

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

CWP No. 12681 of 2017
Date of decision: 13.12.2017

The Karnal Central Cooperative Bank Ltd.Petitioner(s)

Versus

The State of Haryana and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Sandeep Bhardwaj, Advocate,
for Mr. Ramesh Sharma, Advocate,
for the petitioner (in CWP No. 12681 of 2017)
and for respondent no. 3 (in CWP Nos. 6785 of 2013; 8809,
9638, 9743, 10464, 10539, 11713,
11719 of 2015 and CWP Nos. 8785
and 240 of 2016).
and for respondent no. 4 (in CWP No. 514 of 2016
and 7017 of 2017).

Mr. S.S. Dalal, Advocate,
for the petitioner (in CWP Nos. 6785 of 2013 & 8809 of 2015).

Mr. Kuldip Singh, Advocate,
for the petitioner (in CWP Nos. 9638, 9743, 10464, 10539,
11713 and 11719 of 2015).

Ms. Nupur Choudhary, Advocate,
for Mr. Hitesh Malik, Advocate,
for the petitioners (in CWP Nos. 514 and 240 of 2016).

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Bharat Bhushan Sharma, Advocate,
for respondent-Suresh Pal.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 13 writ petitions i.e.
CWP Nos. 12681, 7017 of 2017; 6785 of 2013; 8809, 9638, 9743, 10464,
10539, 11713, 11719 of 2015 and CWP Nos. 514 , 8785 and 240 of 2016 as
common questions of facts and law are involved in all the writ petitions.

Facts are being taken from *CWP No. 12681 of 2017, The Karnal Central Cooperative Bank Ltd. vs. The State of Haryana and others.*

The petitioner-bank challenges the order dated 06.12.2013 (Annexure P-9) passed by the Additional Registrar (Marketing), Cooperative Societies, Haryana wherein, the claim of private respondent no. 4-Suresh Pal for promotion was granted and the decision of the DRCS, Karnal was set aside. It is to be noticed that the case of the private respondent for promotion as Secretary Grade-B was on the strength of the promotion granted to one Sohan Lal. The order dated 06.12.2013 has further been upheld vide order dated 29.12.2016 by the Additional Chief Secretary to Government of Haryana, Cooperative Department on the ground that the said person was shown at seniority no. 179 and was senior to Sohan Lal, who was at seniority number 186 and resultantly, the revision petition of the bank was dismissed.

In the other set of cases which has been filed by other similarly situated employees, consideration for promotion to the post of Secretary Grade-B is also sought on the ground that Suresh Pal has been promoted. Thus, cumulative effect is that if Suresh Pal's promotion is set aside, the other petitioners' cause of action will also erode. Vide detailed order dated 31.08.2017, it was noticed that Sohan Lal had earned promotion on 02.11.2000 and belongs to the BC category and though junior had been placed at Sr. No. 187 in the seniority list of Clerks-cum-Salesman. Suresh Pal had filed CWP No. 19753 of 2004 taking the plea that his name figured at Sr. No. 180 and, therefore, he was senior. The promotion of Sohan Lal had been quashed on 26.10.2006 (Annexure P-2) and directions were issued to consider the case of Suresh Pal for promotion.

The matter was taken to the Apex Court by Sohan Lal in SLP No. 6528 of 2007 wherein, apparently, a compromise was arrived at between the two persons and on account of an affidavit being submitted by Suresh Pal, the writ petitioner, the said order came to be passed on 25.03.2009:-

“When the matter was taken by hearing, an affidavit was filed in court by the original writ petitioner who is respondent no.5 in the present case. It is stated that the said respondent No.5- writ petitioner is not interested in pursuing the matter in writ petition and prays that liberty be granted to him to move the departmental authorities i.e. Registrar, Cooperative Societies, Haryana and the Karnal Central Cooperative Bank Ltd. In view of his submissions, the SLP is disposed of with direction that the writ petition filed by the writ petitioner-respondent No.5 before the High Court shall be treated to have been dismissed. It is open to the respondent No.5, if so advised to move such authorities for relief as is available in law. We express no opinion in that regard.”

It is in such circumstances resolution No. 11 dated 12.11.2012 was passed by the petitioner-bank and the promotion of Suresh Pal was also ordered on 19.11.2012 (Annexure P-7) leading to other writ petitions being filed. Show cause notice was issued on 01.03.2013 to Suresh Pal and on 28.03.2013, the resolution passed sanctioning the promotion was rescinded by the Deputy Registrar. The same was challenged before the Registrar where the appeal was accepted as noticed vide order dated 06.12.2013 (Annexure P-9) which has now been upheld by the Additional Chief Secretary on 29.12.2016 (Annexure P-11).

The same is based on the ground that Sohan Lal, the junior

continues to hold the promotion. The bank's specific case was that request had been made for reversion of Sohan Lal but the response was awaited. Resultantly, it is apparent that on account of Sohan Lal getting one promotion, parity has been sought by Suresh Pal in spite of the fact that the cadre of the Secretary Grade-B is a diminishing cadre w.e.f. 20.07.2009 which had been noticed by passing order dated 13.10.2010 (Annexure P-5) by the Registrar that no promotions were to be made to the said post but promotions were made thereafter. It is in such circumstances on 31.08.2017 the Registrar, Cooperative Societies, Haryana was directed to take a decision on the request by the petitioner-bank regarding the reversion of Sohan Lal. His interest was, however, duly protected on account of the fact that he was not a party in the present set of litigation.

Similarly, apart from Suresh Pal, it is to be noticed that private respondents namely Madan Pal, Som Nath, Babbar Bhan and Kiran Chand in CWP No. 11719 of 2015 also earned promotions on 10.02.2015 (Annexure P-4). The said persons had also approached this Court in CWP No. 20744 of 2006 in view of the fact that the juniors have been promoted and placing reliance upon promotion of Suresh Pal. Resultantly, directions had been issued on 16.10.2008 (Annexure R-2) to consider the case of the petitioners after the decision of the SLP. Accordingly, final order was to be passed after two months of receipt of the copy of the decision of the SLP. Thereafter, COCP No. 1226 of 2013 was filed by the said respondents seeking promotion and accordingly promotion was made on 10.12.2015 as Secretary Grade-B in spite of the fact that the said cadre had been declared as a dying cadre on 13.10.2010 (Annexure P-5). Resultantly, the said promotions are also not justified.

Counsel for the State has now placed on record the order dated 08.12.2017 passed by the respondent Registrar wherein, it had been noted that Sohan Lal had been promoted at the cost of 15 candidates belonging to the BC category and the resolution was not correct and, therefore, the benefit given vide order dated 02.11.2000 was illegal and contrary to Rules. Accordingly, directions have been issued to the petitioner-Co-operative Bank to take decision regarding reversion of Sohan Lal. Copy of the said order is taken on record. The relevant part of the order reads thus:-

“As such, the further promotions made on this basis were also ignoring the rights of other seniors, who have been left out. If all the seniors to Sh.Sohan Lal are to be considered, this strength would make the case even beyond the sanctioned strength. Also, vide instructions dated 13.10.2010, this cadre has been declared as dying and diminishing cadre w.e.f. 20.7.2009, hence, are not to be considered for promotion. Though the promotion in case of Sh. Sohan Lal has been made prior to 20.07.2009, however, the same has been ignoring the principle of seniority, a promotion made in arbitrary and discriminatory manner. It was an administrative error, which could be rectified at any stage, keeping in view the principle of natural justice in aspect.

Sh. Sohan Lal was afforded with opportunity of personal hearing on 3.11.2017 and 28.11.2017 and the submissions made by him have been considered, which are without any merit, as discussed in detail in above. As such, the appointment of Sh. Sohan Lal vide offer dated 2.11.2000 was illegal, contrary to rules and ignoring number of senior persons.

Since the appointing authority is Karnal CCB, therefore, the competent authority is hereby directed to

take decision regarding reversion of Sh. Sohan Lal after serving notice, in view of principle of natural justice.”

Resultantly, keeping in view the above, once Sohan Lal's promotion has already been held to be bad the benefit to Suresh Pal has only been given because of the inter se comparison as such and, therefore, other petitioner's can seek no such benefit on the strength of the promotions given to both Sohan Lal and Suresh Pal.

Accordingly, the present writ petition being CWP No. 12681 of 2017 is allowed. Orders dated 06.12.2013 and 29.12.2016 (Annexures P-9 and P-11) are set aside. The petitions bearing CWP Nos. 7017 of 2017; 6785 of 2013; 8809, 9638, 9743, 10464, 10539, 11713, 11719 of 2015 and CWP Nos. 514 , 8785 and 240 of 2016 filed by the petitioners claiming promotion are accordingly partly allowed in view of the above said observations. Accordingly order dated 10.02.2015 (Annexure P-4) granting promotion to the private respondents after the cadre had been declared as a diminishing cadre is also not sustainable and the promotions accordingly are also quashed. The bank shall take appropriate action within four weeks from today as per the directions of the Registrar dated 08.12.2017.

13.12.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No