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

+ W.P. (C) 1387/2016 & CM No. 6050/2016

ALL INDIA PUNJAB NATIONAL BANK OFFICERS'
ASSOCIATION

..... Petitioner

Through: Mr. Rajiv Garg, Mr. K.K. Aggarwal
& Mr. Ayush Aggarwal, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC with Mr.
Santosh Kr. Pandey, Advocates for
UI
Mr. Rajesh Kumar & Mr. V. Govinda
Ramanan, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.08.2018

VIBHU BAKHRU, J

1. The petitioner – an Association of Employees (Officers) of respondent no.2 bank (hereafter “PNB”) – has filed the present petition impugning the communication dated 12.10.2015 (hereafter “the impugned communication”) issued by respondent no.1. The impugned communication is issued in the context of nomination of officer employees and workmen employees to be appointed as directors on the board of public sector banks. By the impugned communication, respondent no.1 has clarified that the names of only those officers / employees who have three years of residual service as on the date of vacancy on the board of directors, should be

forwarded. The petitioner claims that the said additional requirement of the nominees having at least three years of residual service is contrary to the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970 (hereafter “the Scheme”), which is framed under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereafter “the Act”). The petitioner submits that the aforesaid added qualification (of three years residual service), for being nominated to be considered for appointment as directors on the board of public sector banks, was introduced for the first time by the impugned communication. It is contended that the same seriously affects the right of the employees (non-workmen) of the nationalized banks. The learned counsel appearing for the petitioner contended that most of the nominees are usually elected representatives and such representatives may not have residual service of three years; therefore, insisting on such qualification would effectively curtail the pool of persons from which such nominees could be chosen. He also contended that whereas the Scheme provided for such added qualification (three years of residual service) in the case of workmen employees, no such condition was stipulated in the case of officer employees. He submits that the Scheme must, therefore, specifically exclude imposition of any such condition.

2. The principal questions that fall for consideration of this Court are: (i) whether the condition that the officers nominated for being appointed as directors should have at least three years of residual service, falls foul of the Act or the Scheme; and (ii) whether such condition is arbitrary and unreasonable and offends Article 14 and 19(1)(c) of the Constitution of

India.

3. At the outset, it would be relevant to refer to Section 9 of the Act. Sub-section (1) of Section 9 of the Act expressly provides that the Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the provisions of the Act. Sub-section (3) of Section 9 of the Act contains provisions regarding constitution of the board of directors and is set out below:

“3. Every Board of Directors of a corresponding new bank constituted under any scheme made under sub-section (1), shall include-

- (a) not more than four whole-time directors to be appointed by the Central Government after consultation with the Reserve Bank;
- (b) one director who is an official of the Central Government to be nominated by the Central Government:

Provided that no such Director shall be a Director of any other corresponding new bank.

Explanation,- For the purposes of this clause, the expression "corresponding new bank" shall include a corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

- (c) one director, possessing necessary expertise and experience in matters relating to regulation or supervision of commercial banks, to be nominated by the Central Government on the recommendation of the Reserve Bank;

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(e) one director, from among such of the employees of the corresponding new bank who are workmen under clause (s) of section 2 of the Industrial Disputes Act, 1947, to be nominated by the Central Government in such manner as may be specified in a scheme made under this section;

(f) one director, from among the employees of the corresponding new bank who are not workmen under clause (s) of section 2 of the Industrial Disputes Act, 1947, to be nominated by the Central Government after consultation with the Reserve Bank;

(g) one director who has been a Chartered Accountant for not less than fifteen years to be nominated by the Central Government after consultation with the Reserve Bank;

(h) subject to the provisions of clause (i) not more than six directors to be nominated by the Central Government;

(i) where the capital issued under clause (c) of sub-section (2B) of section 3 is-

(I) not more than sixteen per cent. of the total paid-up capital, one director;

(II) more than sixteen per cent, but not more than thirty-two per cent. of the total paid-up capital, two directors;

(III) more than thirty-two per cent. of the total paid-up capital, three directors,

to be elected by the shareholders, other than the Central Government, from amongst themselves:

Provided that on the assumption of charge after election of any such direction under this clause, equal number of directors nominated under clause (h) shall retire in such manner as may be specified in the scheme:

Provided further that in case the numbers of directors elected, on or before the commencement of the Banking Companies

(Acquisition and Transfer of Undertakings) and Financial Institution Laws (Amendment) Act, 2006, in a corresponding new bank exceed the number of directors specified in sub-clause (I) or sub-clause (II) or sub-clause (III), as the case may be, such excess number of directors elected before such commencement shall retire in such manner as may be specified in the scheme and such directors shall not be entitled to claim any compensation for the premature retirement of their term of office.

(3A) The directors to be nominated under clause (h) or to be elected under clause (i) of sub-section (3) shall-

(A) have special knowledge or practical experience in respect of one or more of the following matters, namely:-

- (i) agricultural and rural economy,
- (ii) banking,
- (iii) co-operation,
- (iv) economics,
- (v) finance,
- (vi) law,
- (vii) small-scale industry,

(viii) any other matter the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the corresponding new bank;

(B) represent the interests of depositors, or

(C) represent the interests of farmers, workers and artisans.

(3AA) Without prejudice to the provisions of sub-section (3A) and notwithstanding anything to the contrary contained in this Act or in any law for the time being in force, no person shall be eligible to be elected as director under clause (i) of sub-section (3) unless he is a person having fit and proper status based

upon track record, integrity and such other criteria as the Reserve Bank may notify from time to time in this regard.

(3AB) The Reserve Bank may also specify in the notification issued under sub-section (3AA), the authority to determine the fit and proper status, the manner of such determination, the procedure to be followed for such determination and such other matters as may be considered necessary or incidental thereto.

(3B) Where the Reserve Bank is of the opinion that any director of a corresponding new bank elected under clause (i) of sub-section (3) does not fulfil the requirements of [sub-sections (3A) and (3AA)], it may, after giving to such director and the bank a reasonable opportunity of being heard, by order, remove such director and on such removal, the Board of Directors shall co-opt any other person fulfilling the requirements of [sub-sections (3A) and (3AA)] as a director in place of the person so removed till a director is duly elected by the shareholders of the corresponding new bank in the next annual general meeting and the person so co-opted shall be deemed to have been duly elected by the shareholders of the corresponding new bank as a director.”

4. It is apparent from the above that the board of directors of public sector banks must include at least two employees as directors: one being a workman under Section 2(s) of the Industrial Disputes Act, 1947 and one who is not a workman under that section.

5. It is also not in dispute that the employee directors are to be nominated by the respective associations. It is a longstanding practice that non-workman employee directors are appointed from a panel of three nominees submitted by the association of the non-workmen employees. The right of the employees to nominate their representatives for being appointed on the board of directors is now well established. The Supreme Court, in the

case of *All India Bank Officers' Confederation & Ors v. Union of India & Ors.*: AIR 1989 SC 2045, has observed that the Act envisaged a truly representative Board of Directors in view of the object to the Act. In that case, the Supreme Court struck down the Circular dated 23.08.1982, which had sought to do away with the practice of appointing directors from the panel as submitted by the respective associations of the employees. The court held that the Scheme as framed under Section 9 of the Act must be worked in a manner to give maximum scope for the concerned employees to exercise their choice in selection of their representatives to be appointed as directors.

6. Section 3 of the Scheme provides for the constitution of the board of a nationalized bank. The said Section is set out below:

“3. Constitution of the Board.- (1) The Central Government shall by notification in the Official Gazette, constitute the Board of a Nationalised Bank.

(2) (i) The director referred to in clause (e) of sub-section (3) of section 9 of the Act, shall be nominated by the Central Government from out of a panel of three such employees furnished to it by the representative union, within a date to be specified by the Central Government, which date shall not be more than six weeks from the date of communication made by the Central Government, requiring the representative union to furnish the panel of names:

Provided that where the Central Government is of the opinion that owing to the delay which is likely to occur in the verification and certification of any union or federation as a representative union it is necessary in the interest of the Nationalised Bank so to do, it may

nominate any employee of the Nationalised Bank, who is a workman, to be a director of that bank.

(ii)(a) Where there is no representative union, to represent the workman of a Nationalised Bank, or

(b) Where such representative union being in existence omits or fails to furnish any panel of names within the specified date, or

(c) Where all the persons specified in the panel furnished by the representative union are disqualified whether under item (iii) of this sub-clause or under clause 10, the Central Government may, at its discretion appoint such workman of the Nationalised Bank, as it may think fit, to be a director of such bank.

(iii) A workman of a Nationalised Bank shall be disqualified for being nominated as a director unless-

(a) he is and has been, serving for a continuous period of not less than five years in the Nationalised Bank, and

(b) he is of such age that there is no likelihood of his attaining the age of superannuation during his terms of office as director.]

(3) The director referred to in clause (f) of sub-section (3) of section 9 of the Act, shall be nominated by the Central Government in consultation with the Reserve Bank, after the procedure for verification of membership of officers' associations by whatever name called operating in the nationalised banks and for obtaining a panel of names for appointment of non-workmen employee on the Board of nationalised banks as mentioned in the Third Schedule has been followed."

7. As is apparent from the above, Section 3(3) of the Scheme concerns appointment of representative of non-workman employees as director on the

board of nationalized banks.

8. The Central Government is required to nominate the director (to be appointed under Section 9(3)(f) of the Act representative of the non-workmen employee) in consultation with the Reserve Bank after obtaining the panel of nominees from the concerned association.

9. There is no dispute that the said procedure needs to be followed, thus, the right of the association of employees to furnish a panel of names for being considered for nomination as a director is not curtailed in any manner. The only requirement imposed is that the names of persons sent by the association should have at least three years of residual service. The rationale for such requirement is obvious: the term of the board of directors is three years and, therefore, any person nominated as a director is required to serve on the board for a period of three years. He is also required to be an employee of the bank. It is not in dispute that if the person appointed as a director under Clause (f) of sub-section (3) of Section 9 of the Act ceases to be the employee of the bank, he would also automatically demit the office as a director. Therefore, if the petitioner sends a panel of names of persons who do not have three years residual of service, the said persons would be unable to serve for their entire term as directors. Thus, this Court is unable to accept that the said condition is arbitrary or in any manner unreasonable. On the contrary, insisting on appointment of persons that the petitioner knows would be unable to serve the entire term would not only result in the nominee director having a truncated term but would also result in respondent no.1 repeating the entire process of nomination. Plainly, the petitioner has no right to insist on the same.

10. The contention that the impugned communication is contrary to the Scheme is also unmerited. Whilst the learned counsel for the petitioner is correct that the Scheme does not expressly indicate that the panel of persons suggested by the petitioner for appointment of directors must have a minimum residual service of three years, it does not prohibit such qualification either. In terms of Section 9(2) of the Scheme, directors referred to in clause (f) of sub-section 3 of Section 9 of the Act are to hold an office for a term not exceeding three years and also eligible for re-nominations. However, in terms of proviso to Section 9(2) of the Scheme, no director shall hold an office continuously for a period exceeding six years.

11. It is a trite law that executive instructions cannot run contrary to the statutory instruments. However, they can always supplement them. In the present case, the Scheme is a statutory Scheme and has been framed in terms of Section 9 of the Act. Respondent No.1 is well within its jurisdiction to issue executive instructions to supplement the said Scheme. In ***Sant Ram Sharma v. State of Rajasthan and Ors: AIR 1967 SC 1910***, the Supreme Court of India observed as under:-

“It is trite law that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

(Also See: ***State of Madhya Pradesh & Ors v. G.S. Dall & Flour Mills & Ors: AIR1991 SC 772***).

12. In the case of workmen employees, Section 3(2)(iii)(b) of the Scheme expressly disqualifies any person from being nominated as a director unless he is of such age that there is no likelihood for attaining the age of superannuation during his term as a director. Although, no such disqualification has been expressly stated in the case of nomination of non-workmen employees, the same does not preclude respondent no.1 from insisting upon the same for fulfilling the object of the Scheme. Ensuring that the person nominated as a director has a definite term would only make certain that he is able to make an effective contribution. Indisputably, appointing directors with truncated terms is likely to reduce their effective participation and contribution to the Board.

13. In view of the above, the present petition is unmerited and is, accordingly, dismissed. The pending application is disposed of.

VIBHU BAKHRU, J.

AUGUST 07, 2018

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