

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.6574 of 2000

The Sangrur Central Coop-Bank Ltd.
Sangrur

... Petitioner

Versus

The State of Punjab and others

... Respondents

2. CWP No.17401 of 1997

The Sangrur Central Co-operative
Bank Limited Sangrur and another

... Petitioners

Versus

The State of Punjab and others

... Respondents

Date of Decision: 23.04.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajiv Atma Ram, Sr. Advocate,
with Mr. Ranjit Singh Kalra, Advocate,
for the petitioner(s).

Mr. Harkesh Manuja, Addl. AG, Punjab.

Ms. Jagdeep Bains, Advocate,
for respondents No.3 to 15 in CWP No.6574 of 2000.

Mr. Rahul Sharma-I, Advocate,
for respondents No.17, 20, 24, 25, 27, 28, 30, 31, 32, 39, 42,
43, 45, 46, 48, 49, 58, 61, 63 and 64 in CWP No.6574 of 2000.

Mr. Amit Chopra, Advocate,
for respondents No.4 to 10 in CWP No.17401 of 1997.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of CWP No.6574 of 2000 titled *The*

Sangrur Central Coop. Bank Ltd. Sangrur v. The State of Punjab and others & CWP No.17401 of 1997 titled The Sangrur Central Co-operative Bank Limited Sangrur and another v. The State of Punjab and others.

2. This case presents a crisis for the judicial mind to explore the possibilities of relief to be granted.

3. The petition has been filed by the Bank challenging the order of the Registrar Cooperative Societies, Punjab, Chandigarh directing the Bank to appoint the private respondents and also protecting certain candidates who were illegally appointed by resort to improper means to be retained in service.

4. The factual matrix is that the appointees have continued in service while the private respondents have been unable to secure orders of appointment all these passing years and presently the youngest of whom would have no more than about 9 years left to serve in case appointed by court directions. The rest would have no more than a few years left in case they had been appointed. Therefore, relief has become the dilemma in this case. The operation of the impugned order of the Registrar Cooperative Societies, Punjab, Chandigarh has remained stayed during the pendency of the petitions. Only if the order is set aside would the Bank have to appoint the private respondents who are about 30 in number.

5. Despite every effort made at the hearing I find hardly any legal principle to cure the injustice done after a passage of 30 intervening years from the date of the selection made by the petitioning Bank. The authorities in the Bank may have been at fault and viewed as suffering deviation from the path of rectitude and derelictions committed by those persons holding

the reigns of power in the years gone by in making dubious selections on considerations other than pure merit. Those appointments included 12 candidates who were related either to the Directors of the Bank or its Senior Officers capable of influencing the selection. The grievance of the petitioning Bank, with the change of regime, is also that candidates available in the select list who were lower in merit than the private respondents secured appointment.

6. Be that as it may, and without going into a fishing enquiry in the chequered litigation history of the case, it is found not practically possible to pass any constructive or destructive order which may result in quashing the appointments of 12 candidates etc. made decades ago where some of whom have either retired from service or are close to retirement. Even if the selection result or part of the selection process is held to be vitiated by nepotism and bias even then the respondents cannot secure appointment as all the vacancies/posts in case set aside would have to be re-advertised in consonance with the principles in Articles 14 & 16 of the Constitution to recognize rights of third parties who would have become eligible for consideration meanwhile.

7. Mr. Rajiv Atma Ram, learned Senior counsel appearing for the Bank submits that there were at least 25 candidates who were above the private respondents 3 to 15 on merit which statement is disputed by Ms. Jagdeep Bains for some of the private respondents. Be that as it may, interference still would not be warranted in favour of the private respondents who could not secure appointments even after lapse of enormous time to be now within the margins of judicially acceptable an

manageably standards and limits.

8. Mr. Amit Chopra has an additional argument to address. He submits that the impugned order passed by the Registrar Cooperative Societies, Punjab was challenged in an earlier writ petition i.e. CWP No.1723 of 1997 which was filed by the Bank but was dismissed as withdrawn and, therefore, this petition does not lie since no leave was granted in terms of Order 23 Rule 1 CPC. The argument could have been gone into had there been scope for granting real relief to the private respondents.

9. In the facts and circumstances obtaining after long lapse of time, the arguments addressed by the private respondents have become merely academic and will serve no useful purpose in trying to cull out relief. The situation appears to this Court to be past repair.

10. Again Ms. Bains contends that the petition suffers from vice of concealment of facts and worse still contradictory stands taken by the petitioning-Bank before the Supreme Court and this Court in the earlier litigation and on this count the petition deserves to be dismissed.

11. However, Mr. Rajiv Atma Ram, learned Senior counsel disputes this contention and points out to the impugned order passed by the Registrar Cooperative Societies, Punjab where it is recorded as a finding of fact that 12 candidates were related to those in power and the impugned order is part of the writ file. There is thus no suppression of facts. The question is whether the Court should intervene and set aside the polluted part of the recommendations of persons at the fag end of their careers.

12. I am unable to find any effective principle to grant relief to the

private respondents by dismissal of the Bank's petition or to quash the impure appointments of persons who are by now in their mid 50s and must have in the intervening years settled themselves in life in other callings and avocations.

13. In these strange and peculiar facts and circumstances, neither of the party wins or loses. The petition is rendered infructuous by sheer passage of time over which no one could have had any control. By way of rationalizing it is often said that time is the best healer of injuries sustained or inflicted.

14. At the end of the day all that can be said is that this order will not be taken as an imprimatur of the Court on illegal appointment or appointments induced by nepotism, favouritism, manipulation and string pulling. Nor is the impugned order to be read as one upholding the questionable appointments or removing stigmas from the faces scanned. The scars and guilt may remain forever as blots without any attempt at scrubbing or removing them. This is the only way conceivable out of the dilemma fashioned by lapse of time. This order will not be understood as a certificate justifying the means to the end devised by the then Registrar Cooperative Societies, Punjab as a via media to cure the disease of ill gotten gains by a compromise fashioned by the Registrar to make everyone happy by a *panchayati faisla*. The moral code enjoins upon man that the ends can not justify the means. What is bad will remain bad. Therefore the Bank will be at liberty to take such action against illegal appointments as they may evolve including depriving the 12 persons of their terminal benefits to balance out ill gotten salaries. But for this the incumbents will be required

to be heard before taking the final call. It may be remembered that the arms of the law are long which catches culpability of persons who gained by unjust enrichment despite long passage of time protected by interim orders. This method would equitably balance out the competing interests of the parties within the constraints the Court suffers in its extraordinary jurisdiction and the extent of its exercise, sometimes to correct wrongs in unaccustomed ways hitherto uncharted by enforcing affirmative action while the Court helplessly gropes for relief in a special way, failing which vision the Court may be seen as partisan to a bad cause approving what is unlawful, if we go by the findings of the Registrar Cooperative Societies, Punjab in the impugned order compromising merit. But one thing is clear in the mind of the Court that the claim of the private respondents should not be accepted as they have not petitioned for relief and as respondents they take nothing.

15. Accordingly, both the petitions stand disposed of with the above directions and liberty granted to the Bank to be exercised by due process of the law and the procedural safeguards, if and when rules support.

(RAJIV NARAIN RAINA)
JUDGE

23.04.2016
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