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

CWP-1968-2016

Date of decision : 27.04.2017

Gurpratap Singh Khushalpur

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order 05.01.2016 (Annexure P-6), whereby the nomination of the petitioner for the purpose of electing in the elections to the Board of Directors of Punjab State Cooperative Labour and Construction Federation Ltd., Chandigarh, has been rejected.

Mr. D.V. Sharma, learned Senior Counsel assisted by Ms. Shivani Sharma, learned counsel appearing on behalf of the petitioner submits that the provisions of Section 26(1-B) and 26(B) of the Punjab Cooperative Societies Act, 1961 (for short 'the 1961 Act') prescribe that the terms of the office of elected members shall be five years from the date of the election. The petitioner, according to the impugned order, has served the Society for two period i.e. from 29.04.2009 to 18.10.2010 i.e. 18 months

and from 18.11.10 to 17.11.2015 from Zone No.4 i.e. five years, as a representative of the District Labour Union, Gurdaspur, therefore, there is a mis-interpretation of the provisions of Section 26(B)(2) *ibid*. The rejection also apparently appears to be backed by the Registrar, who wanted to appoint the Administrator to take the control of the Society/Federation. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Coordinate Bench of this Court rendered in "Harbhajan Singh V/s State of Punjab etc." 1973 AIR (Punjab) 31 and "Ramphool and another V/s State of Haryana and others" 1981 PLJ 6, wherein, the nomination allegedly rejected had been set aside, when thereafter elections, an application was filed for removal as he would be ceased to hold the office owing to the completion.

He further submits that one term is of five years and both the terms would be construed as 10 years, whereas the petitioner has only served for 6 ½ years, therefore, cannot be held to be ineligible, thus, urges this Court setting aside the impugned order, under challenge.

Mr. Yatinder Sharma, Addl. A.G., Punjab has raised the objections qua maintainability of the writ petition as against the rejection of the nomination, the petitioner has a remedy of filing a election petition and not impleaded as Labour Federation and therefore, the present writ petition is liable to be dismissed. The interpretation by the Presiding Officer is perfectly legal and justified, much less, does not call for interference.

In rebuttal, Mr. D.V. Sharma, submits that it would not be fallen within the domain of Section 55 of the 1961 Act as the Registrar would be a person dealing with the aforementioned provisions, therefore, he does not file election petition. Even otherwise, the order apparently is

without jurisdiction and despite availing of alternative remedy, the writ jurisdiction can always be invoked.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the present writ petition.

It would be appropriate to reproduce the provisions of Section 26(1-B) and 26(B) of the 1961 Act, which reads as under:-

"26(1-B) The term of the office of elected members of the committee and its office bearers shall be five years from the date of its election and the term of office bearers shall be co-terminus with the term of the committee;

Provided that the committee may fill a casual vacancy on the committee by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of the office of the committee is less than half of its original term;

Provided further that such casual vacancy shall be filled in a meeting of the committee held in the presence of a nominee of the Registrar.

26-B Restructions on membership etc.:- (1) No individual shall, at any time, be a member of committee of-

- (a) more than two primary societies ; and
- (b) more than one central and one apex society

Provided that nothing in this sub-section shall apply to a member nominated under sub-section (2) of Section 26 or a member of the committee of an apex or central society nominated to serve on the committee of another apex or central society as the case may be, in accordance with the provisions of their bye-laws.

(2) No person shall be eligible for being elected to the

committee of any co-operative society after he has served on the committee of that co-operative society, for two continuous terms; unless a period of not less one term has expired since he last he last so served.

Explanation. – *For the purpose of computing the period of two terms under sub-section (2), if a person ceased to serve on the committee on account of resignation tendered by him, he shall be deemed to have so served for the full term in which resignation was tendered.”*

The period taken from the impugned order i.e. from 29.04.2009 to 18.10.2010 i.e. 18 months and from 18.11.10 to 17.11.2015 from Zone No.4 i.e. five years, would not strictly construe to be two terms as definition of Section 26(1)(b) *ibid* has defined the term as five years and by two terms, it would be ten years, whereas the petitioner has only served for 6 ½ years, thus, the rejection of the nomination of the petitioner is wholly erroneous, much less, without jurisdiction. Even otherwise, the Registrar could not have rejected in this manner and mode.

I am in agreement with the *ratio decidendi* culled out by this Court in **“Harbhajan Singh's case** (supra). For the sake of brevity, the findings rendered in paragraph 11 reads as under:-

"11. Some other contentions were also raised by learned counsel for the contesting respondents and the same may now be examined. The first was that "a continuous period of not less than six years" mentioned in sub-Section (2) of Section 26(B) of the Act must be a period during the whole of which the person concerned held the position of a member of the Committee in question in his capacity as "elected member" and that if such a person was for a part of the period a nominated or a co-opted member of the Committee, such period could not be counted as part of the period of six years. The contention is

wholly unwarranted in view of the language used in the sub-section, according to which the sole criterion of ineligibility is service on the committee which means service as a member. The sub-section goes no further and does not state that in order to attract the ineligibility the service must be of particular type, so that what is to be seen is the period of membership of the person and not the mode in which such membership came to be held. In this view of the matter the entire period for which respondent No.4 served as a Director on the Board would be counted towards the period of "Not less than six years" without reference to the manner in which he became a member, i.e. whether by election, nomination or co-option."

Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law being opaque and arbitrary and the same is hereby set aside.

Resultantly, the present writ petition stands allowed.

27.04.2017 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No