IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO. 3022 OF 2013

Babu s/o. Ramdeorao Joshi **....Petitioner.**

Versus

The State of Maharashtra and Ors. **....Respondents.**

Mr. S.Y. Patil h/f. Mr. B.N. Patil, Advocate for petitioner.
Mrs. D.S. Jape, AGP for respondent Nos. 1 & 3 to 5.

CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : APRIL 11, 2018.

ORDER : [PER T.V. NALAWADE, J.]

1. The petition is filed under Articles 226, 14 and 21 of the Constitution of India for challenging the validity of amended provision of section 81 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act' for short), by which qualification of graduation came to be prescribed for working as Auditor. Both the sides are heard.

2. It is the case of petitioner that in the past, he was working as Head Clerk with District Deputy Registrar, Co-operative Societies, Nanded and while in service he had passed Government Diploma in Co-operation and Accountancy (G.D.C.A.) in the year

1979. It is his contention that after his retirement, he wanted to work as Auditor and so, he had applied for including his name in the list of certified auditors. It is his contention that his name was included in the list prepared for the period 2004-2007 by respondent No. 4 Divisional Joint Registrar, Co-operative Societies, Latur and his name was also included in the similar list prepared for the period 1.4.2011 to 31.3.2012 and then in the list prepared for the period 1.4.2014 to 31.3.2015. According to him, he then worked as Auditor.

3. It is the case of petitioner that by Ordinance No. II of 2013 dated 14.2.2013, amendment was made in the Act and by amending section 81, clause (g) was added and qualification of graduation was prescribed in addition to holding of aforesaid Diploma for working as Auditor. It is his contention that as he had already obtained registration in view of the previous provisions and he was empanelled as auditor, the opportunity to work as Auditor cannot be denied to him only because he has not done graduation. It is his contention that the aforesaid amendment cannot be given retrospective effect and opportunity cannot be denied to him to work as Auditor by using the aforesaid amendment.

4. The learned counsel for the petitioner submitted that the aforesaid provision was amended by the State Government in view

of the 97th Amendment of Constitution of India. He submitted that Gujrat High Court has given decision on the said amendment in **Writ Petition (PIL) No. 166/2012 [Rajendra N. Shah Vs. Union of India and Anr.] decided on 22.4.2013** and Gujrat High Court has held that Article 243ZH to 243ZT are ultra vires the Constitution of India for not taking recourse to Article 368 (2) of the Constitution which provides for ratification by the majority of the State Legislature to the amendment. He submitted that in view of these circumstances, the provision itself cannot be read against the petitioner and when in the past, as per the previous eligibility conditions, he was allowed to do work of Auditor, he cannot be prevented from working as Auditor. This submission is not acceptable in the present matter. In the present matter, the State Government has made amendment in the Act and only the said amendment is under challenge in the present proceeding. The State Government has also the power to make amendment in the State Legislations like the Act. The State has no grievance about the aforesaid amendment made in the Constitution of India and further, in the amended Article like 243ZT, it is made clear that the provisions of law already in existence in State shall remain in force until amended or repealed by competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less. In any case, in the present matter, there is only challenge to the provision of the Act as mentioned above.

5. If one reads Article 19 of the Constitution of India, it can be said that Article 19 (1)(g) r/w. 19(6) show that the State has the power to make law relating to the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business. Thus, the restrictions in the interest of general public which are reasonable restrictions are possible. Further the period for which he was empanelled is over.

6. The learned counsel for the petitioner submitted that there is the discrimination between two groups and the employees of the State Government, who have completed only diploma, but who are in service in Co-operative Department can work as Auditor even when they have not obtained degree, but in view of section 81 (1), explanation I (d), they can do the audit work, but the condition mentioned in clause (c) of the same explanation prevents the persons like petitioner from working as Auditor, if they have not obtained degree. He submitted that this classification has no base. This Court holds that there is no force in this submission also. The persons working in Government are responsible to the employer and actions of any kind can be taken against them when there are

lapses. The persons like present petitioner get permission, but they are not that way responsible to any authority for the lapses. The recent incidents in India show that the misappropriation of public money in this country has taken place mainly due to the lapses which were there in audit work. In many cases, the auditors had joined hands with the persons involved in fraud. If due to these circumstances and by way of precaution, the Government has laid down some conditions for such occupation, it cannot be said that the conditions are unreasonable. Further, these two groups are totally different and so, it cannot be said that there is discrimination between the petitioner and the Government employee, who work as Auditor, but who has not obtained degree certificate.

7. The learned counsel for petitioner placed reliance on some observations made by the Apex Court in the case reported as **(2017) 9 SCC 438 [Sukhwinder Kumar and Ors. Vs. State of Punjab and Ors.]**. The facts of the case were totally different. The observations made by the Apex Court in that case are of no use to the petitioner. On the other hand, the learned AGP placed reliance on some observations made by the Apex Court in the case reported as **AIR 1953 SC 210 [Election Commission India Vs. Saka Venkata Rao]**. This case is with regard to the jurisdiction of this Court. As argument was advanced indirectly against the amendment

to the Constitution itself, reliance was placed on this case by the learned AGP. That point need not be touched as the amendment to the Constitution need not be considered by this Court as the State has made necessary amendment in the Act and that was within the power of the State. In the result, the petition stands dismissed.

[K.L. WADANE, J.] **[T.V. NALAWADE, J.]**

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