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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6949/2017 & CMs 28890-91/2017

ANJALI DABAS & ORS.

..... Petitioners

Through : Mr. Sanjay Agnihotri, Advocate with
petitioners No.3,5,8 and 9 in person.

versus

REGISTRAR COOPERATIVE SOCIETIES & ORS..... Respondents

Through : Mr. Varun Nischal, Advocate for R-1.
Mr. Chetan Sharma, Sr. Vivek Singh, Mr. Rohan
Sharma, Mr. Siddharth Aggarwal, Mr. Amit,
Mr. Faheem Shah and Mr. Vaibhav Suri,
Advocates for R-2 and 3.
Mr. Rajesh Srivastava, proxy counsel for
Mr. Anil Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **11.08.2017**

1. The present petition has been filed by 11 petitioners assailing an order dated 28.6.2017, passed by the respondents No.2/Administrator and respondent No.3/Bank, discharging their services with a caveat that the said discharge shall not be treated as a disqualification for future employment.
2. Mr. Chetan Sharma, learned Senior Advocate appearing for the respondents No.2 and 3 opposes the maintainability of the present petition and points out that prior to issuing the impugned discharge order dated 28.6.2017, an order dated 17.4.2017 was passed by the respondent

No.1/RCS disposing of the proceedings initiated in terms of a show cause notice issued under Section 66(2) of the Delhi Co-operative Societies Act, 2003 (in short '**the DCS Act, 2003**') addressed to the Ex-Chairman, Ex-Vice Chairman, Ex-Directors and CEO of the respondent No.3/Bank. The said proceedings were initiated in terms of an order dated 27.11.2012 passed in **WP(C)No.7398/2012** entitled 'Anil Kumar Gaur vs. Delhi Nagrik Sehkari Bank Ltd.'.

3. The operative para of the order dated 17.4.2017 passed by the RCS, in the above proceedings, is reproduced below for ready reference:

“66. In view of the above facts, I hereby direct that:

1. The appointment process followed for appointing 40 staff in the Bank whose cases are being considered in this matter are found to be in violation of various provisions of DCS ACT 2003 and Rules 2007. So the payment made to them automatically become contrary to the provisions of this Act and hence it attracts the provision of section 66 (1) of the DCS Act, 2003 which allow this court to take cognizance of any payment made contrary to the DCS Act and Rules. Although the appointments are in violation of DCS Act and Rules but the said employees have been working in the Bank after their appointment so the whole payment made to them in terms of their salaries and perks cannot be treated as a loss to the Bank. Since their appointment are in violation of the Act, the people responsible for their appointment are held accountable for it and hence a compensation is levied upon them under section 66 (2) of the DCS Act, 2003, to a collective amount of Rs. 5 lacs to be equally shared among Sh. Jai Bhagwan, Smt. Krishna Khatri, Sh. Deepak Sharma, Sh. R.S. Gupta, Sh. Rajesh Kumar, Sh. Satbir Singh, Sh. Hari Prakash Garg, Sh. J.C. Bharadwaj, Sh. M.K. Bansal, Sh. K.K. Mittal and Sh. Vinay Bharadway the responsible members of the Board of Directors of the Bank. The said amount should be paid by them immediately to the Bank.

2. *Further, the continuation of the said 40 employees in the Bank be looked into by the Board of Directors/Administrator of the Bank and the Banking division of the RCS office as per the Act, Rules and Bye Laws concerned and take a decision accordingly regarding continuation of these employees. Further, the Board of Directors/Administrator of the Bank must also re-examine the issue of promotion which has been brought to the notice in these proceedings and clearly bring out the corrective action, if required, to be taken as per Act, Rules and Bye Laws applicable in consultation with Banking division of the RCS office as per rules.”*

4. Learned counsel for the respondents No. 2 and 3 states that in terms of the aforesaid order, the respondent No.2/Administrator of the respondent No.3/Bank issued the impugned order dated 28.6.2017, terminating the service of the 11 petitioners and 27 others employees. It is stated that out of 40 employees whose continuation in service was being examined by the learned RCS, 27 have filed appeals against the order dated 17.4.2017 before the Delhi Cooperative Tribunal, which are pending consideration and the next date fixed is 1.9.2017. However, the petitioners herein have not filed any appeal before the Tribunal and instead, they have filed the present petition which is not maintainable in view of the remedy available under Section 70 of the DCS Act, 2003.

5. It is sought to be clarified on behalf of the respondents No.2 and 3, that no disciplinary action has been initiated by the Bank against the 40 employees including the petitioners. Rather, it is a case of simpliciter discharge on the ground that the initial appointment of the petitioners and other similarly placed employees was itself irregular and invalid being a

back door entry, which is prohibited in law. He points out that the order dated 17.4.2017, records that the entire process of appointment was full of procedural lapses and by adoption of improper practices; that fake papers were prepared for the whole process of appointment to the point that after passage of one month of publication of the public notice, it was decided that the posts in question shall be filled up by conducting interviews; that the name of the respondent No.3/Bank was found to be missing in the advertisement issued and the dates for conducting the interviews for the posts of clerk-cum-cashier, field inspector, junior clerk, peon and driver were not mentioned; that the Ex-Chairman of the Board of Directors of the respondent No.3/Bank decided to hold an interview on 8.7.2012, which was a Sunday, but no records were maintained with regard to how many persons had appeared in the interview, the employees who were present on the said date, or the payments if any made to those employees who had worked on a Sunday. Besides the above, it was observed by the RCS that many of the candidates who had allegedly participated in the interview, were registered with the Employment Exchange well after the last date mentioned in the advertisement issued for filling up the posts in question.

6. To overcome the absence of any explanation as to the manner in which the applications were received for filling up the posts in question, it was stated before the RCS that all the 80 applications were received by hand, though it may be noted that the advertisement, copy whereof has been produced for our perusal, had specifically mentioned that the applicants whose names ought to be registered with the Employment Exchange, must apply within ten days to “Box No.9445, the Statesman, New Delhi” and interestingly, the advertisement did not mention the name of the respondent

No.3/Bank for any applicant to have approached it directly with an application.

7. At the outset, learned counsel for the petitioners states that the petitioners do not propose to file an appeal against the order dated 17.4.2017 passed by the respondent No.1/RCS as they have no grievance against the same. The impugned order dated 28.6.2017 has been assailed on the ground that it is stigmatic in nature and will foreclose the right of the petitioners to find alternative jobs.

8. At this, we had enquired from Mr. Sharma, learned Senior Advocate appearing for respondents No.2 and 3 if they were willing to modify the impugned order dated 28.6.2017, so as to ensure that no stigma is attached to the petitioners. The matter was passed over with directions to both the sides to obtain instructions.

9. On the second call, in the post-lunch session, Mr. Sharma, learned Senior Advocate appearing for the respondents No.2 and 3 states on instructions that his clients are willing to modify the impugned order as suggested earlier. However, counsel for the petitioners states that he has instructions to address arguments on the maintainability of the present petition in the light of the plea taken by the other side that the present petition is not maintainable when an alternate efficacious remedy is available under Section 70 of the DCS Act, 2003.

10. Counsel for the petitioners contends that the petitioners are entitled to agitate their grievance by invoking the extraordinary powers of judicial review vested in this Court under Article 226 of the Constitution of India since the dispute raised herein is not covered under Section 70 of the DCS Act, 2003. It is submitted that the dispute in the present case, which is

between the employees and the respondent No.3/Bank, falls under the exception clause carved out under Section 70(1) of the DCS Act, 2003.

11. We are unable to accept the aforesaid submission for the reason that Section 70 of the DCS Act, 2003 takes in its sweep any dispute touching the constitution, management or business of a cooperative society and arising between the co-operative society or its committee and the past committee, any officer, agent or employee etc., and requires the same be referred to the Registrar for a decision. The said provision contains a non obstante clause which lays down that no court shall have jurisdiction to entertain a suit or any other proceedings in respect of such a dispute. For learned counsel for the petitioners to contend that the dispute between the petitioners and the respondents is in relation to disciplinary action taken by the respondents no.2 and 3 against the petitioners, who are paid employees of the respondent No.3, thereby falling in the exception clause, is found to be untenable when admittedly, no disciplinary action has been initiated against any of them. Instead, a simpliciter order of discharge has been issued in respect of the petitioners and 27 other employees, in the light of the order dated 17.4.2017 passed by the respondent No.1/RCS which the petitioners state that they do not propose to challenge before the Tribunal.

12. Accordingly, the present petition is dismissed as not maintainable along with the pending applications with liberty granted to the petitioners to seek legal recourse against the impugned order before the appropriate forum.

13. We may clarify here that some facts have been noted above only to examine the maintainability of the present petition under Article 226 of the Constitution of India. However, we have not gone into the merits of the case as it may amount to pre-judging the issues raised in the present petition

which have been left open for a decision on merits before the Arbitrator, in the event the petitioners raise a dispute before the respondent No.1/RCS as contemplated under Section 70 of the DCS Act, 2003.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 11, 2017

sk/ap

