity '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. 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 ?:"*
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> *(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.

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.

Keeping in view the above discussion, it is held that no writ is maintainable against the respondent No.2-The Jalandhar Central Cooperative Bank, Jalandhar.

Hence, this writ petitions are dismissed as not maintainable.

It has been brought to the notice of the Court by the learned counsel for the respondents that the petitioners in both the writ petitions can approach the appropriate/competent authority for redreassal of his grievance under the Punjab Cooperative Societies Act, 1961 and the 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 view of the above, the petitioners would be at liberty to file such a petition before the competent authority within a period of three months from the date of receipt of certified copy of this order.

In case any such a petition is filed, within the above stipulated period, the Competent Authority would not raise the question of limitation.

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

07.05.2015 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**