

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 1156 of 2015 (O&M)

DATE OF DECISION : 24.09.2015

The Fazilka Central Cooperative Bank Ltd. and another

.... APPELLANTS

Versus

The Additional Secretary Cooperation (Appeals) Punjab and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Ashwani Prashar, Advocate,
for the appellants.

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SATISH KUMAR MITTAL, J. (Oral)

The Fazilka Central Cooperative Bank Limited and its Board of Directors have filed this intra-court appeal under Clause X of the Letters Patent against the judgment dated 04.05.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 11516 of 2001) filed by Gurmeet Singh and Ram Saroop (respondents No.3 and 4 herein) has been disposed of with a direction to the appellant Bank to treat both the private respondents, for all intents and purposes, as Junior Clerks, from the date of their initial promotion.

Though there is delay of 31 days in filing the appeal and the appellants have filed application (CM No. 2444-LPA of 2015) for condoning the said delay, yet we have heard learned counsel for the

appellants on merits and have gone through the impugned order passed by the learned Single Judge.

Undisputedly, in this case, both the private respondents, who were working as Peons in the appellant Bank, were promoted as Junior Clerks, vide resolution dated 21.11.1998 (Annexure P-1). After about two months, the Administrator took the charge of the Bank after the expiry of the period of Board of Directors, and issued a show cause notice dated 03.02.1999 (Annexure P-4) proposing to revert both the respondents to the post of Peon. They challenged the said show cause notice by filing a petition before the Registrar, Cooperative Societies, Punjab, Chandigarh, which was entrusted to the Additional Registrar (G), Cooperative Societies, Punjab. Vide order dated 29.10.1999 (Annexure P-6), the Additional Registrar (G) accepted the said petition and set aside the impugned show cause notice dated 03.02.1999. Thereafter, the appellant Bank challenged the said order before the Government by filing revision petition under Section 69 of the Punjab Cooperative Societies Act, 1961, and the Additional Secretary, Cooperation (Appeals), Punjab, vide order dated 20.03.2001 (Annexure P-8), allowed the revision petition and set aside the order of the Additional Registrar (G), Cooperative Societies, Punjab.

Respondents No.3 and 4 challenged the said order dated 20.03.2001 passed by the Additional Secretary by filing the aforesaid writ petition, which has been disposed of by the learned Single Judge, vide the

impugned order dated 04.05.2015.

The learned Single Judge, while disposing of the writ petition, observed that the Additional Secretary has wrongly allowed the revision petition to the extent that even both the respondents were ordered to be reverted from the post of Junior Clerk to that of Peon. It has been observed that even if the show cause notice issued to respondents No.3 and 4 was valid, the matter should have been remitted back to the competent authority to take decision on the show cause notice, after affording opportunity of hearing to both the respondents. But the revisional authority itself passed the order of reversion without providing an opportunity of hearing to both the respondents. After coming to the said conclusion, the learned Single Judge observed that normally, in such cases, the matter would have been remitted back to the competent authority, but in the facts and circumstances of the case, the appellant Bank has been directed to treat respondents No.3 and 4, for all intents and purposes, as Junior Clerks, from the date of their initial promotion, because both the respondents are serving in the appellant Bank as Junior Clerks from the last more than 16 years, and the appellant itself permitted them to work as such, though there is no interim direction in their favour. The learned Single Judge, keeping in view the facts and circumstances of the case, while exercising the discretionary jurisdiction, has issued the aforesaid direction. We do not find any ground to interfere in the discretion exercised by the learned Single Judge.

There is another fact, which has weighed in our mind. Undisputedly, under Rule 5.1 (b) of the Punjab Coop. Financing Institution Service Rules, 1958, 15% quota for promotion of Peons to the post of Junior Clerks has been provided. It has also not been disputed that 7 posts of this quota were vacant at the relevant time and at present, more posts are available in this quota. The aforesaid quota of 15% has been further bifurcated and 5% of the posts are to be filled from amongst the Matriculate Peons having at least 5 years service in the Bank. In the grounds of appeal, it has not been mentioned that how many posts of Junior Clerks are lying vacant under the said quota. In view of these facts, even today, respondents No.3 and 4 may even fall within their quota of promotion. Therefore, at this juncture also, they cannot be reverted to the post of Peon.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

September 24, 2015
ndj

(MAHAVIR S. CHAUHAN)
JUDGE